Securing assets during a claim in EU countries

Αυστρία

1 What are the different types of measures?

Interim and preventive measures are examples of precautionary measures. Austrian law provides for the following precautionary measures:
measures to preserve evidence;
measures to achieve the forced sale of collateral;
interim injunctions.
The common feature of all these precautionary measures is that the parties do not have to prove their claims; they simply have to provide *prima facie* evidence of them (i.e. credibly demonstrate them).
Interim injunctions are the most important of these measures, which is why the notes below are confined to them.
Interim injunctions are court rulings in the form of an order which secures future enforcement, regulates current circumstances for a certain period of time or achieves provisional satisfaction of a claim.
Interim injunctions are sub-divided into injunctions to:
secure a claim to payment of money;
secure a claim to performance of an action;
protect a right or legal relationship.

2 What are the conditions under which such measures may be issued?

2.1 The procedure

Interim injunctions are only granted on application. The parties are the applicant and the respondent. The following courts have jurisdiction to grant interim injunctions:
during proceedings already pending: the trial court at the same instance;
during enforcement proceedings: the enforcement court;
before the main action in contentious proceedings or between the trial and enforcement proceedings: the district court (*Bezirksgericht*) in the district where the respondent's general place of jurisdiction is located;
alternatively, the place of jurisdiction of the subject of the injunction or of the permanent or temporary place of residence of the third party debtor, or the district court which holds the first enforcement hearing.
As the procedure complies with the provisions of enforcement law, legal representation is not compulsory at first instance.
Actual acts of enforcement (such as impounding by the court) are carried out *ex officio* (by the enforcement officer). As a rule, the costs of an interim injunction, which depend on the value of the claim to be secured, are initially borne by the applicant. An applicant may only claim reimbursement of costs if they are successful in the main proceedings for which the application is made in the main proceedings. However, if a respondent is successful at the stage of the ruling on the interim injunction, they will already be entitled to reimbursement of costs.

2.2 The main conditions

In order to obtain an interim injunction, the injured party must file an application asserting and providing *prima facie* evidence of a monetary claim, a non-monetary claim to some other performance or a disputed right or legal relationship and also that there is a risk.
In order to obtain an interim injunction to secure a monetary claim, the applicant must provide *prima facie* evidence of a subjective risk; i.e. *prima facie* evidence that, without an injunction, the respondent will take measures to frustrate or complicate collection of the monetary claim.
For all other types of interim injunction, only *prima facie* evidence of an objective risk is needed, i.e. that, without an interim injunction, pursuit and collection of the claim through the courts would be impeded or considerably complicated, especially as a result of a change in the current situation of the subject of the injunction.
For interim injunctions to secure monetary claims and other forms of interim injunctions, proof that the claim would have to be enforced in countries in which such enforcement is not guaranteed by either international treaties or EU law is sufficient as *prima facie* evidence of risk.

3 Object and nature of such measures?

3.1 What types of assets can be subject to such measures?

All the means available for securing a monetary claim are listed in the Enforcement Code (*Exekutionsordnung*). They are:
measures to impound and administer movable assets;
an order prohibiting the disposal or pledging of movable physical assets;
a third-party prohibition order;
measures to administer the respondent's property;
an order prohibiting the disposal or encumbering of property or of rights registered in the Land Register.

3.2 What are the effects of such measures?

The effects of these measures vary according to the security provided. Impounding and administering movable physical assets removes those assets from the direct personal influence of the respondent. In principle, even legal disposal of assets impounded and administered is null and void. The law grants the courts broad latitude to give 'necessary or useful' directions whilst the goods are being retained and administered in order to prevent changes that would reduce their value or the proceeds from them. Such directions may, for example, include the sale of impounded perishable goods.
All disposals which infringe a prohibition on the disposal or pledging of movable, tangible assets are null and void.
Third-party prohibition orders granted by the court prohibit the respondent from disposing of or collecting any claims against third parties. At the same time, third parties are ordered not to pay any debts owed to the respondent and not to deliver any items due to him or do anything else which might frustrate or considerably complicate enforcement in respect of the claim or the items owed or to be delivered, until further notice from the court. In other words, third-

party debtors may only be prohibited from fulfilling an obligation or from impairing fulfilment; they cannot be prohibited from making payment to the applicant or from exercising any right. Third parties who fail to comply with the order are liable for damages. Whether disposals in breach of an injunction are null and void is not expressly regulated by law and legal opinion in Austria is divided on the subject.
An administrator appointed and thereafter supervised by the court administers the respondent's real property.
An entry is made in the Land Register to the effect that the debtor is prohibited from disposing of or encumbering his properties or rights registered in the Land Register. Once that entry has been made, voluntary disposal of property or rights by the respondent and corresponding entries in the Land Register are possible, but only have limited effect in respect of the applicant. Only if the applicant's claim is dismissed by the court in a final judgment or the interim injunction is otherwise cancelled does the third party come into full possession of his/her rights, including with regard to the applicant, and can have the prohibition removed.

3.3 What is the validity of such measures?

An interim injunction is only valid for a specified period of time, although it may be extended at the applicant's request. If an interim injunction is ordered separately from the substantive proceedings, the court must set a reasonable time limit for substantiating the secured claim and filing a claim or application for enforcement. The respondent can stay enforcement of the injunction and cancel injunctions already enforced by lodging a redemption sum.
Interim injunctions must be cancelled on request or *ex officio* if:
the deadline for substantiating the claim has expired;
the interim injunction was enforced to a greater extent than was necessary in order to protect the applicant;
the conditions for an injunction are no longer fulfilled;
the respondent has paid a redemption sum or provided security;
the grounds for the injunction no longer apply.

4 Is there a possibility of appeal against the measure?

There are two types of appeal under the interim injunction procedure, neither of which delays the proceedings:
an objection to the interim injunction itself: if the respondent and third-party debtor have not previously been heard, they may lodge an objection within 14 days. New evidence may be provided in order to ensure a fair hearing. The court of first instance rules on such objections by order and the hearing of the appeal is not open to the public;
an appeal known as a '*Rekurs*' is also available against an order granted in interim injunction proceedings. The time limit for this appeal is 14 days. The appeal process is a purely written procedure in which new evidence is barred. An appeal on a point of law may also be lodged against a confirmed order granting an interim injunction, but not if the application for an injunction was dismissed.

Special rules:

The law makes provision for the following:
temporary accommodation for a (divorced) spouse;
temporary regulation, use or safeguarding of matrimonial assets and matrimonial savings;
temporary accommodation for a child;
interim injunctions to prevent domestic violence;
interim injunctions to prevent violence in general;
interim injunctions to prevent invasion of privacy;
measures to satisfy a spouse's urgent need for accommodation.
temporary rent.
Of these special rules, interim injunctions preventing violence are especially important. Austria has a very simple but efficient system of protection against violence which allows a violent resident to be expelled from the home and forbidden to return. A person whose violent behaviour makes it unreasonable to expect the other person to meet them may also be forbidden from frequenting certain places or making contact. Most importantly, this system provides for close cooperation for the prevention of domestic violence between the police, the courts, the local domestic violence centre and, where minors are involved, child and youth welfare agencies. In certain cases provision is also made for representation by a victim support organisation.
The forces of law and order have the power under policing laws to issue an expulsion or restraining order for up to two weeks on persons who have endangered another person's life, health or liberty. If an application for an interim injunction is filed with the court, the order is extended to a maximum of four weeks. The police must also inform the local domestic violence centre, so that they can provide the victims with support.
If one person makes continued cohabitation intolerable for the other person through physical assault, the threat of physical assault, or any behaviour which is severely damaging to the other's mental health, the Court must, upon application from the other person:
order the former to leave the residence and its immediate vicinity and
not to return to the home or the immediate vicinity while the home is being used to meet the applicant's urgent need for accommodation.
The court may also prohibit the expelled person from frequenting specified locations (such as the street outside the home or the child's school) and order them to refrain from meeting or contacting the applicant, provided that this does not conflict with the respondent's own serious interests.
Interim injunctions granted in connection with main proceedings, such as divorce proceedings, annulment proceedings, division of property proceedings or proceedings to clarify rights of use of the home, apply pending final judgment in the main proceedings. Interim injunctions may be granted irrespective of whether or not the parties are still living together and independently of the main proceedings. However, if no main proceedings are pending, an injunction may not be granted for longer than six months.
If the conditions for doing so are met, an interim injunction must be enforced immediately either *ex officio* or on request. The enforcing authority (bailiff) must order the respondent from the home and remove all keys to the home from him and lodge them with the court. When a domestic violence injunction is enforced, the court may instruct the forces of law and order to call on the law and order enforcement officers at their disposal. This is a frequent occurrence in practice, meaning that violence interim injunctions are generally enforced by the police rather than by a bailiff.

Last update: 05/06/2023

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