

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Turkey]

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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. Judicial cases can take a long time to conclude, leaving the plaintiff unprotected against transactions made by the defendant. These transactions may involve the total or partial assignment of an asset or establishing rights in it, leaving the effective execution of a case or enforcement of a judgment impractical. To ensure the plaintiff's rights against such actions, the Civil Procedure Law numbered 6100 and the Enforcement and Bankruptcy Law numbered 2004 set forth conditions, procedures and types of precautionary measures available.

The Civil Procedure Law regulates precautionary measures and the Enforcement and Bankruptcy Law regulates preliminary attachment.

Precautionary and interim measures may be necessitated before or during the filing of a case or during the ongoing procedure for the action. A court may grant precautionary measures before reaching a verdict if a delay would cause circumstances which may not be reverted or compensated.

A precautionary measure may be requested before or during the filing of a case. In this context, the party issuing the precautionary measure request is required to fill in a petition stating their justification points. If the court finds valid grounds for granting a precautionary measure, the type of precautionary measure which is most appropriate for the conditions of the case shall be applied. For example, if the subject matter of the case relates to rights in real estate then the property may be put under receivership. If the subject matter is perishable, then it may be sold and the value deposited.

As a note, interim measures and preliminary attachments rendered by foreign authorities cannot be enforced in Turkey due to the provisions of Civil Procedure Law. However, a plaintiff may request an interim measure or preliminary attachment to be rendered by Turkish courts before or during the filing of the underlying lawsuit or during the proceedings for the main claim.

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

Answer: According to Turkish Civil Procedure Law, the plaintiff is obliged to deposit an annually fixed amount in legal fees when filing a case. Therefore, if a precautionary measure is requested, the claimant must deposit the necessary fees as stipulated under the concerned law.

Additionally, Civil Procedure Law Article 392 sets forth a general provision concerning the deposition of a security. The party who claims a precautionary measure must deposit security against potential damage and loss that the counter party or third parties may suffer, or in case the

claim of the party with the precautionary measure is accepted on wrong grounds. The court may not deem a deposition of a security necessary unless the claim is based on an official document or any other kind of conclusive evidence or if the circumstances and conditions require it.

In order to obtain a preliminary attachment, the plaintiff is obligated to deposit a collateral between 10% and 15% of the amount awarded in the foreign court decision. This collateral can be deposited as cash or as a guarantee letter issued by a Turkish Bank. The security will be handed back after the finalisation of the judgment or if no execution proceeding is commenced within the 7 days before the preliminary attachment decision is rendered or if no action for damages is filed within one month following the removal of the precautionary measure.

Besides that, according to International Private and Civil Procedure Law and Civil Procedure Law, foreign plaintiffs and plaintiffs that are Turkish citizens but do not reside in Turkey are obligated to provide a security (determined by the court) to compensate for any loss suffered by the defendant due to the lawsuit being filed. However, if there is reciprocity between Turkey and the country where the plaintiff is a citizen, the court may decide that the plaintiff be exempted from providing the security.

Turkey is a party to various international agreements and conventions ensuring reciprocity with different countries. The most important international convention Turkey is a party to which ensures reciprocity regarding the security obligation is the Hague Convention dated 1954. The citizens of contracting states are not obligated to provide security before filing a lawsuit or commencing execution proceedings.

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

Answer: The average length of time for this kind of procedure is not explicitly indicated under the relevant law. The length of time may vary according to the court and material facts of the case. The court may take a longer time to evaluate a precautionary measure application if it sees that the damage that the defendant may suffer would be irreparable or disproportionate to the requested measure. It may take up to one month to grant a precautionary measure. If the defendant opposes the court decision, it may take several months to be rendered.

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 Civil Procedure Law includes provisions regarding precautionary measures, however, the Civil Procedure Law does not set forth all types of available measures. Instead, it is indicated that the court may grant all and any type of measure to abolish risk to the recovery of

damages and/or avoid any kind of harm. In this regard, the court may decide to assign the right or subject matter of the case to receivership or place it under custody, order something to be done, halt an activity provisionally, or refrain temporarily from engaging in a particular type of behaviour.

It must be stated that the types of precautionary measures stated below are not limited and may be expanded upon according to the requirements of the case.

- I. **Assignment of the assets to receivership:** If the subject matter of the case involves a dispute concerning the ownership or rights in an asset, then the court may make an order to assign the asset concerned under receivership. In other words, the court may grant a precautionary measure concerning the assignment of assets under receivership to ensure the safety of transactions in respect of the asset (an amount of money, revenue, estimated value of the objects in concern, etc.). The receiver shall not be entitled to assign the asset to third parties without an order from the court and the parties shall not be entitled to enact transactions in respect of the asset. The court may also decide to impound movable property if the application is aimed at obtaining an order to have property in the possession of the defendant turned over.
- II. **Precautionary Measures on Real Assets:** The court may grant precautionary measures on real assets in concern in a case. In this regard, the court grants a precautionary measure against a real asset to protect the potential rights of the plaintiff and avoid assignment of such rights to third parties. Such measures are registered at the land registry.
- III. **Alimony measures:** are available under the Civil Code subject to certain conditions provided there under.
- IV. **Civil law measures:** set forth by the Civil Code for the cases of separation and divorce.
- V. **Preliminary Attachment:** If the subject matter of the case is a pecuniary debt, then the court can decide to grant an attachment over the assets of the debtor, excepting assets stipulated as non-seizable under Article 82 of the Enforcement and Bankruptcy Law. Regulated under the Enforcement and Bankruptcy Law numbered 2004. The creditor of a pecuniary debt can request preliminary attachment from the court and the assets of the debtor will be seized discreetly.
- VI. **Other measures:** taken for the protection of certain rights, these are expressly provided by law or are regarded as necessary to ensure the effectiveness of the judicial protection that may be (for the applicant) in the main proceedings.

III. PROCEDURE

1. Competent Court

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

Answer: According to Article 390 of the Turkish Civil Procedure Law, if proceedings have not yet been initiated the measures are to be granted by the court which is competent given the subject matter and territory; if the case has been filed then the court with the jurisdiction to grant interim and precautionary measures is the court that will hear the case. If the necessary requirements are available, measures may also be requested before the divisional court. The component court for preliminary attachment is also determined in accordance with the aforementioned provisions.

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 principle, interim and precautionary measures are requested simultaneously with the underlying lawsuit and with the petition concerning the subject matter of the case. The proceedings for measures are considered as supplementary to the main case and they will be evaluated depending on the main case.

For proceedings concerning the measures, the court will require evidence to be submitted to prove that the general requirements needed to obtain the precautionary measure are met.

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. As long as the law does not require that they are submitted together or the specific nature of the measure in concern cannot be obtained before filing of the underlying lawsuit, precautionary measures may be requested before submitting an application.

The precautionary measures granted before filing an underlying lawsuit will be released if the corresponding main lawsuit is not submitted within two weeks following the court decision granting the measure.

A plaintiff must file a lawsuit or commence execution proceedings within 10 days from a seize being conducted if the plaintiff was present, or, if the plaintiff was not present during the seizure, 10 days from service of the lien minute to the plaintiff.

The judicial expenses and any damages caused by the measures will be imposed on the applicant if they do not file a lawsuit within the due time.

If the lawsuit is filed within the due time, the precautionary measures shall be in effect and enforceable until finalisation of the court judgment.

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. Measures may be requested after filing the main claim. As a general principle, measures may be requested when valid grounds are presented indicating that the subject matter of the case has become inconvenient, impractical, or there is a risk the plaintiff may suffer damage if a delay in the proceedings arises. If the applicant has not submitted an application before or during the filing of a lawsuit, the court shall look for a change in the facts and circumstances that caused the necessity of a measure.

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: Article 389 of the Civil Procedure Law states that courts may grant a precautionary measure if:

- I. it would be impossible or difficult to obtain rights due to changes in the current situation; or
- II. serious damage might occur to the plaintiff because of a delay.

In addition to the above mentioned conditions, the conditions for granting preliminary attachment are stipulated under Enforcement and Bankruptcy Law numbered 2004. An interim attachment on a debtor's assets can be granted with respect to unsecured receivables that are due and payable, or for receivables not yet due and payable where the debtor has no residential address in Turkey, or has commenced actions to move their assets or leave the country.

The conditions stipulated under the aforementioned articles are not the only conditions for granting precautionary and interim measures.

Pursuant to Article 390 of the Civil Procedure Law, the party who asks for the measure must prove that if the measures requested are not granted, situations could arise during the course of the proceedings that would prevent or undermine the effectiveness of the protection that could be granted in the judgment (for the applicant). All evidence supporting their claim must also be attached to their petition for precautionary measure.

Although not explicitly stated in the Civil Procedure Law, it is acknowledged in practice and doctrine that the measure must be proportionate with the requirements of the case and the plaintiff's right/legal benefit in concern. It is only natural for the court to seek proportionality in their decision since they will not grant a measure unless it is strictly necessary to achieve the purpose of the proceedings for which the precautionary protection is requested.

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: Pursuant to Article 390 of the Civil Procedure Law, applications for precautionary or interim measures must be submitted and supported with relevant evidence. As the proceedings for precautionary measures are separated from the underlying lawsuit, in general the court will hold a separate hearing to evaluate the application. At the hearing, the court will hear the parties' arguments and review the evidence submitted by the parties in favour and/or against the measure. The court will evaluate the evidence according to its relevancy on whether or not to adopt a precautionary measure. However, in exceptional cases of urgency, the court may grant a precautionary measure without hearing the defendant party in the subsequent proceedings.

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. According to article 390 of the Civil Procedure Law, the court may grant a precautionary measure without hearing the defendant party in the proceedings, provided that the request is justified as a matter of urgency. Besides that, the court may decide to hear or not hear the defendant when considering whether to grant a preliminary attachment pursuant to Article 258 of Enforcement and Bankruptcy Law, regardless of the urgency of the matter.

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

Answer: The application for a precautionary measure can be submitted before or during the filing of the underlying lawsuit or during the proceedings of the main claim. After the application has been submitted, the court will hold a hearing concerning evaluation of the conditions for the measure. The court may decide to uphold or reject the application. The party against whom the precautionary measure is taken may oppose the measure within one week. If the measure is opposed, the parties will convene at a hearing to evaluate the application in accordance with the procedure outlined at F.1. above.

Following the hearing, the court will decide whether to maintain or to raise the precautionary measure.

7. Opposition of the defendant

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

Answer: Yes. According to Article 394, a defendant can oppose a precautionary measure. Third parties may also be entitled to oppose a precautionary measure if there is a clear infringement of rights and benefits due to the application of the court. Unless the Court determines otherwise, the opposition will not suspend the enforcement of the measure.

The opposition should be based on the grounds of validity of the precautionary measure conditions, jurisdiction of the court and/or security. In addition, the opposition should be made within one week following the enforcement of the measure if the measure is granted in the presence of the opposing party, or within one week following service of the notice concerning the court judgment granting the measure if it is granted in the absence of the defendant.

The defendant can also oppose a preliminary attachment. The opposition must be made within 7 days from a seizure being conducted if the defendant was present, or, if the defendant was not present during the seizure, 7 days from the service of the lien minute to defendant. Third parties whose rights and benefits are infringed must oppose against the decision within 7 days from the date when they became aware of the preliminary attachment.

The opposition must be made in written form and include all the evidence on which the grounds for opposition are based.

Appeal is available against decisions concerning the opposition to a precautionary measure.

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

Answer: Yes. The defendant may ask the court to abolish or replace the decreed precautionary measure by sufficient security, which guarantees effective compliance with the judgment.

The amount of the security will be determined according to general provisions under the Civil Procedure Law. Accordingly, the judge will determine the type and amount of the security by taking into account the grounds of the application, the nature and contents of the claim and the positive appearance of the defendant's grounds.

In addition, the request for substitution of the interim or precautionary measure must be made in written form and include all evidence on which the grounds for opposition are based.

Third parties may also be entitled to request a substitution of the interim or precautionary measure if there has been a clear infringement of rights and benefits due to such application of the court.

8. Appeal

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

Answer: Yes. Under Turkish Civil Procedure Law, an appeal is available against decisions granting or rejecting the precautionary and interim measures. An appeal is also available for decisions concerning the opposition against measures. The plaintiff may appeal where a measure is not provided or where the defendant's opposition is fully or partly upheld. The defendant may appeal where his opposition is dismissed. In this context, if the precautionary measure is granted in the absence of the defendant, the defendant must first follow the procedure for opposition and then appeal if his opposition is rejected.

Together with the possibility of appeal, the plaintiff and defendant may in any case re-introduce their request for amendment or abolishment of the measure, if the circumstances which existed at the time of the initial petition should change.

The appeal process does not suspend the enforcement of the measure, therefore the law stipulates that such appeals should be evaluated urgently to avoid any irreparable loss of rights.

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. In this regard, it is possible to enforce a precautionary or interim measure even when an appeal is filed.

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 measures.

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

Answer: Yes. According to Civil Procedure Law Article 396, an application for the modification of a previous measure is available

provided that several conditions are met. The court will consider modification or abolishment of the measure if it is apparent that the facts and circumstances for which the measure was granted have changed, the party who has suffered from the change of state may request modification or abolishment of the measure. The application must be made with a petition within one week following the change of facts and circumstances. The applicant must submit all the evidence supporting their claim with their petition for alteration of the measure.

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

Answer: An application for a precautionary measure must be requested within one week following the grant. Likewise, an application for a preliminary attachment must be submitted within 10 days following the grant. Otherwise, even if the underlying lawsuit is filed, the decision granting the measure will be lifted. The enforcement of the measure should be requested from the enforcement office at the place of the court.

Should a judgment be handed down that is not in favour of the applicant, the judge must immediately order that the measure be lifted (unless otherwise requested given the circumstances of the case) and the deposited guarantee increased.

In the event of a judgment that is partly in favour of the applicant, the judge will hear the other party and decide whether to lift or to maintain the measure.

If dismissal of the claim is confirmed once a final decision has been issued, the measure will be automatically lifted and the party affected by it may initiate an action for the damages caused. The same occurs if the plaintiff abandons the action or the application.

When provisional enforcement of a judgment has been issued, any measures that may have been granted relating to the initial enforcement are abolished and replaced by enforcement measures so that the nature of the measures originally adopted as precautionary measures changes.

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

Answer: As stated above, the proceedings for measures are separated from the main claim. In this context, there are no special rules regarding the costs related to the application for a measure and therefore the general rules under Article 326 of Civil Procedure Law apply. Accordingly, when the opposition to a precautionary measure is allowed by the Court, the applicant must pay the fees and expenses. If the opposition is rejected, the fees and expenses are imposed on the defendant.

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. According to Article 6 of the International Arbitration Law, parties may request interim or precautionary measure before or during the proceedings for arbitration. Such request will not constitute infringement of the arbitration agreement. If one of the parties neglects the requirements of the precautionary measure decision, the party may ask for the help of the competent court.

The competent court is the court that is competent to enforce the Arbitration Award. In this regard, the court with jurisdiction to enforce the interim or precautionary measure will be the civil court of first instance of the domicile or workplace of the defendant. If the defendant does not have a domicile or workplace in Turkey, then the Istanbul Civil Court of First Instance will have jurisdiction.

Precautionary measures granted will be automatically lifted when the arbitral award becomes enforceable or when the case is rejected by the arbitrator or arbitration tribunal.

The court may decide on an amount of security to be deposited by the defendant for granting an interim measure.

Besides that, the arbitrators may grant an interim measure according to Article 6 of the International Arbitration Law. The arbitrators may decide an amount of security to be paid for granting the decision. However, the interim measures granted by the arbitrators cannot be conducted by execution offices or other official authorities and interim measures will not oblige third parties.

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

Answer: Yes. Pursuant to Article 6 of the International Arbitration Law, an arbitrator or an arbitral tribunal are entitled to grant a precautionary measure upon request of one of the parties. In such a case, the arbitrator or the arbitral tribunal may demand the applicant to provide security.

The arbitrators are not entitled to grant precautionary measures that may only be enforced by and through compulsory execution offices or other official authorities. The precautionary measures granted by the arbitrator will only be binding on the parties of the arbitration and may not be enforced on third parties.

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. Foreign court judgments which have been granted with an exequatur will be deemed and enforced just like Turkish Court Judgments. Accordingly, foreign court judgments recognised in accordance with the law will be subjected to procedure and assurance of the relevant Turkish law provisions, primarily the Civil Procedure Law and Enforcement and Bankruptcy Law.

Furthermore, interim measures can be requested before or during filing of the lawsuit or during the trial proceedings. Therefore, the interim measures and preliminary attachment can be requested from the court before filing for an exequatur.

VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.

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

Answer: The Turkish Civil Procedure Law was amended in 2011. The divisional court system has been introduced but the implementation of the system is suspended until the necessary basis (such as the means of facility and labour) are provided. The effect of this system is that appeals against court decisions for measures will first be brought before the divisional court instead of the Court of Appeals (which has a large workload) and a resolution should be achieved faster.

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