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 render the legal protection sought ineffective through delays in the delivery of a judgement or its entry into force. With this in mind, the legislator has provided for a set of measures aimed at ensuring the effectiveness of the judicial protection sought restricting the exercise of certain property rights by the respondent.

Issues related to securing the claim are 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 at the court's discretion even when there is sound documentary evidence.

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 regard to a potentially substantiated claim.

In order to permit the claim to be secured, the court assesses 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 precautionary measures up to the amount of the claim (there being no need to secure more than that amount).

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 (securing a future claim).

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 granted, the prerequisites laid down in Article 391 of the CPC must apply: probable justification of the claim, existence of a need of securing the claim, i.e. a risk of the effects of the court's decision granting the claim (if such decision is issued) being frustrated because the defendant has disposed of his or her seizable property, as well as adequacy of the specified measure. In accordance with Article 391(2) and (3) CPC, where there is insufficient evidence to prove the probable justification of the claim, the court may, at its own discretion, also request the payment of a monetary guarantee in an amount 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 may be submitted by the person concerned or by his procedural representative (a lawyer). A copy of it is not required since such a copy is not served on to the opposing party because the interlocutory proceedings are ex parte proceedings: they are pursued without the participation of the other party (whose patrimony will be affected by the measure granted).

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,

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

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.

However, the Bank Insolvency Act (Zakon za bankovata nesastoyatelnost) (ZBN), as a special law, expressly provides for the securing of claims for replenishment of a bank's insolvency estate. Under Article 53(2) of the ZBN, securing of a claim is to be granted where the motion is supported by sufficient evidence to warrant the assumption that the claim is justified. If the claim is probably unjustified, the general law allows the granting of precautionary measures when a guarantee is provided, whereas the special law regards probable justification as a sine qua non condition for securing of a claim to be granted. Therefore, securing of a claim is to be granted where the arguments and the evidence presented warrant the conclusion that the claim is probably

not unjustified. This is understandable, considering that, under Article 403 CPC, the securing party is liable for the damages caused by the precautionary measures to the opposing party. The legislator acknowledges that obligations to indemnify such damages should not arise in the patrimony of an insolvent bank (because this would erode the insolvency estate and would inflict damage on creditors) and, therefore, establishes a requirement that securing of a claim brought should be granted only if sufficient evidence is presented to prove its probable justification.

Under point 2 of Article 629a(1) of the Commerce Act (Targovski zakon) (TZ), the measures referred to in point 4 of Article 630(1) of the TZ may be granted as ex ante precautionary measures in insolvency proceedings if this is necessary in order to preserve the debtor's property. These measures include imposing an attachment, appointing a provisional receiver, ordering a stay of pending enforcement proceedings, sealing premises, equipment, etc. The rule in question presupposes that the petition under Article 625 of the TZ should be admissible, that it should be supported by written evidence establishing the probable manifestation of the facts underlying the claim and, if it is not supported by such evidence, that the petitioner should furnish security in an amount set by the court to compensate the debtor for the damages caused in case it is not established that the debtor is insolvent or, respectively, overindebted (Article 629a(2) of the TZ) and that there should be an interest in securing (where the debtor squanders, destroys and/or conceals his or her property and thereby endangers creditors' interests and unless the measures sought are imposed creditors may incur damages as they would find it impossible to satisfy themselves when the debtor's property is monetised). The law also requires that the precautionary measure sought should be adequate and relevant to the need of securing the claim.

It is inferred from the rule of Article 629a(1) of the TZ that ex ante securing in proceedings for the initiation of insolvency proceedings is granted only if there is a real risk of the debtor disposing of his or her property in order to inflict damage on creditors. Only if this prerequisite exists is the court bound to consider whether the other prerequisites provided for in Article 629a(2) of the TZ also exist.

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:

defendant's receivables from credit institutions on bank accounts opened with them,

movable goods;

immovable property;

automobiles, as regards their impounding,

enforcement activities,

particular assets of the claimed debtor as reviewed in other cases explicitly laid down in law.

3.2 What are the effects of such measures?

Any dispositions of the subject of the precautionary measure, effected by the debtor, are ineffective vis-à-vis the person at whose request the precautionary measures were imposed. 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. Apart from this relative ineffectiveness (non-reliance), the dispositions effected are completely effective and produce their legal effects.

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.

The provisions of 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.

Third parties, too, are recognised to have legal interest in bringing an appeal if their patrimony is affected by the precautionary measure. In the ex parte interlocutory proceedings, the court does not examine whether the defendant holds the rights in respect of which a restriction of his or her power of disposal is requested. For this reason, attachment may be imposed on immovable property which is not owned by the debtor. The actual owner in this case would have standing to appeal the ruling granting the attachment even though that owner is a third party with regard to the proceedings.

Where a ruling refusing to grant a securing of the claim is appealed, a copy of the requesting party's appeal is not served on the respondent because in this phase, too, the proceedings remain ex parte.

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.

Last update: 01/05/2020

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.