Securing assets during a claim in EU countries

Sloveenia

1 What are the different types of measures?

The temporary and precautionary measures laid down by the Enforcement and Securing of Civil Claims Act (Zakon o izvršbi in zavarovanju, ZIZ) are preliminary and interim orders.

As (longer-term) precautionary measures, in the sense of the forced securing of claims, the ZIZ allows securing by the establishment of a lien on immovable property, the establishment of a lien on movable property and by the establishment of a lien on a participating interest. A creditor may request measures for the forced securing of claims on the same basis as enforcement, i.e. on the basis of an executory title, in distinction from preliminary and interim orders, which are measures of a temporary nature and may be requested under the conditions set out below.

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

Preliminary order: A court issues a preliminary order pursuant to a decision of a domestic court or other body in relation to a pecuniary claim that is not yet enforceable if the creditor can show that there is a probable risk that enforcement of the claim will otherwise be impossible or rendered considerably more difficult.

Interim orders are time-limited measures for securing claims designed either to preserve the status quo or establish a new, provisional situation in order to allow the effective enforcement of a creditor's claims at a later date (orders of a protective nature) or to avert serious and damaging consequences and the threat of violence (orders of a regulatory nature).

Under the ZIZ, **interim orders** can be divided into ***orders to secure pecuniary claims*** and ***orders to secure non-pecuniary claims.***

A court issues an *interim order to secure a pecuniary claim* if the creditor can demonstrate the likelihood of the existence of a claim or that a claim against the debtor will arise, where the creditor must demonstrate the likely risk that, owing to disposal, concealment or other use of the property by the debtor, enforcement of the claim will be impossible or rendered considerably more difficult.

A creditor is not obliged to prove that there is a risk if they demonstrate that it is probable that the debtor would suffer only insignificant damage from the proposed order. A risk shall be deemed to have been demonstrated if the claim is to be enforced abroad unless it is to be enforced in a Member State of the European Union.

A court issues an *interim order to secure a non-pecuniary claim* if the creditor can demonstrate that a claim against the debtor likely exists or will arise.

The creditor must also prove the existence of one of the following preconditions:

the risk that enforcement of the claim will be impossible or rendered considerably more difficult;

the order is necessary in order to prevent the use of force or avert the occurrence of irreparable damage;

the debtor will not suffer more detrimental consequences than the creditor if the interim order issued is proved to be unfounded in the course of proceedings.

2.1 The procedure

Preliminary order: The court that would have jurisdiction to exercise enforcement on the item for which a request to secure has been made has territorial jurisdiction to decide on a request to secure a claim by means of a preliminary order and to secure the claim itself.

After submitting a request for a preliminary order and studying the conditions for the issuing of a preliminary order, the court issues a decision indicating, inter alia, the amount of the secured claim, with interest and costs, the security ordered and the period of time which the court shall allow for it. A preliminary order may last no longer than 15 days from the occurrence of the conditions for enforcement.

If the period for which the court has permitted a preliminary order expires before the decision on the basis of which the preliminary order was issued becomes enforceable, the court, at the motion of the creditor, extends the order, provided that the circumstances under which it was issued have not changed.

Interim order: If civil or other judicial proceedings are initiated, the decision is made by the court with jurisdiction at which the proceedings are to take place. In the case of requests to secure a claim by means of an interim order filed before the opening of court proceedings in which the court would decide under special proceedings rules for matrimonial disputes and disputes relating to parental responsibility for children, and to secure the claim itself, the district court that would have jurisdiction over such proceedings has jurisdiction. In the case of requests to secure a claim by means of an interim order filed before the opening of court proceedings based on an act governing domestic violence, and to secure the claim itself, the district court that would have jurisdiction over such proceedings has jurisdiction. If civil or other judicial proceedings are not initiated, the court with jurisdiction to decide on the motion to secure a claim by means of an interim order and to secure the claim itself is the court with territorial jurisdiction that would have jurisdiction to decide on the motion for enforcement.

It therefore follows that the territorial jurisdiction of courts to issue interim orders in these cases is determined with regard to the subject of the securing of a claim. If this is movable property, the court with territorial jurisdiction is the court of execution in the area in which the items are located or the area in which the debtor has their permanent or temporary residence. If the subject to be secured is a pecuniary claim, book-entry security or other property right of the debtor, the court with territorial jurisdiction is generally the court covering the area in which the debtor has their permanent residence or registered office. If the subject to be secured is a partner's share in a company, the court with territorial jurisdiction is the court covering the area in which the company's registered office is located. If the subject to be secured is immovable property, the court with territorial jurisdiction is the court covering the area in which the immovable property is located.

2.2 The main conditions

A court issues a **preliminary order** pursuant to a decision of a domestic court or other body in relation to a pecuniary claim that is not yet enforceable, if the creditor can show that there is a probable risk that enforcement of the claim will otherwise be impossible or rendered considerably more difficult. This type of risk is deemed to have been demonstrated if the request to secure a claim by means of a preliminary order rests on any of the following:

on a judgement issued in criminal proceedings which upheld the injured party's property-law claim and a motion for a criminal retrial has been lodged against the judgement;

on a decision on the basis of which enforcement would have to be carried out abroad, unless enforcement would have to be carried out in a Member State of the European Union;

on a judgement of recognition against which an appeal has been submitted (in this case, the court may, at the debtor's request, lay down a condition for the securing of the claim by means of a preliminary order to the effect that the creditor remit a security deposit for the damage that the debtor could incur as a result of the preliminary order);
on a settlement concluded before a court or administrative body which is contested as determined by law (in this case, the court may, at the debtor's request, lay down a condition for the securing of the claim by means of a preliminary order to the effect that the creditor remit a security deposit for the damage that the debtor could incur as a result of the preliminary order);
on a notarial record that is an executory title on a pecuniary claim that has not yet fallen due.
A court permits the securing of a claim by means of a preliminary order for an amount of legally prescribed maintenance not yet fallen due, compensation for lost maintenance due to the death of the person that provided it, and compensation for the damage caused by a reduction in loss of activity or a reduction in or loss of the ability to work only for sums that will fall due within one year.
In these cases, an assumption is made that risk has been demonstrated if enforcement of a claim for recovery of an amount that has fallen due has already been requested against the debtor, or if such enforcement has been proposed.
A court issues an **interim order to secure a pecuniary claim** under the following conditions: if the creditor can demonstrate the likelihood of the existence of a claim or that a claim against a debtor will arise, and if the creditor demonstrates the likely risk that, owing to disposal, concealment or other use of the property by the debtor, enforcement of the claim will be impossible or rendered considerably more difficult (subjective risk).
A court issues an **interim order to secure a non-pecuniary claim** under the following conditions: if the creditor can demonstrate the likelihood of the existence of a claim or that a claim against a debtor will arise, and if the creditor demonstrates the likelihood of one of the following preconditions being met: the risk that enforcement of the claim will be impossible or rendered considerably more difficult (objective risk), that the order is necessary to prevent the use of force or to avert the occurrence of irreparable damage, and that the debtor will not suffer more detrimental consequences than the creditor if the interim order issued is proved to be unfounded in the course of proceedings.
In both cases (interim orders to secure a pecuniary claim and interim orders to secure a non-pecuniary claim), a creditor is not obliged to prove that there is a risk, if they demonstrate that it is probable that the debtor would suffer only insignificant damage from the proposed order. In both cases, a risk shall be deemed to have been demonstrated if the claim is to be enforced abroad, unless it is to be enforced in another Member State of the European Union.

3 Object and nature of such measures?

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

Any of a debtor's property may be subject to a preliminary or interim order, e.g. cash deposits in bank accounts, movable property, registered vehicles, immovable property and other property rights insofar as they are not items exempt from enforcement under the law or there is no legally restricted right to enforcement on items (e.g. items that are not in circulation, mineral wealth, items required by the debtor in order to provide a public service, etc.).

3.2 What are the effects of such measures?

Preliminary orders: A court may specify the following preliminary orders: the seizure of movable property and entry of the seizure in the register, if such is kept; the seizure of pecuniary claims or claims to hand over items; the attachment of other property rights or material rights; the seizure of pecuniary claims on the debtor's account at a payment institution; the entry of a lien in the companies register on a partner's share in a company, or in the central register of book-entry securities on a book-entry security; the provisional entry of a lien on the debtor's immovable property or a right entered on the immovable property.
A court may permit the sale of seized movable items if they will perish or if there is a risk that their price will fall significantly, where the sale of seized items shall be carried out under the provisions of the ZIZ regarding enforcement on movable property.
If the court attaches a claim by means of a preliminary order, it may, at the request of the creditor or debtor, permit the prohibited claim to be transferred to the creditor for recovery where there is a risk that a delay would lead to the claim not being recovered or that the right to recourse against a third party would be lost.
The amount acquired through the sale of items or the recovery of a claim is kept by the court until the preliminary order ceases or until the creditor requests enforcement, but for no longer than 30 days from the day the claim becomes enforceable.
Interim order: *Interim orders to secure pecuniary claims* may be all measures capable of achieving the purpose of securing a claim and which can be, in terms of the objectives they pursue, of a merely protective nature. The law lists the following types of interim order for securing pecuniary claims by way of example: a prohibition on a debtor making free use of movable property, and the safekeeping of such property; a prohibition on a debtor transferring or mortgaging their real estate or rights *in rem* to real estate registered in their favour, with that prohibition being recorded in the land register; a prohibition on a debtor of the debtor paying claims or handing over property to the debtor, and a prohibition on a debtor receiving property, recovering claims or making free use of them; an instruction to a payment transactions organisation to refuse payment from the debtor's account to the debtor or another person on the debtor's instructions of the sum of money on which the interim order has been placed.
Interim orders to secure non-pecuniary claims may also be all measures capable of achieving the purpose of securing a claim and which can be, in terms of the objectives they pursue, of a protective or regulatory nature. The law lists the following types of interim order for securing non-pecuniary claims by way of example: a prohibition on the transfer or mortgage of the movable property to which the claim refers and the ordering of the safekeeping of such property; a prohibition on a debtor transferring or mortgaging the real estate to which the claim refers, with that prohibition being recorded in the land register; a prohibition on the debtor doing anything that might cause damage to the creditor, or prohibiting them from changing anything in the property to which the claim refers and imposing a fine in the event of a violation of that prohibition; a prohibition on a debtor of the debtor handing over to the latter the property to which the claim refers; the payment of compensation for lost salary to an employee while a dispute is ongoing over the legality of a decision terminating their employment, where such compensation is necessary to maintain the employee and persons whom they are legally bound to maintain.
When a decision on an interim order is issued in civil or other proceedings, it has the effect of an enforcement decision; this allows intervention only in the debtor's sphere of interests, not in that of any third party. The issuing of an interim order does not therefore give rise to a lien on the item to be secured. Accordingly, where, for example, an interim order prohibits a debtor from making free use of the item to be secured, this does not prevent legal intervention by another person in respect of that item (e.g. in enforcement proceedings). Should the debtor disregard an interim order of this kind, the only consequence is that the creditor is entitled to contest legal acts that cause them damage, in accordance with the general rules of obligational law. Persons acquiring property which the debtor is not free to use are, in such cases, protected if they acquired it in good faith (they did not know and could not have known that such an act has caused damage to the creditor). If the person acquiring the property did not acquire it in good faith, the legal act ceases to have an effect solely in respect of the creditor (claimant) and insofar as is necessary to repay the creditor's claim.
Where the debtor infringes an interim order, they are also criminally liable for the offence of violating the rights of others. The court of execution may also impose a fine on a debtor who infringes an interim order, while the debtor has the right to claim compensation from the creditor for damage caused to them by an interim order that was unfounded or to which the creditor was not entitled.
An interim order may also impose a prohibition on payments being made to a debtor of the debtor (e.g. a bank); in this case the prohibition takes effect from the moment it is served on the debtor of the debtor. On receiving the prohibition, the latter may no longer effectively meet its obligations towards the debtor

and may also be liable to pay compensation to the creditor. In procedures for issuing an interim order, the bank may disclose information on the existence and number of transaction accounts, or other claims that the debtor has on it, only at the court's request; information on the current account numbers of legal entities and on whether those accounts are frozen is nevertheless accessible to the public on the website of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (Agencija Republike Slovenije za javnopravne evidence in storitve).

3.3 What is the validity of such measures?

A decision on a *preliminary order issued by a court must state, inter alia*, the amount of the secured claim, with interest and costs, the security ordered **and the period of time which the court shall allow for it**, where the preliminary order may last *no more than 15 days from the occurrence of the conditions for enforcement.*

The period of validity of an *interim order* is not defined by law; rather, it is determined by the court in the decision ordering the interim order. If an order is issued before the submission of an action or the commencement of another procedure, or if an order is issued to secure a claim that has not yet arisen, the court provides the creditor with a deadline by which it must commence a procedure or submit an action. If the creditor fails to submit an action or commence a procedure by this deadline, the court shall halt proceedings. Interim orders may remain in force after the day the court decision in relation to which they were issued is published.

4 Is there a possibility of appeal against the measure?

A debtor may lodge an objection to a decision on a preliminary order or a decision on an interim order within eight days of the decision being served. This shall be done at the court that issued the decision on the preliminary or interim order; that same court shall then decide on the objection itself.

A debtor or creditor may lodge an appeal against a court decision on an objection and against a decision rejecting a request to issue an interim order at the court that issued the decision within eight days of the decision being served. This appeal shall be decided by a court of second instance. Objection and appeals do not, as a rule, stay proceedings.

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