

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Czech Republic]

2020



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I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

1. Is it possible to apply for an interim measure in order to ensure the effective enforcement of a court decision?

Answer: Yes, the rules on interim measures are governed by Article 74 *et seq.* and by Article 102 of the Civil Procedure Code (Act No. 99/1963 Coll.)

The interim measures are ordered to ensure the enforcement of a judicial decision or to regulate provisionally the relationships of participants.

They are ordered by the court upon a petition. However the petition is not necessary in a case of interim measure where the proceedings may be commenced by the court even without a petition.

Czech legal system also applies special interim measures for certain specific situations such as protection against domestic violence or care for a minor. They are governed by the Act on Special Judicial Proceedings (Act No. 292/2013 Coll.) which also provide special arrangements complementary to the general rules for interim measures.

2. Is it mandatory to pay court fees for this type of application?

Answer: Yes. The court fee is 1,000 CZK (it equals approx. 39 EUR).

3. What is the ordinary/average length of time for this kind of procedure?

Answer: The judge shall order the interim measures immediately. Unless there is danger of delay, the judge decides about the application for interim measures within the seven days after it was filed.

II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES

1. For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc)

Answer:

a) pay maintenance in a necessary extent;

- b) put the child into the custody of the other parent or into the custody of the person identified by the court;
- c) pay at least a part of a remuneration for work in case of duration of labour relationship and the petitioner does not work for serious reasons;
- d) deposit a sum of money or a thing with the custody of the court;
- e) not dispose of certain things or rights;
- f) do something, omit something or suffer from something.

There are also special types of interim measures under the Act on Special Judicial Proceedings (Act No. 292/2013 Coll.).

III. PROCEDURE

1. Competent Court

- a) **Which court has jurisdiction to grant these interim and precautionary measures?**

Answer: The court which is competent to hear the case.

2. When can the application for interim and precautionary measures be submitted?

Is it possible to apply for it at the time the underlying lawsuit is filed? If YES: Are there any special requirements when so doing?

Answer: Yes, the application for the interim measures and lawsuit may be filed simultaneously. They are considered as two motions, both require to pay the court's fee.

3. Is it possible to apply for interim precautionary measures before filing the underlying lawsuit? If YES: Are there any special requirements when so doing? (e.g., deadline to submit the lawsuit)

Answer: Yes, the interim measures ordered prior to the commencement of proceedings are covered by Article 74 *et seq.* of the Code of Civil Procedure.

The petitioner is required to file a petition to commence the proceedings within the legal period or period specified by the court.

4. Is it possible to apply for interim precautionary measures after filing the main claim? If YES: Are there any special requirements when so doing?

Answer: If after the commencement of the proceedings there is a danger that enforcement of the decision that is to be issued in the proceedings could be jeopardized, it is possible to apply for a preliminary measure. The interim measures ordered after the commencement of the proceedings are set out in Article 102 of the Code of Civil Procedure.

5. Criteria used by the court for granting these measures

What requirements must be fulfilled in order to apply for an interim measure? (e.g. *periculum in mora*, *fumus boni iuris*, security, etc)

Answer: The applicant has the obligation to pay security in the amount of CZK 10,000 and in matters concerning relations between entrepreneurs arising from business activities in the amount of CZK 50,000. However, there are cases in which this obligation does not apply (e.g. in cases of personal injury compensation).

The petition must contain the explanation of the decisive facts justifying ordering the preliminary measure and the applicant has to attach to the draft instrument relied upon.

6. Procedure

a) Which are the main steps of the procedure after filing the interim measure application? (e.g. holding a hearing, presenting evidence, etc.)

Answer: The applicant has to attach to the draft instrument relied upon. The question of interim measures is decided by the court without hearing.

b) Is it possible for the Court to order an interim measure without hearing the other party? (*in audita parte debitoris*). If YES, under what circumstances can the parties apply for it?

Answer: Yes. The question of interim measures is always decided without hearing.

c) What are the main steps of the procedure in this case?

Answer: The steps are the same as described above in Part III Question 6 (a).

7. Opposition of the defendant

- a) Is it possible for the defendant to oppose interim and precautionary measures?**

Answer: Yes. The defendant may appeal against a decision of the court by which the preliminary measure is ordered. The appeal may be filed within fifteen days after the delivery of a written execution of a decision with the court against which decision the appeal is directed.

- b) Is it possible for the defendant to ask the court for the substitution of the interim measure for a guarantee?**

Answer: No.

8. Appeal

- a) Are appeals allowed from the court decision ordering the measures or rejecting the defendant's opposition to them?**

Answer: It is possible to appeal but the appellate review is not allowed. After rejecting the defendant's opposition, there is not any instrument for another appeal available.

- b) Is it possible to enforce the interim measure once an appeal is filed?**

Answer: The interim measure is already enforceable by publication (or as soon as it was delivered).

IV. EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.

- 1. Is it possible to enforce the interim measure when the other party obstructs it?**

Answer: Yes.

When the obliged person does not fulfil voluntarily what is imposed upon him or her by the interim measure, the entitled

person may file a petition for a judicial enforcement of the decision.

2. Is it possible to modify a previous interim measure?

Answer: Yes, the court may limit the scope of interim measure following the change of circumstances.

3. When is it possible to raise an interim measure?

Answer: The interim measure can be raised when the petitioner fails to file a petition to commence the proceedings within the legal period or period specified by the court, when it was decided about the matter itself, and when the time limit ordered in the interim measure elapses. The court also raises the interim measure when there is not present any reason for its application and when the petitioner fails to pay security.

4. Are there any rules concerning the costs (e.g., lawyers' fees, etc.) related to the application?

Answer: If the court has awarded a participant reimbursement of costs of proceedings, the court awards him / her also with reimbursement of costs of an interim measure.

The obligation to reimburse the costs of proceedings is decided by the court in the final decision. Lawyers' fees (if granted) are fixed by legislation, and thus can be calculated in advance.

V. ARBITRATION

1. Is it possible to apply for an interim measure in order to assure the effective enforcement of an arbitration award in your country? If YES: what is the enforcement procedure?

Answer: Yes, under section 22 of the (Czech) Arbitration Act 1994, Czech national courts are empowered to order an interim measure at the request of a party to a dispute.

The procedure follows the provisions of the Civil Procedure Code and may be invoked solely in a situation where the enforcement of the arbitral award could otherwise be jeopardized.

2. Are the arbitrators, entitled to order an interim measure?

Answer: No, only Czech national courts are empowered to order an interim measure at the request of a party to a dispute.

VI. FOREIGN PROCEDURE & ARBITRATION

- 1. Is it possible to apply for an interim measure before your country's courts in order to assure the effective enforcement of a foreign court decision or arbitration award? If YES: how is this procedure executed?**

Answer: Yes. Procedure is the same as mentioned above.

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