

Enforcement of Foreign Judgments

Interim and Precautionary Measures [North Macedonia]

2020



TABLE OF CONTENTS

	Page
MULTILAW LITIGATION AND DISPUTE RESOLUTION PRACTICE GROUP	1
I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES	1
1. Is it possible to apply for an interim measure in order to ensure 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.	1
1. For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc.)	1
III. PROCEDURE	2
1. Competent Court	2
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?	3
5. Criteria used by the court for granting these measures	3
6. Procedure	4
7. Opposition of the defendant	5
8. Appeal	6

IV.	EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.	6
1.	Is it possible to enforce the interim measure when the other party obstructs it?.....	6
2.	Is it possible to modify a previous interim measure?	6
3.	When is it possible to raise an interim measure?	7
4.	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's Courts in order to ensure the effective enforcement of a foreign Court Decision or Arbitration Award? If YES: how is this procedure executed?	8

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: In accordance with the Law on Securing Claims, parties can apply for interim measures (*привремени мерки*) in order to ensure the effective enforcement of a court decision. However, an interim measure will not be approved if the same aim can be achieved with a precautionary measure (*претходна мерка*), and the conditions for adopting a precautionary measure are fulfilled.

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

Answer: Yes. The amount of the fee is determined on the basis of the value of the dispute.

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

Answer: The procedure is considered as urgent and the court is obliged to take on the case within three days after the receipt of the request. However, the period in which the court should render a decision is not regulated, therefore it can vary from case to case and last several months.

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: The Law on Securing Claims provides for precautionary measures for securing a monetary claim which include:

- (i) Inventory of movables;
- (ii) Prohibition on the debtor's debtor to pay a claim to the debtor or to hand over objects, as well as prohibition on the debtor to collect a claim, receive objects, and dispose of them;
- (iii) Prohibition on the payment operations carrier of the debtor or third party to approve an order of the debtor for payment of a monetary amount (which is subject to an approved precautionary measure) from his accounts;
- (iv) Recording a pledge right over immovables of the debtor or a right registered over an immovable.

The Law on Securing Claims provides two types of interim measures: interim measures for securing a monetary claim and interim measures for securing a non-monetary claim. Note that other laws can provide for different interim measures from the ones listed below.

Interim measures for securing a monetary claim:

(i) Prohibition on the debtor from disposing movables, as well as keeping those movables;

(ii) Prohibition on the debtor from alienating or burdening his immovables or other proprietary rights over the properties which are registered on his behalf and recording that prohibition in a public book, as well as a prohibition on giving them under lease;

(iii) Prohibition on the debtor from selling securities and shares;

(iv) Prohibition on the debtor's debtor from paying a claim to the debtor or from handing over objects, as well as a prohibition on the debtor from receiving objects, collecting a claim and disposing of them; and

(v) Order for the payment operations carrier of the debtor or third party, not to approve an order of the debtor for payment of a monetary amount (which is subject to an approved interim measure) from his accounts.

Interim measures for securing a non-monetary claim:

(i) Prohibition on the alienation and encumbrance of movables to which the claim is directed, as well as keeping these movables;

(ii) Prohibition on the alienation and encumbrance of immovables to which the claim is directed and recording that prohibition in a public book;

(iii) Prohibition on the debtor from undertaking activities that can cause damage to the creditor, as well as a prohibition on making changes to the objects to which the claim is directed;

(iv) Prohibition on the debtor's debtor from handing over objects to which the claim is directed; and

(v) Payment of salary compensation to the employee during a dispute due to unlawfulness of the decision on termination of the labour relation, if that is necessary for his financial support and the financial support of the persons that he is obliged by law to support.

III. PROCEDURE

1. Competent Court

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

Answer: The locally competent court for granting a precautionary measure is the court which conducts i.e. the procedure for the case for which the security is requested.

The locally competent court for granting interim measures is the court where a court procedure was already initiated. If a court procedure is not initiated, the locally competent court will be the court which would have competence if such procedure was initiated.

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: Precautionary measures cannot be applied for at the time the underlying lawsuit is filed.

Interim measures can be requested together with filing the underlying lawsuit and after initiating a court or administrative procedure. There are no special requirements when requesting an interim measure at the time the underlying lawsuit is filed.

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: Precautionary measures cannot be applied for before filing the underlying lawsuit.

Interim measures can be requested before filing the underlying lawsuit and initiating a court or administrative procedure. In this case, the adopted decision for an interim measure, in addition to the duration of that measure, will have to contain a deadline to submit the lawsuit or initiate the respective procedure.

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: Precautionary measures can be applied for after filing the main claim, after the court has rendered its decision, but the decision will not yet be enforceable.

Interim measures can be applied for after filing the main claim. There are no special requirements.

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: Precautionary measures are allowed on the basis of a decision containing a monetary claim, which has not become enforceable. The creditor needs to make probable the danger that without such security, the collection of the claim will be disabled or significantly hindered. In certain situations this danger is assumed.

The requirements differ when the interim measure is requested in order to secure monetary and non-monetary claims.

Monetary claims: the creditor needs to make probable:

- (i) The existence of the claim; and
- (ii) The danger that without such a measure the debtor will disable or significantly hinder the collection of the claim, by alienating, covering, or otherwise disposing with his property or assets. As an exception, the creditor must not prove this danger, if he proves that with the interim measure, the debtor would suffer only insignificant damage. Note that if the claim should be realised abroad, the danger is considered proven.

Non-monetary claims: the creditor needs to make probable:

- (i) The existence of the claim; and
- (ii) The danger that without such a measure the debtor will disable or significantly hinder the collection of the claim. As an exception, the creditor must not prove this danger, if he proves that with the interim measure, the debtor would suffer only insignificant damage. Note that if the claim should be realised abroad, the danger is considered proven; or
- (iii) As an alternative to proving the danger as described under (ii) above, the creditor can prove that the requested measure is necessary in order to prevent the use of force or occurrence of irreparable damage.

Upon the creditor's proposal, the court can issue an interim measure even in cases when the creditor does not make the claim and danger probable, if within the granted deadline, the creditor deposits the amount which the court will determine as guarantee for the potential damage which the debtor might suffer due to the interim measure. The court can also act in this manner, in accordance with the specific circumstances of the case and upon a proposal of the debtor, even when the creditor has made the claim and the danger probable.

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: After requesting a precautionary or an interim measure, the case is assigned to a judge. Parties can file evidence in support of their position.

When a lawsuit is initiated, the judge decides on the interim measure outside the main hearing.

Depending on the circumstances of the case, the judge can hold one or several hearings where evidence will be presented.

The judge can adopt:

- (i) A decision, with which it will decide the request for the measure;

(ii) A conclusion, with which it will issue an order to the official person for the implementation of certain actions, and decide on other management issues.

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: When the request for interim measure is filed together with the lawsuit, the law explicitly states that three days from receiving the lawsuit, the judge has to schedule a hearing for this request.

In exceptional cases related to the hindering of possessions, the judge can impose interim measures for the purpose of removing from urgent danger, protecting from unlawful damaging, preventing violence, or preventing irreparable damage without previously hearing the other party.

In situations when the request for interim measure is filed separately from the lawsuit, the law does not specify whether the judge has to hold a hearing, but in practice, judges tend to do so.

When it comes to precautionary measures, the law does not specify whether the judge has to hold a hearing, but in practice, judges tend to do so.

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

Answer: The procedure for precautionary and interim measures is not regulated in detail, so local courts generally follow the rules for a litigation procedure. The procedure is initiated with filing a request with the court and paying a court fee.

The court is obliged to take on the case within three days after the receipt of the request. Judges deliver the request to the defendant for response (in case of interim measures, if the request for interim measure is made with the lawsuit, the defendant responds to the request with the response to the lawsuit).

The judge can schedule a hearing, or several if necessary, after which it adopts a decision upon the request. In the case of interim measures, if the request is made with the lawsuit, the judge has to schedule a hearing for the request and order a copy of the lawsuit to be submitted to the defendant within three days from the day of receipt of the request, at the latest.

After the court adopts a decision upon the measure, the decision is delivered to the defendant.

7. Opposition of the defendant

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

Answer: The defendant is entitled to oppose the request for a precautionary or an interim measure. He can also propose revocation of the precautionary or interim measure if the prescribed conditions are met.

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

Answer: The debtor can submit a proposal for depositing a guarantee instead of an interim measure. This proposal can also be submitted by the creditor if the creditor declares his consent for replacing the interim measure with a guarantee.

The law does not give a possibility for substitution of precautionary measures for a guarantee by the debtor.

8. Appeal

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

Answer: Yes. An appeal can be submitted against the decision for a precautionary or an interim measure in a period of three days after the delivery of the decision.

As a rule, appeals against conclusions of the court are not allowed.

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

Answer: As a rule, the appeal does not postpone the enforcement, unless the appellant with the appeal has proposed postponement and has offered to deposit a guarantee in the amount of at least one half of the value of the claim.

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: If the debtor does not act in accordance with the precautionary or interim measure, the measure can be enforced by force.

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

Answer: If certain conditions are met, the law prescribes a possibility to extend the duration of the previous or interim measure upon a proposal of the creditor. In other cases, the previous or interim measure cannot be modified, but can be revoked and a request for a new interim measure can be submitted.

The judge can correct obvious mistakes in writing and calculation as well as mistakes in the form of the decision at any time. This is done with a separate decision and can be done without hearing the parties.

Additionally, having in mind the circumstances of the case, the court can issue multiple precautionary or interim measures upon the request of the creditor.

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

Answer: The debtor can propose to the court to revoke the interim measure if any of the following is fulfilled:

- (i) The creditor has not submitted a lawsuit, i.e. has not initiated another procedure within the determined deadline of the decision for interim measure;
- (ii) The interim measure has expired;
- (iii) The circumstances under which the measure was determined later changed, so the measure is no longer needed;
- (iv) The debtor deposits to the court the amount of the secured claim, with interest and expenses;
- (v) The debtor makes it probable that the claim at the time of the adoption of the decision determining the measure has already been collected or sufficiently secured;
- (vi) With a final and definitive decision it is determined that the claim has not occurred or has ceased;
- (vii) The debtor proves the existence of any of his established claims against the creditor or that the debtor has grounds for counter-enforcement.

The debtor can propose to the court to revoke the previous measure in the same situations as described under (iv) to (vii) above as well as if the conditions for forced enforcement are fulfilled prior to the expiration of the previous measure and if the creditor does not request forced enforcement within 15 days of the occurrence of such conditions. Additionally, the court will revoke the previous measure if within 15 days from the expiry of the previous measure, the conditions for forced enforcement are not fulfilled.

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

Answer: North Macedonia has generally accepted the "*loser pays*" rule. A party who fully loses the litigation is obliged to compensate the costs of the other party, including lawyers' fees as determined by the lawyers' tariff. In case of partial success, the court can designate each party to bear a proportional part of the costs.

Independent from the result of the proceedings, the party who caused costs on its own fault or in an event that happened to this party, has to compensate such costs to the other party.

The party must request compensation of costs and specify the costs in order to be awarded with such compensation.

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. Depending on the type of measure, it can be enforced either by the competent court or an enforcement agent. The enforcement procedure is the same as the procedure for enforcement of court decisions depending on the entity enforcing it.

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

Answer: The extent of the arbitrator's power, if any, to order interim measures will depend on the extent of the powers given to the arbitrator by the arbitration agreement or the particular institutional arbitration rules that apply.

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. The procedure as same as described above.

Submitted by

	Contact 1	Contact 2 (optional)	Contact 3 (optional)
Contact Name:	Veton Qoku	Ljupka Noveska Andonova	
Firm Name:	Independent Attorney at law in cooperation with Karanovic & Partners	Independent Attorney at law in cooperation with Karanovic & Partners	
Email:	veton.qoku@karanovicpartners.com	ljupka.noveska@karanovicpartners.com	
Phone #:	+389 2 3223 870	+389 2 3223 870	
Website:	www.karanovicpartners.com	www.karanovicpartners.com	