

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Montenegro]

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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.

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

Answer: Even though the Law on court fees prescribes the obligation to pay the fees for this type of application as well, in practice it is possible that the court fees would not be paid, since the court did not give the order to pay them. It mostly depends on the court.

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

Answer: The length is not prescribed by the law, but, depending on the complexity of the case, it can last from 1 week to 6 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: Interim measures in Montenegro are divided in those that secure monetary claims and those that secure non-monetary claims. The types of interim measures are not determined in accordance with the “numerus clausus” principle, but the law states that every interim measure which can ensure the purpose of such security can be obtained. However, there are some of the most common measures stated, such as: freezing of bank accounts, prohibition to divest of and encumber movable assets, shares, immovable property that the claim relates to, as well as safekeeping of such assets, prohibition to the security contestor to take activities that may incur damage to the security petitioner, prohibition imposed on a debtor of the security contestor to deliver to the security contestor the assets that the claim relates to, payment of wage compensation to an employee during the dispute regarding illegality of the decision on termination of employment, if it is necessary to do so for his subsistence and subsistence of persons he is obliged to support in accordance with law, reinstatement of employee to work etc.

III. PROCEDURE

1. Competent Court

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

Answer: Either the Commercial court or the Basic court, depending on the case at hand.

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: Interim measures can be filed for regardless of whether the main judicial or other proceeding have been started. Also, the court can determine the interim measure even when the judicial or other proceeding have been finished and while the enforcement proceeding has not been completed yet. There are no special requirements depending on when 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: Yes, it is possible. There are no special requirements. However, in the case of adopting the application for interim measures in this case, the court will determine the deadline on which the petitioner is obliged to start the underlying lawsuit in order to justify the interim measure.

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, it is possible. No, 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: In order to apply for the interim measure successfully, the petitioner shall have to prove two issues: i) probability of its claims and ii) probability of the danger that without such a measure the security contesters shall prevent or significantly hamper the collection of claims. Notwithstanding the previously stated, the court may, at the proposal of the security petitioner, order an interim relief additionally when he did not establish the probability of the claim or the danger, if he previously deposits, within the specified deadline, the amount determined by the court as surety for

damage that could be incurred to the security contester by ordering and implementing the interim relief.

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 main step is the presentation of evidence, which can be also done along with filing the interim measure application. It is possible that the court decides to schedule the hearing but, usually, it would not happen, since the process of obtaining the interim measure is considered to be urgent.

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, it is possible. The practice regarding this issue differs from one judge to another, however, there are no strict provisions that deal with this issue. Judges often tend to issue the decision without hearing the other party, while enabling it to file an objection to the decision.

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

Answer: The main steps are: filing the interim measure application, the presentation of evidence, holding the hearing (sometimes), issuance of decision, and eventually filing the objection to the decision.

7. Opposition of the defendant

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

Answer: Yes, the defendant (contester) can file an objection to the decision.

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

Answer: Yes. Additionally, even the security petitioner may state in the application for ordering an interim measure, or later on, that instead of an interim measure, he shall be satisfied with a security contester (defendant) depositing a certain amount on behalf of the security petitioner.

8. Appeal

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

Answer: Yes.

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

Answer: Yes.

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: Since the objection does not delay the enforcement, the interim measure shall be enforceable as soon as the decision is obtained.

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

Answer: This issue is not investigated significantly in Montenegrin practice, even though it is not strictly forbidden by the law. However, it would be up to the interpretation of the judge whether he/she will adopt the request for modification of the interim measure or he/she would require that the new application for the interim measure shall be submitted.

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

Answer: An interim measure can be filed regardless of whether the main judicial or other proceeding has been started. Also, the court can determine the interim measure even when the judicial or other proceeding has been finished, while the enforcement proceeding has not been completed yet. There are no special requirements dependent on when the underlying lawsuit is filed.

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

Answer: Even though the Law on court fees prescribes the obligation to pay the fees for this type of application as well, in practice it is possible that the court fee would not be paid, since the court did not give the order to pay the fees. It depends on the court.

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. In deciding on the interim measure application, the arbitral tribunal should perform the process in accordance with the rules prescribed by the Law on arbitration.

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

Answer: Yes.

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, it is possible. In deciding on the interim measure application, the courts should perform the process in accordance with the rules prescribed by the Law on enforcement and security. However, in each case, the competence of the Montenegrin court for issuing the interim measure should be verified, and this depends on the subject of the interim measure, the rules of foreign arbitration etc.

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