

# Enforcement of Foreign Judgments

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Interim and Precautionary Measures [Romania]

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## **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.

Interim measures aim at maintaining a right which would be damaged further by a delay, to prevent an imminent and irreparable damage and to eliminate any obstacles against enforcement. These measures may also be taken if the person owing money/goods to another person creates a state of insolvency in order to circumvent the fulfilment of the obligation or to eliminate the effects of a judgment.

Interim and precautionary measures are regulated by the Civil Procedure Code.

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

**Answer:** Yes.

In Romania, access to justice involves the payment of stamp duties by the plaintiff. Upon completion of legal proceedings, such stamp duties will be borne by the party losing the case.

Under the Civil Procedure Code, in the legal proceedings seeking the approval of precautionary measures, the court of law may also order the plaintiff to pay a court bond.

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

**Answer:** Depending on the caseload of the court where the claim is submitted and the type of procedure (*i.e.* with or without summoning the parties concerned), an interim or precautionary measure may be ordered within several weeks to 2-3 months, since these procedures are tried as a matter of emergency.

In general, appeal may be filed against judgments issued in this respect within 5 days from the issuance of a solution by the court or from the service thereof to the parties. It does not usually take more than 3 to 4 weeks since the final appeal is filed until a final judgment is obtained.

The evidence preservation procedure, although it is urgent, can take from 2 months to 1 year, if the plaintiff requests a forensic expert report.

## 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 interim and precautionary measures provided by the Civil Procedure Code are as follows:

- a) **Preservation of evidence** for the urgent acknowledgment of somebody's testimony, an expert's opinion, the status of movable or immovable assets or for obtaining the recognition of a writ, fact or right;
- b) **Production of evidence** for the urgent acknowledgment of a state of facts which could cease or change until evidence is produced;
- c) **Injunction** for maintaining a right that would be damaged further to a delay, to prevent an imminent and irreparable damage, as well as in case of obstacles against an enforcement;
- d) **Precautionary seizure** which may be established on the debtor's movable and immovable assets;
- e) **Precautionary garnishment** which may be established on the amounts of money, securities or other enforceable intangible assets owed or to be owed to the debtor by a third party;
- f) **Judicial seizure** for the cases when there is a trial on the property, other main real right, the possession of a movable or immovable asset; in such case, the court may decide on the seizure of the respective asset if the measure is necessary for its preservation.

## III. PROCEDURE

### 1. Competent Court

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

**Answer:** These measures may be ordered by the court with substantive and territorial jurisdiction, as provided by the Civil Procedure Code; in general, the court of law having territorial jurisdiction over the defendant's domicile or headquarters is also competent to judge such actions, if there is no examination of the case merits.

If the case merits are examined, the court which is competent to rule on interim and precautionary measures is the court vested with the settlement of the case merits.

**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:** As a general rule, these measures are applied for concurrently with the filing of the statement of claim.

In most cases (e.g. injunction, precautionary seizure, precautionary garnishment and judicial seizure, with some exceptions), the Civil Procedure Code conditions the filing of such claim from the existence of a trial on the case merits.

**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.

Filing an application for the preservation of evidence, an application for the production of evidence and, in exceptional cases, an application for placing a movable or immovable asset under judicial seizure are not conditional on the existence of a pending dispute on the case merits. Nevertheless, if judicial seizure is approved without a trial on the case merits, the creditor shall be under the obligation to file a claim on the case merits within 20 days from the approval of the judicial seizure, under the penalty of *ispo jure* cessation thereof.

**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.

In most cases, the admissibility of the application for interim precautionary measure is conditional on the filing of a main claim in prior.

**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:** The conditions and criteria considered by the court are different for each type of procedure, as follows:

1. In the procedure for the preservation of evidence, the plaintiff must account for its interest (a general condition for exercising the civil action), establish that the situation is urgent and there is a danger of disappearance of evidence or that the production of such evidence in the future will be troublesome and cumbersome.

2. In the injunction procedure, the following conditions must be met:
  - 2.1. Filing, in advance, a main claim to initiate the examination of the case merits;
  - 2.2. Due to the urgent and temporary (interim) nature of the measure, the measure can be requested only until the final settlement of the main trial; and
  - 2.3. Non-examination of the case merits. This condition for the admissibility of the application for injunction involves the judge's obligation to make a brief examination of the case, in order to determine which party has the appearance of law, so that he may rule fairly.
3. In the precautionary seizure and precautionary garnishment, the following conditions must be met:
  - 3.1. Filing, in advance, a main claim to initiate the examination of the case merits;
  - 3.2. The creditor that does not hold a writ of enforcement must prove that it has a receivable ascertained by a writ and payable. The court may order the creditor to pay a court bond.
  - 3.3. The creditor whose receivable is not found by a writ must submit, in addition to the conditions provided at items 3.1. and 3.2. above, together with the application for the establishment of the precautionary seizure or garnishment, a court bond of half of the claimed value.
  - 3.4. The court may approve the precautionary seizure or garnishment even if the receivable is not payable, when the debtor has decreased, by its own doing, the guarantees given to the creditor or did not give the promised guarantees, or when there is a danger for the debtor to circumvent enforcement, or to hide or scatter its estate. Under these circumstances, the creditor must prove that it has ceased its main claim and it has a payable receivable, ascertained by a writ, and must submit a court bond in the quantum determined by the court.
4. In the judicial seizure procedure, the following conditions must be met:
  - 4.1. Existence of a trial on the property or another main real right, on the possession of a movable or immovable asset, or on the use or management of a jointly owned asset;

- 4.2. The measure must be necessary in order to preserve the right on the asset which makes the object of the main claim and which is intended to be seized;
- 4.3. If the claim is admitted, the court may order the plaintiff to pay a court bond;
- 4.4. The court may approve the judicial seizure even if there is no trial: (1) on an asset that the debtor offers for the discharge of its obligations, (2) on an asset in relation to which the interested party has good reasons to fear that it will be circumvented, destroyed or altered by its current possessor, (3) on movable assets representing the creditor's guarantee, when the creditor demonstrates the debtor's insolvency or when it has good reasons to suspect that the debtor will run or to fear circumventions or deteriorations.

## 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 general rule is that before precautionary measures are granted, the parties are convened to a hearing before the court during which the arguments are put forward and the evidence is heard. As a rule, in such urgent procedures, the court only approves the documentary evidence.

- 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:** No.

There are cases when the court either summons and hears all parties involved, or does not summon and hear any party involved. However, there are no cases when the court hears the plaintiff, but not the defendant, or vice versa.

The party requesting the measure may ask that it be granted without hearing any of the parties when this is justified on grounds of urgency or if a hearing could compromise the purpose of the measure.

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

**Answer:**

The first step for the plaintiff is to expressly request that the court would order the interim or precautionary measure without summoning the parties. The court will decide on the urgent measure and appeal may be



filed against its judgment within 5 days either from the ruling or from service of the judgment to the party concerned, depending on whether the summoning of the parties was approved or not.

**7. Opposition of the defendant**

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

**Answer:** Yes.

In the cases when the court decides on the interim measures by summoning the parties, the defendant may oppose the provisional measures by submitting a statement of defence or orally during the court session.

If the court orders that the claim be tried without summoning the parties, the defendant cannot oppose.

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

**Answer:** Yes, but this possibility of the defendant is expressly provided in the Civil Procedure Code only for the precautionary seizure procedure, when the debtor provides guarantees that are deemed satisfactory by the court, and the court may release, at the debtor's request, the precautionary seizure. This is also applicable as far as the precautionary garnishment is concerned.

For the other procedures to which reference is made herein, the law does not provide for such possibility, but no interdiction in this respect is regulated.

**8. Appeal**

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

**Answer:** Yes.

The procedural rules allow the submission of an appeal before the higher court against the judgment issued in these special procedures. The appeal must be filed within 5 days and time runs as of service of the judgment to the party concerned if the trial took place without summoning of the parties, or as of service of the judgment, if trial was made with summoning of the parties.

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

**Answer:** Yes. The appeal does not suspend the enforceability of the precautionary measure.

#### 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. The general enforcement rules are applicable to the enforcement of precautionary measure.

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

**Answer:** Interim measures can be changed into appeal, if the appeal court finds that they have been illegally established by the first instance court, or if the *de facto* or *de jure* state which entitled the plaintiff to request the taking of such measure has changed.

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

**Answer:** If dismissal of the claim is confirmed once a final decision has been issued, the measure will be automatically lifted; the situation is the same should the plaintiff abandon the action or the application. Also, a measure cannot be maintained if proceedings are suspended for more than 6 months year because of reasons imputable to the plaintiff.

Also, in case of precautionary seizure and precautionary garnishment, the court will be able to lift the seizure upon the defendant's request if it deems that the latter provided sufficient guarantees.

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

**Answer:** Upon filing the application, the plaintiff will have to present evidence attesting to the payment of stamp duties, as provided by the law in force. In case of failure to pay the stamp duty within the term set by the court to this effect, the application will be annulled.

As indicated above, there are cases when the Civil Procedure Code provides for the plaintiff's obligation to also pay a court bond up to the amount established by the court. In other cases, the court is left to determine whether the plaintiff will have the obligation to pay a court bond or not.

The court bond is released to the person having deposited it unless the entitled person filed an application for payment of due compensations against it, by the expiry of the 30-day term following the date when a final decision was issued on the case merits. Nevertheless, the court bond is released immediately if the interested party expressly declares that it does not seek to oblige the party to pay compensations for the damage caused.

If the court admits the application, the defendant will be obliged, upon request, to pay court charges (e.g. legal stamp duties, legal fees, etc.). If the court dismisses the application, the plaintiff may be ordered, upon request, to pay court charges.

According to the provisions of the Civil Procedure Code, the judges cannot reduce the amount of stamp duties, experts' fees, etc. if the winning party proves that it incurred such expenses.

However, the judges are entitled to increase or reduce the legal fees whenever there are reasons for them to believe that such fees are unreasonably low or high as compared to the value of the claim or the work performed by the lawyer.

## **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. This application may be filed prior to or during arbitration before the competent court with jurisdiction to approve precautionary and interim measures as regards the object of arbitration. Approval of such measures shall be notified to the arbitration tribunal by the party having applied for it.

The general enforcement rules are applicable to the enforcement of an Arbitration Award. The court where the applications for enforcement of arbitration awards are filed is the court with jurisdiction to rule on the merits of the claim, had it not been for any arbitration clause.

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

**Answer:** Yes. During arbitration, precautionary and interim measures, and the establishment of specific *de facto* circumstances, may be approved by the arbitration tribunal as well. If the adverse party opposes, the enforcement of such measures may be ordered by a court of law.

## **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. The procedure to grant a precautionary measure is the general procedure stated in the Civil Procedure Code.

## **VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.**

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

**Answer:** Due to the high caseload of the courts, judges do not always comply with the terms for the settlement of the applications for enforcement of precautionary or interim measures; therefore, the procedure is sometimes difficult, for which reason the purpose of such precautionary and interim measures is not always achieved in due time.

Romania

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