

## 1 What are the different types of measures?

The trial is generally characterised by a longer or shorter duration in time. This delay, which results from the different phases and the different instances the trial goes through, may sometimes lead to inefficiencies of the legal protection sought in view of the delayed judgement and hence its delayed entry into force. In this regard, the legislator has foreseen a series of measures to ensure the effectiveness of the judicial protection sought.

The subject matter related to securing the claim is governed by the provisions of Articles 389-404 of the Civil Procedure Code (CPC).

According to Article 391 of the CPC, securing of a claim is permitted where, without such interim measures, it would be impossible or quite difficult for the plaintiff to implement the rights ensuing from the judgement and when: a) the claim is supported by sound documentary evidence, or b) a guarantee is to be provided in an amount determined by the court as per Articles 180 and 181 of the Obligations and Contracts Act (OCA). A guarantee may be requested even when there is sound documentary evidence.

Therefore, a fundamental prerequisite and a mandatory condition for granting interim measures is the risk of the plaintiff's inability to implement his rights ensuing from a judgement that will possibly be delivered with regards to a potentially substantiated claim.

In order to permit the claim to be secured, the judge should estimate whether the following prerequisites exist: the need of securing the claim, a probable justification of the claim and an interim measure, as specified by the plaintiff, that is appropriate and adequate in terms of the needs of the particular case and the legal protection explicitly sought.

According to Article 397 (1) of the CPC, the law provides for the following interim measures:

Seizure of immovable property,

Attachment of movable assets and receivables, including attachment of shares in a company,

Other adequate measures determined by the court, including impounding of a motor vehicle and stay of enforcement.

The court may also grant several interim measures up to the amount of the claim.

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

### 2.1 The procedure

Under the provisions of Chapter 34 of the CPC, securing of a claim is permitted:

according to Article 389 of the CPC – for all types of claims – with regard to any state of the case, prior to conclusion of the judicial inquiry during the appellate proceedings,

according to Article 390 of the CPC, all claims can be secured even before bringing the action.

Application for interim measures regarding a pending case:

This application is submitted by the plaintiff before the court having jurisdiction to deal with the legal dispute. For securing of a claim to be permitted, the prerequisites laid down in Article 391 of the CPC must exist – a probable justification of the claim, the need of securing the claim (i.e. a risk of not being able to satisfy the plaintiff's claim in the event it is upheld), as well as adequacy of the specified measure. In accordance with Article 391(2)(3) of the CPC, where there is insufficient evidence, the court may, at its own discretion, also request the payment of a monetary guarantee, as determined by it.

Securing of a claim is permitted even while the case is suspended.

Application for securing a future claim:

The application is submitted at the place where the plaintiff has his permanent address or where the property that will serve for securing the claim is located.

When there is a request for permitting an interim measure for the "stay of enforcement", the application must be submitted before the court of competent jurisdiction as per the place of enforcement.

When interim measures are granted with regards to a future claim, the court sets out a time limit for submission of the claim, which cannot be longer than one month. The material prerequisites for granting such interim measures are the same as those concerning the granting of interim measures regarding a pending case.

The application should indicate the requested interim measure and the value of the claim. It must be submitted to the relevant regional court or to the relevant district court, depending on the court jurisdiction and competence according to Article 104 of the CPC.

The application could be submitted by the person concerned or by his procedural representative or lawyer. A copy of it is not required since such a copy is not submitted to the opposite party.

The interim measures granted by the court are imposed by means of:

Seizure of immovable property – by the Registry Office,

Attachment of movable assets and receivables of the debtor – by a state or private bailiff, including by notification, on his part, of third parties such as banks and other credit institutions,

For interim measures regarding automobiles – by the relevant Traffic Police services,

For the interim measure "stay of enforcement" – a copy of the court's ruling for the permission granted should be submitted to the relevant bailiff who instituted the enforcement proceedings,

Other measures envisaged by law – by the relevant state or private bailiff, chosen by the person.

### 2.2 The main conditions

The material prerequisites for permitting interim measures (as described above) are set out in Article 391 of the CPC.

Securing of a maintenance claim is permitted even without complying with the requirements of Article 391 of the CPC, in which case the court may take interim measures ex officio.

Partial securing of the claim may also be permitted, but only in relation to the parts supported by sufficient evidence.

## 3 Object and nature of such measures?

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

In general, any property of the debtor may be subject to interim measures. Securing a pecuniary claim by means of attachment of receivables which are not subject to enforcement is not permitted.

According to Article 393 (1) of the CPC, securing a pecuniary claim against the state, state institutions and healthcare facilities under Article 5 (1) of the Healthcare Facilities Act is not permitted.

The following types of property can be subject to interim measures:

bank accounts,  
movable assets,  
immovable property,  
automobiles, as regards their impounding,  
enforcement activities,  
particular assets of the future debtor as reviewed in other cases explicitly laid down in law.

### **3.2 What are the effects of such measures?**

Any disposition of the asset performed by the debtor is invalid with regard to the creditor or the affiliated creditors. As regards immovable property, the invalidity has effect solely in respect of the dispositions performed after the foreclosure is entered into the register – as per Article 452 of the CPC.

Article 453 of the CPC governs the hypotheses of unenforceability, on the part of the creditor and the affiliated creditors, of the rights acquired after the foreclosure is entered into the register and the notification of the attachment has been received.

According to Article 401 of the CPC, the secured creditor can bring an action against a third liable party for the amounts or the assets which the latter refuses to submit voluntarily.

The expenses relating to claim securing proceedings are borne by the person at whose request the interim measures were granted, as provided by Article 514 of the CPC, by reference to Article 401 of the CPC, which regulates interim measures.

### **3.3 What is the validity of such measures?**

Permission for securing a claim is granted based on the principle that with regards to a pending case, the relevant interim measure is imposed prior to conclusion of the case by means of the corresponding judgement which has entered into force.

When interim measures are granted with regards to a future claim, the court sets out a time limit for submission of the claim, which cannot be longer than one month. If no evidence of submitting the claim within the established time limit has been presented, the court cancels the interim measures ex officio – as per Article 390 (3) of the CPC.

In the event of submission of a claim with regards to which interim measures have been granted, as is usually the case, the interim measures remain in force and have effect until the conclusion of the case.

Article 402 of the CPC governs the cancellation procedure for granted interim measures. It provides that the interested party must submit an application, a copy of which must be handed over to the person who has requested the granting of interim measures. The latter may submit an objection within three days. The court, sitting in closed session, cancels the interim measures where it is fully satisfied that the reason on account of which they were granted no longer exists or that the defendant has lodged a guarantee, within the prescribed time limit, by depositing the entire amount claimed by the plaintiff (Article 398 (2) of the CPC). The court's ruling for the cancellation of interim measures is subject to appeal by means of a private complaint within one week.

The replacement of the granted interim measures, as provided by Article 398 of the CPC, may be granted in the following two situations:

under paragraph 1 – the court, acting at the request of one of the parties, may, after notifying the other party and taking into account its objections submitted within three days after the notification, permit the replacement of one type of interim measures by another,

under paragraph 2 – in the event of securing a claim estimable in monetary terms, the defendant may at all times replace the permitted security, without the consent of the other party, with a pledge of money or of other securities, as provided by Articles 180 and 181 of the OCA.

In the cases laid down in Article 398 (1) (2) of the CPC, the attachment or seizure is revoked.

The law does not preclude the defendant from bringing a claim against the plaintiff for compensation of the damages that the interim measures have caused to the former, if the claim subject to the granted interim measures is revoked or not submitted within the prescribed time limit, as well as if the case is terminated (Article 403 of the CPC).

### **4 Is there a possibility of appeal against the measure?**

According to Article 396 of the CPC, the court's ruling regarding the securing of a claim may be appealed by means of a private complaint within one week.

For the plaintiff, this one-week period starts when the ruling is submitted to them, while for the defendant (the person against whom the interim measures have been granted) it starts from the day on which the notification of the imposed interim measures is submitted to them by the bailiff, by the Registry Office or by the court. A copy of the private complaint must be submitted to the opposite party, which is to reply within one week.

In the event of an appeal of a ruling for the refusal of interim measures, no copy of the plaintiff's private complaint is submitted to the defendant.

If the appellate court has upheld a ruling for granting or refusing interim measures, the ruling is not subject to cassation appeal. If the appellate court has granted interim measures which were refused by the first-instance court, the ruling of the former is subject to appeal by means of a private complaint before the Supreme Court of Cassation if the preconditions under Article 280 of the CPC for allowing such an appeal are met.

According to the CPC currently in force, both the granted interim measures and the amount of the guarantee determined by the court as a condition for granting interim measures are subject to a right of appeal. However, the appeal before the appellate court may not suspend the interim measures before a ruling on the appeal has been issued by the higher court and a repeal has been ruled.

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