

Interpretation of some provisions of the crisis measures adopted by the Czech government¹ and more

Regarding item I. 2. Resolution of the Government of the Czech Republic No. 199, on the adoption of a crisis measure

From 8:00 pm on 13.3.2020, any presence of the public is prohibited at catering facilities² between 8.00 pm and 6:00 am.

Our commentary:

Does this catering facilities' limitation also apply to hotel restaurants and bars?

Does this catering facilities' limitation also apply to the guests staying in hotels?

The restrictions apply **to the public, among which the accommodated guests may also belong**. With regard to the definition of a catering service as such, it can be concluded that in the case, where the food is not produced, prepared or delivered, the food can be sold even beyond the prescribed time interval – i.e., if there is a minibar in the hotel room, it can be used for consumption also outside the permitted times, similarly as, according to the current interpretation, also vending machines dispensing food or beverages can be used and, possibly, food and drinks can also be sold at the hotel reception, for example. The AHR CR is of the opinion that the current wording of the crisis measure does not prohibit take-away services or serving food outside the catering facilities - for example from a dispensing window or as part of the so-called room service.

Concerning the limit set for the events hosting groups of people - does the limit also apply to the number of people in restaurants?

What exactly does the limitation of congregations of more than 30 people mean? Does it also concern, for example, hotel breakfasts, half boards, ... etc?

The limit of 30 persons currently applies only to such places where the activities described in Article I.1 are being held, **among which the standard provision of catering services (except tastings) is not listed**. This suggests that a restaurant can be hosting more than 30 people at the same time. The provision itself implies that the events are meant to contain a certain element of organization or a specific purpose.

Regarding item I. 4. Resolution of the Government of the Czech Republic No. 199, on the adoption of a crisis measure

From 6:00 am on 13.3.2020, any presence of the public is prohibited in gyms, natural and artificial bathing establishments, solariums, saunas, wellness services, music and social clubs, entertainment facilities, public libraries and galleries.

Our commentary:

A natural bathing establishment is a building structure that has been approved for the purpose of bathing, or a bathing reservoir in which the bathing water is replenished by a controlled inflow and outflow of potable water or a permanent inflow and outflow of chemically untreated underground or surface water^{8a)}, or a building structure that has been approved for the purpose of bathing which is equipped with a natural water purification system to enable bathing (hereinafter “bathing structure”) or a surface water basin^{8a)} where the operator offers a bathing service.

An artificial bathing establishment is a swimming pool, a bathing pool, an infant and toddler bathing pool, a wading pool.

Having said that, **spa and curative pools and waters used for medical purposes are not considered to be swimming pools**³. Spas are thus exempted from the obligation to prohibit public access to swimming pools, provided that they serve to curative purposes and are used for these. A natural curative spa is then a set of medical and other related facilities used to provide spa therapeutic rehabilitation care.

Does the ban on entry also apply to hotel swimming pools which are accessible solely to the hotel guests?

The ban applies to all swimming pools, even those accessible exclusively to the guests.

Does the restriction on wellness operations also apply to hotel guests and hotel wellness facilities?

It follows from the Government Resolution that all wellness services, as well as other services described therein, are prohibited.

How about private wellness operations? Are these also prohibited?

Private wellness is prohibited by the above-mentioned article, too; it is therefore not possible for the members of public to dwell or to be present at such facilities.

Massages are provided for a maximum of two people at the same time. Are they also covered by this emergency measure?

Definition of “the public” is provided by the Czech legal order for some specific areas. Given the specific interest of the Czech state in this particular situation, it can be interpreted as that any wellness service, which may include massages, is prohibited, and that the crisis measure also applies to massages catering for the specified number of persons.

In this regard, there have been some types of problems defined so far:

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How should the accommodation facility proceed if the clients do not want to come to the hotel, for example for fear, yet in the absence of a pending obstacle hindering their stay resulting from the crisis measures in question (i.e. no quarantine has been ordered, no limitations are experienced due to the emergency situation...)

In this case, clients are not entitled to release themselves from the contract (i.e. they cannot cancel their stay without further notice) or to claim monetary refund.

How should the accommodation facility proceed if the clients cancel their wellness stays?

In the present situation, no hotel can provide a stay of this kind for objective reasons. The government resolution is a *vis major* situation - no one could have expected this situation to arise. Therefore, the hotel is not liable for any damage incurred by the client as a result of failure to provide the agreed service. But the client can withdraw from the contract and the hotel must refund the advance that has possibly been prepaid for the accommodation - here it is necessary to look into the specifics of the situation in more detail.

How should the accommodation facility proceed if the clients cancel accommodation in a wellness hotel?

This is a combination of the above-mentioned situations. The AHR presently assumes that the accommodation itself naturally cannot be cancelled (there is no obstacle here), and as far as the impossibility to enter the wellness is concerned, this has been caused *vis major* and if the client incurs damage (taking the form of a lower perceived value of the accommodation, as he/she could not visit the wellness), the hotel is not liable for it, because it has occurred *vis major*. It is recommended that the hotel should offer and allow the hotel guest to use other services worth the value of the expected wellness services, possibly also on an alternative date.

Regarding compensations in general, it can be assumed **that the basic rule** is that if the client does not receive the service, the hotel quite logically cannot keep the deposit. In such a case, the client may withdraw from the contract. On the other hand, the hotel's liability for damage caused by the inability to provide the ordered services is excluded - as a result of the *vis major*.

Regarding item II. Resolution of the Government of the Czech Republic No. 198, on the adoption of a crisis measure

From 14.3.2020 onwards it shall apply that those foreigners, who at the time of the proclamation of the emergency situation were staying in the Czech territory legally and in compliance with the rules for the stays of foreigners, either temporarily or permanently, are entitled to remain in the territory for the duration of the emergency situation.

Our commentary:

Do the currently accommodated guests arriving from the risk areas have to leave the country?

Such already accommodated guests are entitled to stay in the Czech territory and do not have to leave the country immediately if their stay is in accordance with the Act on the Residence of Aliens in the Czech Republic and on the Amendment of Certain Acts. However, some embassies already recommend leaving the Czech Republic today. Also, the interruption of international public transport has already limited the possibilities for these persons to return and various scenarios thus have to be considered.

Regarding item I. 1. Resolution of the Government of the Czech Republic No. 201, on the adoption of a crisis measure

With effect from 13.3.2020, the personal presence of pupils and students... in schools and school facilities... and at events organized by these schools shall be prohibited.

Our commentary:

Unlike the annulled Extraordinary Measure taken by the Ministry of Health on 10.03.2020, the ban on the presence of pupils and students also applies to schools organised in nature and to similar stays outside the school facilities.

The AHR CR reserves the right to amend or supplement its commentaries above to reflect the latest developments concerning these matters.

Prague, 13.3.2020

¹*Below follows an interpretation of the individual provisions of the Resolution of the Government of the Czech Republic No. 198 and No. 199, on the adoption of a crisis measure, reflecting the statements of the relevant members of the Czech government and the actual meanings of the crisis measures in question, i.e. in an extensive form in some cases. This is particularly because some of the terms used do not have a clear legislative definition and that the situation is developing very dynamically.*

²*A catering service is to be understood as the production, preparation or distribution of food by the catering business operator for the purpose of its serving within the scope of a licensed hospitality activity²⁰⁾, in a school canteen²¹⁾, university canteen, in the children's activity group⁷⁵⁾, while catering for the active military staff, individuals under imprisonment and security detention, within the context of health and social services, including the spa rehabilitation care, staff catering, refreshments and serving food as part of the accommodation and tourism services. - Act No. 258/2000 Coll., on the protection of public health and amending certain related acts.*

³*Act No. 258/2000 Coll., on the protection of public health and amending certain related acts.*