

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Hungary]

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TABLE OF CONTENTS

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I.	APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES.....	1
1.	Is it possible to apply for an interim measure in order to assure the effective enforcement of a Court decision?.....	1
2.	Is it mandatory to pay court fees for this type of application?	1
3.	What is the ordinary/average length of time for this kind of procedure?.....	1
II.	TYPES OF INTERIM AND PRECAUTIONARY MEASURES.....	2
1.	For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc.).....	2
III.	PROCEDURE.....	3
1.	Competent Court	3
2.	When can the application for interim and precautionary measures be submitted?	3
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).....	3
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?	4
5.	Criteria used by the court for granting these measures	4
6.	Procedure	5
7.	Opposition of the defendant.....	6
IV.	EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.	7
1.	Is it possible to enforce the interim measure when the other party obstructs it?	7
2.	Is it possible to modify a previous interim measure?	7

3.	When is it possible to raise an interim measure?.....	7
D.	Are there any rules concerning the costs (e.g., lawyers' fees, etc.) related to the application?.....	7
V.	ARBITRATION	8
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?.....	8
2.	Are the arbitrators, entitled to order an interim measure?.....	8
VI.	FOREIGN PROCEDURE & ARBITRATION.....	8
1.	Is it possible to apply for an interim measure before your country Courts in order to assure the effective enforcement of a foreign Court Decision or Arbitration Award? If YES: how is this procedure executed?	8
VII.	OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.	8
1.	Please state/provide any other issues of interest in your jurisdiction.	8

I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

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

Answer: Yes.

The following types of legal interim and precautionary measures are available in Hungary to ensure that the claim can be satisfied:

- provisional injunction under Act CXXX of 2016 on the Code of Civil Procedure ("**Civil Procedure Act**")
- provisional enforcement under the Civil Procedure Act
- precautionary measures under Act LIII of 1994 on Judicial Enforcement ("**Judicial Enforcement Act**")
- emergency measures under Act LX of 2017 on the Arbitration ("**Arbitration Act**")
- the New York Convention

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

Answer:

Generally, this type of application for an interim measure has to be filed together with the main claim and the applicant will have to pay the court fees in connection with the main claim. There is no separate fee for these types of applications. ("**Application**"). Under the Civil Procedure Act, a provisional injunction may be requested prior to the filing of a statement of claim as well and, in this case, a nominal stamp duty of HUF 6,000 (approx. EUR 20) is payable.

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

Answer:

In theory, the court should decide on any request for interim/emergency measure in an expedited procedure. Nonetheless, it is not possible to estimate the time needed for such a decision. In practice, the court's decision on the interim measures is usually rendered within 3-6 months from the due filing of the request.

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:

Provisional injunctions under the Civil Procedure Act

By ordering an interim injunction, the court obliges the adversary of the applicant to comply with the interim injunction at a time when it has not yet come to a decision on the substance of the legal dispute between the parties. Contrary to the general rules, the Court adjudicates on the application in advance and the ruling ordering the provisional injunction may be enforced in advance, irrespective of the appeals procedure.

Provisional enforcement under the Civil Procedure Act

Some type of decisions are enforceable in advance, irrespective of any appeal:

- decisions on child support and alimony, and other similar payments;
- decisions restricting someone from harming the enjoyment of another person's possessions (trespassing);
- decisions on non-contested claims;
- decisions when the claim was evidenced by public documents; and,
- when immediate enforcement is reasonable due to a state of necessity.

Precautionary measures under the Judicial Enforcement Act

Under Hungarian law, enforcement may be ordered only if the court has issued an enforcement order. An enforcement order may be issued if the final decision contains an obligation that is legally binding or can be provisionally enforced, and the deadline for performance has expired. If these conjunctive conditions are not met, the court shall not issue an enforcement order. However, in order to protect the rights of the applicant, there is a possibility to order a precautionary measure. Therefore, if the enforcement order cannot yet be issued but the applicant has argued successfully that the fulfillment of the claim might be in jeopardy, the court shall order by way of precautionary measure:

- a security for a pecuniary claim; or
- the freezing of a specified asset.

Emergency measures under the Arbitration Act

By ordering emergency measures, the arbitration court obliges the adversary of the applicant to comply with the emergency measure at a time when it has not yet come to a decision on the substance of the legal dispute between the

parties. The emergency measure is enforceable and cannot be appealed. In certain cases (in case of evidenced state of necessity) the emergency measure may be issued *ex parte*, i.e. without the hearing of the other party (which will be effective for 20 days).

III. PROCEDURE

1. Competent Court

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

Answer:

These measures are passed by the court that has competence to decide in the subject matter of the main claim. In case of arbitration, it is the arbitration court that issues the decision.

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

- a) 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

Such measures shall be requested either at the same time as the statement of claim in the main lawsuit is filed or at any time when the case is ongoing. In certain cases, it is also possible to ask for the interim measures prior to the filing of the lawsuit.

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:

It is possible to apply for interim and precautionary measures before filing the underlying lawsuit when a state of necessity is evidenced. Applications for interim injunctions may also be claimed before filing the lawsuit for trademark infringements, patent infringements, procedures for protection of property rights and the procedures for protection of industrial property rights.

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: Yes, please see above under B).

5. **Criteria used by the court for granting these measures**

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

Answer:

Provisional injunctions under the Civil Procedure Act

The court uses a “state of necessity” test, i.e. it evaluates if the requested measure(s) is deemed necessary to prevent any imminent threat of damage, or to preserve the status quo giving rise to the dispute, or to ensure the protection of the applicant’s rights of special appreciation, where the advantages to be gained must always supersede the disadvantage caused by the measure. The court may render the implementation of provisional measures subject to the provision of security. The facts underlying the necessity of the protective measures shall be substantiated.

Provisional enforcement under the Civil Procedure Act

Please see section A) above – the provisional enforcement is automatic if the judgement falls within certain categories.

Precautionary measures under the Judicial Enforcement Act

If the enforcement order cannot yet be issued on the basis of relevant provisions for the enforcement of a claim, but the applicant has substantiated that the fulfilment of the claim might be in jeopardy, the court shall order the following protective measures upon the judgment creditor’s request:

1. security for a pecuniary claim, or
2. freezing of a specific asset.

A precautionary measure may be ordered for the enforcement of a claim upon which

1. an action for matrimonial property right has been filed;
2. an action for infringement of a patent, a protected design or of the patented topography of micro-electronic semiconductors, violation of plant variety rights, infringement of a trademark, infringement of a geographical indication,

infringement of a design, infringement of a certificate for the extension of protection, any copyright violation, or for infringement of the relevant provisions of Act on the Prohibition of Unfair Trading Practices and Unfair Competition has been filed in a Hungarian court under the conditions laid down in the relevant laws;

3. another action has been filed in a Hungarian court in which the claim is proved by public documents or private documents with full evidentiary power

(even if the claim is filed in any other member state in accordance with Brussels I).

Emergency measures under the Arbitration Act

The arbitration court should assess the “state of necessity” test described above.

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:

In general, before the precautionary measures are issued by the court, the court either holds a hearing or requests the parties to submit their views on the request in writing.

In certain exceptional cases, *ex parte* decision is also possible.

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

Provisional injunctions under the Civil Procedure Act

Before ruling, the court shall hear the parties in person, or shall enable them to present their views relating to the request in writing. Ruling shall be made without hearing only in cases of urgency, or if any party involved fails to keep the deadline or time limit set for the hearing.

Precautionary measures under the Judicial Enforcement Act

When precautionary measures are requested, a hearing shall be held, if it is deemed necessary by the court. This means that *ex parte* decision is also possible.

Emergency measures under the Arbitration Act

In case of state of necessity, the arbitration court may decide on the request without the hearing of the party (which decision will be effective for 20 days during which the other party must be heard).

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

Answer:

- 1) Filing of the request
- 2) (if applicable) The court orders the other party to submit its views on the request
- 3) (if applicable) Submission of the response
- 4) (if applicable) Submission of the reply
- 5) Decision of the court on the request
- 6) (if applicable) Appeal procedure
- 7) Enforcement of the measure

7. Opposition of the defendant

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

Answer: Yes

The defendant may oppose the application for an interim and precautionary measure during the hearing and/or in written form. Moreover, after its delivery the defendant can appeal the decision.

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

Answer:

Generally yes, however, it is unprecedented. In our view, if the defendant would offer to provide a guarantee covering a potential payment obligation instead of the freezing of certain assets or accounts, such offer should be acceptable to the court. We note that even after an interim measure is ordered, the defendant has the right to request the court to

lift the measure if the circumstances for the ordering of the measure have changed materially.

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

Answer: Yes, the decision of the court will be appealable. The decision of the arbitration court will not be subject to an appeal.

d) Is it possible to enforce the interim measure once an appeal is filed?

Answer: Yes, the interim measure will be deemed to be enforceable irrespective of the appeal (unless the court orders otherwise).

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: The interim measure will be enforceable. However, the other party will have the same rights during enforcement as "normal", i.e. it is possible to obstruct the procedure with – ungrounded – objections and appeals that have a delaying effect on the enforcement procedure.

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

Answer: Yes, the court is not bound to its earlier decision, it may amend it if the circumstances have changed materially.

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

Answer: Please see B) above. The latest time that an interim measure will take effect is when a final decision is reached in the procedure (in this case, the interim measure will be changed too).

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

Answer: As the application is usually filed together with a statement of claim, the court usually decides on the costs only when the case is decided. The same applies to the precautionary measures filed under the Judicial Enforcement Act – the court/bailiff will decide on the costs once the enforcement procedure is

closed and will take into account the costs relating to the interim measure related application as well.

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

The arbitral tribunal may, upon request, order any party to take an interim measure that the arbitral tribunal may consider necessary in respect to the subject-matter of the dispute. The arbitral tribunal may require either party to provide appropriate security in connection with such measure.

The decision on the subject-matter of the interim measure remains in force as long as a new decision of the arbitral tribunal does not abrogate it or until it delivers a decision in the same issue. If the decision was issued *ex parte*, the decision is effective for 20 days during which the tribunal must hear the other party and decide whether or not to maintain the measure.

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

Answer: Yes - see above (it is always the arbitral tribunal and not the individual arbitrator who decides on the issue).

VI. FOREIGN PROCEDURE & ARBITRATION

- 1. Is it possible to apply for an interim measure before your country 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, same procedure as described above. Hungary is also a party to the New York Convention on the recognition and enforcement of foreign arbitral awards 1958.

VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.

- 1. Please state/provide any other issues of interest in your jurisdiction.**

Answer:

The Hungarian Courts apply the interim and precautionary measures relatively rarely.

Hungary

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