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CHILEAN SUPREME COURT REACHES AGREEMENT REGARDING THE OPERATION OF THE JUDICIARY DURING THE NATIONAL HEALTH EMERGENCY

ACT Nº 53-2020 of the Chilean Supreme Court, recently enacted, attempts to establish a set of norms that balance the protection of public health (to both members of the Judiciary and the general public) with the continuity of the judicial service, with the purpose of facing and getting through the contingency that endangers it.

By this Agreement, the Supreme Court abolishes Act 42-2020 and sets the measures that are to be followed by the members of the Judiciary until the end of the national health emergency declared by the authorities.

In particular, the Act provides that:

• While the constitutional state of exception or the health emergency last, the Judiciary will be governed by the principles that, because of the constitution, are deemed to be incorporated to all public powers.
• Among them, the following principles are to be specially considered: **(i)** the protection of life and public health; **(ii)** access to justice, transparency and continuity of the judicial service; **(iii)** protection of the rights of vulnerable people; **(iv)** due process; and **(v)** the use of electronic means.
• Courts will arrange the duties of their employees in such a form that enables their performance by telecommuting and will limit on-site work to the minimum necessary for the Court's operation. Protection of vulnerable people is to be specially considered for this matter.
• Courts will continue processing cases, with the limitations and in the forms established in Law 21.226 and the ones regarding certain stages of the processes that are set forth in this Agreement. So will do it the Supreme Court and the Appeals Courts.
• Appeals Courts are to establish mechanisms that enable themselves and the lower courts under their jurisdiction to know first and foremost of matters regarding **(i)** requests for urgent precautionary measures where life or health is at risk; **(ii)** domestic or gender violence; **(iii)** habeas corpus or constitutional actions; **(iv)** any

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other that may be related to the protection of fundamental rights.
• In order to allow communications and notices, courts will promote the establishment of special and expedite forms of notice in the parties' first presentations (such as phone numbers and email addresses).
• Attention of public is restricted, and strict protocols are set for attention of public in exceptional cases when it might be needed.
• Article 3 of Law 21.226 is to be strictly complied with and, while the constitutional state of exception lasts, courts will not order the performance of any acts which performance may leave one of the parties in defenselessness, unless they are urgent in terms of the same law. The performance of these acts must be postponed for the nearest date once the constitutional state of exception is over.
• For the purposes of articles 4,5 and 9 of Law 21.226 and its cases of hindrance, facts regarding the COVID-19 virus that are of public knowledge are deemed to be notorious, unequivocal and in accordance to the principle of good faith. The aforementioned, in order to prevent any situation of defenselessness.
• Family Courts will review, on their own initiative, precautionary measures granted in favor of vulnerable people (such as women, children or teenagers' victims of violence) and that are near to expire.Likewise, Criminal Courts will promote the review and renewal of precautionary measures, in accordance with the law.
• Neither the hearings mentioned in letters a and b, subparagraph 4 of article 1 of Law 21.226, nor those that require urgent intervention of the court will be suspended. These hearings are to be carried out remotely.
• The following hearings are considered to be urgent: **(i)** hearings regarding people that are deprived of liberty, save in the cases of article 7, subparagraph 3 to 5 of Law 21.226; and **(ii)** hearings related to protection or precautionary measures referred to children and teenagers, immediate restitution requests, permissions to exit the country, domestic violence, visitations and provisory child support (in the last two, depending on the circumstances).
• If there are substantial grounds, judges can always order the performance of hearings that are not contained in the previously mentioned cases but are also urgent, because there is an imminent risk to someone's life, health, subsistence, or rights. In criminal matters, the judge will previously summon the Prosecutor's Office, the defense and the plaintiff.
• The suspension of hearings will be valid in the whole Chilean territory while the constitutional state of exception lasts, that is,

initially, until June 17, 2020.
• The authorities in charge of the protection of vulnerable people shall provide them the necessary means so that they can participate in hearings via videoconference, regardless of the capacity they are to act in the hearing.
• The only hearings that will be carried out on-site are the ones which performance is essential according to the already set out terms and are not deemed to be suspended by the law or this Agreement, and in which the use of electronic means may leave one of the parties in defenselessness. If this happens, the corresponding court shall exercise caution in order to prevent any risk of passing the virus.
• Lawyers' announcement for pleadings, requests for suspensions and recusals may be made by electronic means.
• The Supreme Court can modify this regime of suspensions at any time. It can either extend it, strengthen it or lift it regarding specific courts or jurisdictions.
• Non jurisdictional labors and the ones that do not impact on the exercise of jurisdiction are to be reduced to the essential minimum that is required for the continuity of the service and it has to focus on the early detection of conflicts related to the constitutional state of exception.Likewise, ceremonial and administrative acts are suspended, and the ceremony of oath for new lawyers will be carried out monthly, via videoconference.
• In order to grant access to justice for vulnerable people, mechanisms for the reception of domestic and gender violence will be established. Also, for the exercise of constitutional actions, requests of urgent precautionary measures or their renewal, actions related to the health emergency and those that do not require the sponsorship of a lawyer.
• Visits to prisons and residences will continue. If possible, remotely.
• While the health emergency lasts, the Judiciary auxiliary services (such us the Registries of Property, Notary Publics, Archivist and others) are to be governed by this Agreement in everything that is applicable to them and according to the instructions issued by each Appeals Court for such purposes.
• The Judicial Administrative Corporation will oversee reinforcing labors of the Judiciary user's orientation, of providing the electronic means that are necessary to comply with this Agreement and of ensuring compliance with sanitary conditions in places where the judicial labor is performed.

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