

# Enforcement of Foreign Judgments

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Interim and Precautionary Measures [Poland]

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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:** Pursuant to the Polish Code of Civil Procedure, an **injunctive relief** may be sought in each case that is subject to the examination by the common court or the court of arbitration. The purpose of an injunctive relief is to prevent situations that hinder or prevent the creditor from enforcing a final and non-appealable judgment as a result of actions taken by the debtor during the trial. The injunctive relief consists of maintaining the existing situation or in creating a temporary situation pending the outcome of the case.

The procedure regarding the injunctive relief is described in the Polish Code of Civil Procedure (Articles 730 to 757).

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

**Answer:** Related costs are governed by the Polish Act on Court Costs in Civil Cases of 28 July 2005 (as amended by the Act amending the Code of Civil Procedure and certain other acts dated 7 July 2019). A regular fee in the amount of PLN 100 (ca. USD 26) is charged on the application for injunctive relief. It should be noted, however, that no fee is charged on an application for injunctive relief which is filed along with a statement of claim initiating court proceedings. Furthermore, a fourth part of the fee (but no less than PLN 30) is charged on an application for injunctive relief pertaining to a monetary claim which is filed prior to the filing of a statement of claim initiating court proceedings.

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

**Answer:** An application for injunctive relief should be examined promptly, but no later than within one week of being filed with the court. The aforementioned time limit is only of an instructional nature for the court and, if exceeded, entails no legal consequences. If the law provides for the examination of the application at a hearing, it should be scheduled so that the hearing can take place within one month of the application being received.

Notwithstanding the above, in practice, the procedure of examining the application for injunctive relief takes much longer, even up to several months.

If the court does not decide on the application in time, it is possible to seek compensation from the State Treasury provided that the court caused damage by exceeding the time limit. In practice, however, it is very difficult to effectively pursue such a claim, as the causal link between the delay of the court and the damage must be clearly established.

## 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:** Where a party seeks to secure its claim by an application for injunctive relief, the court may apply different interim measures depending on the nature of the claim it secures. Such security may concern: (i) pecuniary or (ii) non-pecuniary claims (e.g. concerning the determination of a given legal status).

- (i) The Polish Code of Civil Procedure provides for the following types of injunctive relief in respect of **pecuniary claims**:

- a. seizure/freezing of:

- movable property – movable property does not need to be specified in the injunctive relief order; in any case, it is required to identify the debtor and, if necessary, also the place, where the movable property is located as well as to indicate who has custody of the property. If the injunctive relief order does not specify the movable property to be attached, the court bailiff should attach the movable property, the value of which is equal to the secured cash receivable;
- earnings – the injunctive relief order has to specify earnings and identify the employer;
- bank account – the injunctive relief order by way of attachment of a bank account should specify the amount of the receivable to be attached. Otherwise, the entire receivable held in a bank account is subject to attachment. The attachment encompasses not only the amounts held in the bank account, but also those that are credited to the account after the attachment has been made, up to the amount of the receivable subject to attachment, if specified;
- other receivables or other property rights;

- b. Establishment of a compulsory mortgage on real property – a compulsory mortgage may only be established on real property for which a land and mortgage register has been established. A compulsory mortgage entered on the basis of a legally invalid injunctive relief order is the so-called capped mortgage. In order to convert the capped mortgage into an ordinary mortgage, the entitled party has to present an enforcement order encompassing the real property owner that is currently recorded in the land and mortgage register. The determination of validity of an injunctive relief order with a writ of execution appended operates as such an enforcement order;

- c. Prohibiting the sale or encumbrance of real property (this pertains to real properties for which no land and mortgage register has been established or whose land and mortgage register has been lost or damaged) – in such case, the injunctive relief order shall be enclosed with a set of documents pertaining to the real property concerned;
- d. Establishing a maritime mortgage on a vessel (also a vessel under construction) – a maritime mortgage is regulated by the Maritime Code Act; it consists of the entry of a pledge over a vessel or a vessel under construction into the ship register;
- e. Prohibiting the sale of co-operative ownership rights to residential property – this decision is to be enforced depending on whether or not the given residential property has a land and mortgage register established (the Polish Act on Land and Mortgage Registers and on Mortgage does not require land and mortgage registers to be established for co-operative ownership residential properties).

If the residential property has a land and mortgage register established under an injunctive relief order, one may demand that a warning regarding the prohibition on sale of the co-operative ownership right to residential property be entered into the land and mortgage register. If the residential property has no land and mortgage register established, the management board of the co-operative society gives notice of the prohibition on sale of the co-operative ownership right to the residential property.

- f. Establishing compulsory administration over an enterprise or agricultural farm belonging to the obliged party or over a portion thereof – a type of injunctive relief which limits the rights of the obliged party (whose assets were secured) to the greatest extent possible. At the same time, it entails significant costs (connected with administration). This type of injunctive relief is applied rather exceptionally when other types of injunctive relief prove insufficient.

The aforementioned list of injunctive relief types with regard to pecuniary claims is exhaustive.

**(ii)** In respect of **non-pecuniary claims**, the court may grant injunctive relief at its discretion. In addition to applying the methods envisaged for pecuniary claims, the court may *inter alia*:

- a. regulate the rights and obligations of the parties or participants of the proceedings pending the proceedings;
- b. prohibit the sale of objects or rights covered by the proceedings;
- c. stay the execution or enforcement proceedings;
- d. regulate the manner of exercising custody with respect to minors;

- e. order that a relevant warning be entered into a land and mortgage register or a relevant register.

The aforementioned list of injunctive relief types with regard to non-pecuniary claims is not exhaustive.

### III. PROCEDURE

#### 1. Competent court

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

**Answer:** It is a general rule that the court competent to grant an injunctive relief is the court which would be competent as the court of first instance. Should it prove impossible to determine such court, then injunctive relief is granted by the locally competent regional court. Should it prove impossible to determine such court, then jurisdiction lies with the district court for the Capital City of Warsaw.

If the case is pending, an application for injunctive relief is examined by the court before which the case is pending (court of first or second instance). The exception applies to cases pending before the Supreme Court where an application for injunctive relief is decided by the court of first instance.

#### 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:** An application for injunctive relief may be submitted together with a statement of claim. It is the most common method used in practice.

#### 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:** An application for injunctive relief may be submitted before the proceedings are initiated. When granting injunctive relief in such case, the court sets a time limit for filing a statement of claim under pain of lifting the relief (this time limit cannot exceed 2 weeks). It is to be noted that the granted injunctive relief cannot seek to satisfy the claim (unless otherwise stipulated by law).

**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:** An application for injunctive relief may be submitted at any stage of the proceedings. However, after the enforcement title (*i.e.* in principle, a judgment appended with a stamp confirming the enforceability) has been obtained, an injunctive relief may only be granted if it is intended to secure a claim which has not yet become mature.

**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 following prerequisites need to be fulfilled in order to have an injunctive relief granted:

- admissibility of court proceedings and domestic jurisdiction – the claim needs to be of civil nature and must be suitable for being asserted before a Polish common court or a court of arbitration;
- substantiation of claims – the applicant needs to justify his allegations regarding the existence of the claim which is to be subject to injunctive relief. “To substantiate” means that the applicant does not have to prove the claim. In practice, however, it is not sufficient for the applicant to present certain allegations in order to have an injunctive relief granted. Evidence supporting those allegations (usually in the form of documents) will also be required;
- substantiation of the legal interest – pursuant to the Polish Code of Civil Procedure, the legal interest in having an injunctive relief granted exists if the failure to grant an injunctive relief makes it impossible or excessively difficult to enforce the judgment issued in the given case, or otherwise makes it impossible or excessively difficult to reach the objective of the proceedings in the case. According to the literature, exemplary circumstances which may make it impossible or excessively difficult to enforce the judgment issued in cases regarding pecuniary claims are as follows: asset stripping on the part of the obliged party, losing job by the obliged party, discontinuance of business activity. Conversely, in cases regarding non-pecuniary claims, it is necessary to substantiate that there indeed exists an actual risk of such factual changes occurring which will be irreversible in the future;
- maturity of a claim – in principle, an injunctive relief may be granted with regard to claims that have become mature. Nonetheless, the Polish Code of Civil Procedure introduces an exception which makes it possible to secure performances which have not yet matured but



which are covered by an enforcement order with a writ of execution appended, obtained by the entitled party. This pertains to an enforcement order with a writ of execution appended, which awards periodic performances (maintenance payments, pension) which have not yet matured, or if, in accordance with the enforcement order with a writ of execution appended, the awarded performance is to be paid in instalments and an appropriate time limit has been set for the fulfilment of this performance in cases regarding the delivery of real property or vacancy of premises.

## 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 court examines the application on the basis of evidence gathered in the case. Although injunctive relief proceedings do not preclude evidence proceedings from being conducted, given the purpose of these proceedings consisting in granting immediate relief to the entitled party, one should strive for the issuance of a ruling as soon as possible. Therefore, the court does not conduct full evidence proceedings and only briefly analyses the body of evidence provided by the applicant, which allows it to establish whether the claim exists.

- 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:** Injunctive relief proceedings are characterised by the fact that the person against whom they are conducted (the obliged party) is not notified thereof. This is justified by considerations of effectiveness and promptness. This rule is enshrined in Article 740 of the Polish Code of Civil Procedure which stipulates that under Article 740 of the Polish Code of Civil Procedure the court serves a decision on refusal to provide security as well as a decision on provision of security, which is subject to enforcement by the enforcement authority, issued in camera, and further decisions concerning this security on the entitled party only, unless a special regulation provides otherwise.

Accordingly, it is a standard that a court orders an interim measure without hearing the obliged party. The rights of the obliged party are secured in that the latter may appeal against the court decision.

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

**Answer:** As indicated above, the court examines the application in camera, without the participation of the parties. Only the entitled party is served with a decision granting injunctive relief. The obliged party is

served by the enforcement authority simultaneously with the commencement of enforcement of the decision.

## 7. Opposition of the defendant

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

**Answer:** An injunctive relief order is issued in camera, without the participation of the defendant (in the nomenclature of Polish law: the obliged party). Therefore, the obliged party cannot oppose the issuance of the injunctive relief order.

Nevertheless, as soon as the injunctive relief order is issued, the obliged party may challenge the same within one week after its receipt.

Even after the injunctive relief order becomes final and non-appealable, the obliged party may at any time file an application to have the injunctive relief order set aside if the reason for the security has ceased to exist or changed.

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

**Answer:** In principle, the defendant (the obliged party) may ask the court to make the issuance of injunctive relief conditional upon payment of a security deposit.

Article 739 of the Polish Code of Civil Procedure provides that the court may make its decision to grant an injunctive relief subject to the applicant lodging a security deposit which would cover the claims of the obliged party or, as appropriate, other persons, arising as a result of the enforcement of the injunctive relief. The security deposit entitles the obliged party or, as appropriate, other persons affected by the enforcement of the injunctive relief, to priority of satisfaction over other receivables.

Furthermore, the Polish Code of Civil Procedure provides that the injunctive relief must be lifted if the obliged party deposits the security amount demanded by the entitled party with the court.

## 8. Appeal

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

**Answer:** An injunctive relief order of the court of first instance can be appealed against by both the applicant and the obliged party. This measure does not apply to judgments issued by the court of second instance as a result of examination of an appeal.

Moreover, even after an injunctive relief order becomes final and non-appealable, the obliged party may at any time file an application to have the injunctive relief order set aside if the reason for the security has ceased to exist or changed.

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

**Answer:** In principle, an appeal does not stay the enforcement of the appealed decision (the court of first instance may, however, stay the enforcement of the decision). An exception arises where an appeal is filed against a decision setting aside or varying the injunctive relief order. In this scenario, the injunctive relief order remains in effect unless the decision setting aside or varying it is affirmed by the court of second instance.

**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 an injunctive relief order is subject to execution by way of enforcement proceedings, the court appends a writ of execution thereto. If, in the course of the enforcement proceedings, the obliged party is to perform an action which cannot be performed by any other party, then the court, at the entitled party's request, orders the obliged party to perform such an action under pain of fine.

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

**Answer:** It is allowed to seek the modification of an injunction relief under the Polish law. An application to extend the scope of the injunctive relief granted is to be treated as an application for additional security, which is subject to a separate examination.

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

**Answer:** By its very nature, most interim measures can be executed in the enforcement proceedings as soon as the court's decision granting such interim measure has become final (non-appealable).

The most common form of interim measure in the case of monetary claims is attachment of a bank account. In such a case, the entitled party may apply to the court bailiff for an attachment of the bank account as soon as such party receives a final decision from the Court (in writing, in the form of an official copy with the writ of execution appended thereto). In such a case, the application is sent to the bailiff, enclosing such a copy of the decision. The bailiff shall carry out the seizure in the enforcement proceedings immediately upon receipt of the application and its brief, formal examination.

In some cases, a preliminary court judgment may serve as interim measure - this is the case in special proceedings concerning the *order for payment* (pursuant to the Art. 492 § 1 of the Polish Code of Civil Procedure). In such a case, the judgment may be sent directly to the court bailiff (notwithstanding the fact that the judgment is not yet final), who will provide appropriate security execution.

Some interim measures come into force after the relevant court's decision has become final, without the necessity of initiating the enforcement proceedings. For instance, if the court decides to establish a compulsory mortgage on real estate in order to secure claims (which is one of the interim measures), the entitled party may apply for an entry of such compulsory mortgage into the Land and Mortgage Registers immediately after receiving the relevant, final decision of the court. In such case there is no need of initiating the enforcement proceedings before the court bailiff.

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

**Answer:** The costs of injunctive relief proceedings are decided by the court in a final decision and the costs of injunctive relief proceedings that have subsequently arisen are decided by the court which granted the injunctive relief. The court decides in accordance with the general provisions of the Polish law (*i.e.* the losing party is obliged to reimburse the opponent, at the opponent's request, for the costs necessary for the purpose of expedient assertion of the opponent's rights and expedient defence, which also include legal representation costs).

If the injunctive relief order was not issued before the initiation of proceedings and the entitled party did not observe the prescribed time limit for initiating the proceedings, the obliged party may, within two weeks from the lapse of that time limit, lodge an application for reimbursement of costs. Such application may also be lodged by the entitled party if it did not bring a lawsuit due to the fact that the obliged party had satisfied its claim.

**V. ARBITRATION**

**1. Is it possible to apply for an interim measure in order to ensure the effective enforcement of an Arbitration Award in your country? If YES: what is the enforcement procedure?**

**Answer:** An injunctive relief may be sought in each civil case that is subject to the examination by a court of arbitration. This rule is provided for in Article 1166 of the Polish Code of Civil Procedure. It stipulates that the fact that a dispute may be submitted to a court of arbitration does not preclude the Polish common court from securing claims asserted before the court of arbitration. In such case, the procedure for obtaining the injunctive relief is standardised, *i.e.* based on Article 730 of the Polish Code of Civil Procedure.

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

**Answer:** Unless the parties have decided otherwise, the court of arbitration may, upon request of the party, decide to grant an injunctive relief. Nonetheless, a decision on merits of the court of arbitration is not subject to enforcement until the common court appends a writ of execution thereto.

The court of arbitration grants an injunctive relief only if the applicant substantiates the asserted claim. Unless the applicable arbitration procedure provides otherwise or the parties decide otherwise, the court of arbitration may decide to secure the claim at its discretion.

**VI. FOREIGN PROCEDURE & ARBITRATION**

**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?**

**Answer:** In Poland, it is possible to make an application for injunctive relief to ensure the effective enforcement of a foreign Court Decision or Arbitration Award. This is done using the standard procedure under the Polish Code of Civil Procedure (Article 730) described in the answers above.

In addition, an application for injunctive relief may also be made if the main proceedings fall within the jurisdiction of another EU Member State (and not within the jurisdiction of the Polish common courts). Such possibility is provided for by Article 35 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter referred to as "**Recast Brussels I Regulation**").

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

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

**Answer:** When applying for injunctive relief, the following additional points should be taken into account: (i) an injunctive relief is usually granted on application; however, where proceedings may be initiated *ex officio* (e.g. in certain family law cases), it is also possible for the court to grant an injunctive relief *ex officio*; (ii) it is inadmissible to secure pecuniary claims against the State Treasury.

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