



PECULIARITIES OF THE APPLICATION OF TEMPORARY PROTECTIVE MEASURES IN CIVIL AND ADMINISTRATIVE PROCEEDINGS

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Abstract

Under the Constitution of the Republic of Lithuania, justice is administered by the courts. It is the court's decision that is the act of administering justice, which is adopted after a full and complete assessment of the evidence gathered and examined in the case, providing a reasoned response to the arguments of the parties, and resolving the legal dispute that arose. However, a considerable period may elapse before a judgment is given in a case, and it is therefore necessary to provide for the interim measures in court proceedings in order to ensure that the future execution of the judgment is not impeded. These interim measures are intended to temporarily regulate or "freeze" the situation to ensure that the future judgment (and thus justice) is actually carried out. One of the fundamental principles of civil procedure - access to justice and the right to due process of law - establishes not only the State's obligation to ensure the protection of the subject's substantive rights and access to justice, but also to guarantee the enforcement of the judgment rendered in civil proceedings, as the defence of a person's violated rights must be not only effective but also realistic. Interim measures of protection and measures to secure claims are, in their essence, a temporary mechanism for the settlement of a disputed situation, which is applied on the legal grounds laid down by law in order to ensure that a future judgment can be enforced in practice. They are not to be understood as a remedy for the protection of a substantive legal relationship, since they merely provide procedural protection of a temporary nature, normally lasting until the judgment is enforced. They are 'provisional' in nature, as they can be modified or revoked and normally expire once the judicial dispute has been finally settled. The principles of legal equality, economy of proceedings, fairness and other principles of judicial procedure are important in deciding whether to grant interim measures of protection or interim measures of security or not.

The article presents the grounds for the application of interim measures of protection (security measures) both in civil and administrative court proceedings, the specifics, the main procedural peculiarities and problems of this type of procedural issues in both civil and administrative court proceedings, as well as conclusions.

KEY WORDS: interim measures of protection, security measures, judicial proceedings, civil proceedings, administrative proceedings

JEL classification: K1, K10, K19

Introduction

The aim of every legal proceeding is to provide the justice during court trial. The Constitution of the Republic of Lithuania and the provisions of the laws of the Republic of Lithuania establish the validity and immutability of a final judgment, which ensures the stability of the relations resulting from the judgment and the protection of human rights and fundamental freedoms. However, after a case has been heard and the judgment has become final, various circumstances may arise which may prevent the justice which has been done by the judgment from being achieved, and which may even call into question the adequacy of the court proceedings and the protection of the rights of persons who have been involved by the court's decision.

In 2023, a total of 189,922 cases were received and 190,789 cases were heard in Lithuanian district, regional (first instance) and regional administrative courts (in 2022 193,001 cases were received and 191,729 cases were heard; in 2021 188,767 cases were received and 190,888 cases were heard). Of these, 143 893 civil cases were heard in district courts, 3 779 civil cases were heard in regional courts, 2121 civil cases were heard in the Court of Appeal of Lithuania and 330 civil cases were heard in the Supreme Court of Lithuania in the same calendar year. Meanwhile, 22 453 administrative cases were heard in district administrative courts in 2023, and 3 199

administrative cases were heard in the Supreme Administrative Court of Lithuania. As regards the applications for interim measures (applications for security measures) which are the subject of the study, it should be noted that it is rather difficult to find statistical data on the application of the institution of interim measures (security measures) in courts, as it is a procedural matter, usually decided by interim procedural decisions (court rulings), and the court rulings are not distinguishable from the outcome of the case. However, the court data available in LITEKO (Lithuanian courts' information system) shows that, for example, in 2023, the Supreme Administrative Court of Lithuania heard on appeal approximately 140 administrative cases, where the legality and reasonableness of the application or non-application of measures to secure claims, as well as other relevant circumstances and principles related to the application of this institute, were essentially analysed. Meanwhile, one of the five regional courts of general competence, the Vilnius Regional Court, in 2023 heard on appeal about 200 civil cases, which essentially dealt with the application or non-application of interim measures of protection and the legality and validity of the rulings on this matter made by the district courts within its area of jurisdiction.

It has been repeatedly held in case law that an application for interim measures is not an independent remedy for the protection of rights and interests infringed. Interim measures are not intended to satisfy the interests

of the parties to a dispute and are intended only to ensure the enforcement of a future judgment and to guarantee the binding force of that judgment only to the extent necessary, while limiting the rights and interests of the opposing party. The purpose of interim measures is to prevent the impossibility or impediment of the execution of a future judgment and they may be applied only if it is established that there is a threat to the execution of the judgment (Court of Appeal of Lithuania decision 17th August, 2017 in civil case No e2-1037-516/2017; Decision of 23rd September, 2021 in civil case No e2-872-302/2021).

The aim of this article is to analyse the main peculiarities of the legal regulation of interim measures of protection (measures securing claims) in both civil and administrative court proceedings by means of a comparative method and to provide the following conclusions from this. The object of the study is important, since the timely or proper application of the institute of interim measures of protection (measures of security of claims) in court proceedings may (not) disturb the stability and immutability of the final judgment and, in general, the possibility of achieving real justice, protecting the rights or legitimate interests of persons infringed or protected from imminent danger.

The object of the article is the peculiarities of the legal regulation of interim measures of protection (security measures) as an institute of procedural law, both in civil and administrative proceedings.

The article uses the methods of analysis of legal acts, analysis of legal doctrine, synthesis, comparison and generalisation. The method of quantitative and qualitative analysis of the examined cases was used in the analysis of the case law.

Theoretical Background

The provisions of Article 30(1) of the Constitution of the Republic of Lithuania, Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8 of the Universal Declaration of Human Rights, and Article 47 of the Charter of Fundamental Rights of the European Union establish that every person may have access to a court, while at the same time ensuring that the protection of the subjective rights violated or contested by him or her, and the effective implementation of a decision of the court are guaranteed. At the same time, one of the fundamental principles of the judicial process - access to justice and the right to a fair trial - establishes not only the State's obligation to ensure the protection of the subject's substantive subjective rights and access to justice, but also to guarantee the enforcement of the judgment rendered during the proceedings. The protection of a person's rights must not only be effective but also realistic. Only when a person's violated subjective right is protected by a court decision and the court's decision is actually enforced, it can be considered that the legal defence of the State has fulfilled its function of guaranteeing a person's right to a judicial remedy.

Various reasons and circumstances that may arise before the judgment becomes final may make it impossible or difficult to enforce the judgment in practice.

For these reasons, procedural law provides for an interim mechanism (usually pending a judgment on the merits of the dispute or the execution of the judgment) for the protection of the subject-matter of the dispute in order to guarantee the enforcement of a future judgment.

Accordingly, both interim measures and measures to secure claims are, by their very nature, a temporary mechanism for the settlement of a dispute, applied on the basis of the legal grounds laid down by law, in order to ensure that a future court decision can be enforced in practice. The effective execution of the judgment is also one of the aspects of due process of law according to the jurisprudence of the European Court of Human Rights (JGK Statyba and Guselnikovas v. Lithuania, Judgment of 27 January 2015, Case No 3330/12; Delta Perkany v. the Czech Republic, Judgment of 10 February 2014, Case No. No. 97/11; Manik v. Lithuania, 13 January 2015. No 46600/11; Micallef v. Malta, 15 October 2009. No 17056/06). According to the Glossary of International Law and Arbitration Terminology, provisional interim measures are defined as temporary measures of a conservative nature, granted in exceptional circumstances, at any time during the proceedings, prior to the final award. In the case law of the European Court of Human Rights ("ECHR"), interim measures are temporary and urgent measures granted when there is a risk of imminent and irreparable harm. According to legal scholars W. Herman, R. Ragulskytė-Markovienė and I. Žvaigždinienė, interim measures are understood as measures of a procedural nature which allow individuals to protect their rights while a case is pending. The objectives of interim measures derive from the need to temporarily regulate the relationship between the parties so that neither party suffers further losses, and their interests are not prejudiced during the pendency of the proceedings or before the action is brought. Interim measures of interim relief are thus not to be understood as a remedy for the protection of substantive legal relations, since they merely provide procedural protection of a temporary nature, normally lasting until the judgment is enforced. They are 'provisional' in nature, since they can be modified or revoked and normally expire once the legal dispute has been finally settled. The purpose of these interim measures is to protect the judge's ability to determine the merits of the case, rather than to decide in advance on the substantive rights and obligations of the parties.

One of the most important principles in court proceedings is the right to be heard. This principle requires the court to ensure that, in reaching its decision, it has heard both sides of the dispute, and that it can only reach its conclusions after a proper assessment of the evidence presented by both sides. This principle is also relevant in the application of interim measures. Each party against whom a measure is sought must have had equal opportunities and means not only to bring a claim but also to defend against it. However, the application of interim measures has certain procedural aspects, which are essentially due to the need to settle the situation urgently, but also to the possibility for the other party to the dispute to challenge the interim measures granted by the court, either by lodging a separate appeal against the court's order or by requesting that the defendant be granted security for any loss it may incur (which is a

remedy available only in the context of the civil procedure).

Also considers the principles of legal equality, economy of proceedings, fairness and other principles of judicial procedure and their observance in deciding whether interim measures or measures to secure claims should be granted.

Research analysis results

Grounds for interim measures (security measures)

Civil proceedings are governed by the Code of Civil Procedure of the Republic of Lithuania (hereinafter - CPC). The provisions of Part I "General Provisions", Chapter XI "Procedure", Section 5 "Interim Measures of Provisional Injunction" of Part I "Provisions of General Provisions" of the Civil Procedure Code regulate the institute of application of interim measures of protection as a means of securing a claim. It should be noted that the 1964 CPC, which was in force until 1 July 2001, provided for interim measures as a provisional mechanism for the protection of a dispute as well. Administrative proceedings are governed by the Law on Administrative Proceedings of the Republic of Lithuania (hereinafter referred to as 'LAP'), of which, in fact, one article is devoted to the regulation of measures for securing claims in administrative proceedings (LAP Article 70).

It should be noted that interim measures in civil proceedings may be applied either in the absence of an application or at any stage of the civil proceedings in accordance with the procedure laid down in the procedure. In administrative proceedings, however, the application of interim measures is only possible after a complaint (application, petition) has been lodged with the court and has been admitted for examination. Although the concept of this procedural legal institute differs in civil and administrative proceedings, its purpose in both proceedings retain a similar function, namely, to ensure the reality of the enforcement of a future judgment or the elimination of obstacles to the enforcement of a future judgment. However, there are certain nuances in the application of interim measures in each of these proceedings.

The grounds for interim measures are governed by the provisions of Article 144 of the CPC, which states that the court may, at the request of the parties to the proceedings or of other interested parties, grant interim measures if those parties have plausible grounds to support their claim and, in the absence of such measures, the execution of the judgment may be more difficult or impossible. Thus, the court may, at the request of the parties to the proceedings or of other interested parties, grant interim measures if it finds that two conditions are met, namely: (1) that the claims in the action are likely to be well-founded; and (2) that there is a risk that the enforcement of a judgment which might be favourable to the applicant may be rendered more difficult or impossible. In the absence of at least one of the above conditions, the institution of interim measures is inapplicable.

In administrative proceedings, the court or judge may, at the reasoned request of the parties to the proceedings or on his or her own initiative, take measures to enforce a claim. A claim may be secured at any stage of the

proceedings if the party to the proceedings plausibly substantiates the validity of the claim and if the failure to take measures to secure the claim would result in irreparable or seriously irreparable damage (Article 70(1) of the LAP). Where the grounds referred to in this paragraph are present, interim relief may also be granted in cases where it is necessary to settle temporarily a situation relating to a disputed legal relationship. Accordingly, in administrative proceedings, the court may, on a reasoned application or on its own initiative, take measures to secure a claim if two necessary conditions are met: (1) the party to the proceedings is able to substantiate the validity of the claim on the basis of a *prima facie* case, and (2) the failure to take precautionary measures is likely to result in irreparable damage which is irreversible or serious and difficult to repair. Moreover, the administrative procedure provides an additional legal basis for the imposition of interim measures where the grounds set out in this paragraph are present, by providing that interim measures may also be imposed where it is necessary to settle temporarily a situation relating to a disputed legal relationship.

It should also be noted that an administrative court or a judge may not impose security measures if this is provided for in other laws regulating the application of impact measures or measures to strengthen financial stability and soundness of financial institutions (Article 70(2) of the LAP). The administrative court shall not grant interim relief if the specific legislation provides for the suspension of the validity of the contested administrative decision in the event of an appeal to court. For example, Article 139(1) of the Law on the Legal Status of Aliens in its current version provides that the execution of the appealed administrative decision shall be suspended when the application for asylum of an alien who has entered the Republic of Lithuania from a safe third country is not examined and the alien is returned or expelled from the Republic of Lithuania to a safe third country; or when the appealed decision refuses to grant asylum to an alien, unless the decision was taken after an examination of the application for asylum in principle in an urgent manner; etc.

As can be seen, in both civil and administrative proceedings, the first prerequisite for the imposition of interim measures of protection (security measures) is a preliminary assessment of the validity of the claims and a determination of the probable validity of the claims. Whereas the second necessary condition for the application of interim measures is the difficulty of enforcing a future judgment which may be favourable to the applicant, in administrative proceedings the second necessary condition for the application of interim measures is the establishment of irreparable or irreparable serious damage.

In addition to the necessary conditions for the application of interim measures, the case-law also emphasises other principles relevant for the application of interim measures, such as the principles of reasonableness, proportionality and fairness.

Firstly, it should be noted that a preliminary assessment of the claim brought by the claimant, where the procedural question of the need for interim measures in a particular case is at issue, cannot be equated with the

conclusions reached by the court after the dispute has been examined on the merits. The condition of *prima facie* plausibility of the claim means that, when applying interim measures, the court does not and must not examine the merits of the claim, nor must it examine and assess the factual and legal arguments of the claim and/or the evidence supporting them, but the court determines, on a purely preliminary basis, the likelihood of a judgment in favour of the claimant being given in respect of the claims brought on the basis of the totality of the evidence presented (Court of Appeal of Lithuania decision of 30th September 2021 in civil case No e2-891-553/2021).

The Court of Appeal of Lithuania has already formulated the rule that a *prima facie* (preliminary) assessment of the merits of a claim allows the court to refuse to apply interim measures only in cases where the claimant's claim is manifestly unfounded, for example, where the claimant has chosen an unauthorised or manifestly impossible method of defence of its civil rights, or where interim measures are requested to secure a claim which is not based on the facts set out in the claim, etc., i.e. only when it can be assumed already at the stage of acceptance of the claim that the claim raised cannot be satisfied by the court due to the rather obvious groundlessness of the claim (Court of Appeal of Lithuania decision of 22nd April 2021 in civil case No. e2-307-370/2021 ; decision of 2nd May, 2024 in civil case No. e2-246-464/2024).

It should be noted that the threat to the enforcement of the judgment is linked to the defendants' behaviour, i.e. the intention to reduce the value of their assets in order to avoid the enforcement of a future judgment. In the context of the application of interim measures, dishonesty of a person is not presumed, and the person seeking interim measures must therefore provide specific evidence (information) of the actions already carried out, being carried out or intended to be carried out by the defendants, which are incompatible with the standard of honesty of conduct (concealment of assets, transfer of assets to other persons in any form whatsoever, pledging or encumbering them in any form whatsoever, and the like). A party's actions both before the commencement of the proceedings and during the pendency of the proceedings may be assessed from the point of view of fairness (Court of Appeal of Lithuania decision of 4th June 2018 in civil case No. e2-673-943/2018; decision of 3rd June 2021 in civil case No. e2-494-516/2021). A credible threat, as one of the necessary conditions for the imposition of interim measures, can only be confirmed by evidence of (possible) dishonesty of the defendants and/or their intentions to conceal, dispose of, pledge or otherwise encumber their assets with a view to avoiding the execution of a judgment in favour of the claimant, e.g. i.e. interim measures may only be granted where a person has provided concrete evidence of at least plausible grounds to prove that the defendants deliberately intend to worsen their financial situation in order to avoid the enforcement of the judgment. Therefore, it is important to establish not the financial situation of the person against whom the restrictions are sought and the significance of the amount of the claim brought against him, but his conduct in good faith (Court of Appeal of Lithuania decision of 28th

January 2019 in civil case No. e2-90-464/2019; decision of 29th September 2022 in civil case No. e2-949-1120/2022).

In the practice of the Supreme Administrative Court of Lithuania it has been stated that the court, when deciding on the request of a participant in the proceedings for the application of measures to secure a claim, must take into account whether the request for the application of a measure to secure a claim is directly related to the claims brought in the case, which the court has accepted by the order for consideration, or whether the request is within the boundaries of the arising administrative dispute (Supreme Administrative Court decision of 4th April 2012 in Administrative Case No. AS⁸⁵⁸ -310/2012 , decision of 18th May 2012 in Administrative Case No. AS -227/2012⁴⁹² , decision of 17th July 2018 in administrative case No eAS-516-525/2018, decision of 15th January 2020 in administrative case No eAS-22-492/2020). In an administrative case, only such security measures may be applied as are necessary to secure the specific claim brought in the case, and not to resolve and secure the legal relations between the parties to the proceedings in general (Supreme Administrative Court of Lithuania decision of 19th September 2019 in Administrative Case No. eAS-603-520/2019). When deciding on the application of the measures of securing a claim referred to in Article 70 (3) of LAP, the court must establish that there is a real threat of irreparable or irremediable serious damage, if the measures are not applied, and that the measures of securing a claim may be applied, if there are *prima facie* (prima facie) arguments as to the validity of the contested act and the execution of the administrative act will cause serious damage which would be difficult to remedy/compensate for (Supreme Administrative Court of Lithuania decision in administrative case No AS-899-575/2016).

According to the practice formed by the Supreme Administrative Court of Lithuania, a possible certain negative impact on the applicant's financial situation is usually not considered to be an extraordinary (exceptional) circumstance, indicating that the execution of the court decision may be complicated or become impossible (Supreme Administrative Court of Lithuania decision of 23rd January 2009 in administrative case No. AS -103/2009⁸²² etc.). Accordingly, the circumstance that the applicant may suffer certain negative consequences of a pecuniary nature does not *per se* (automatically) constitute a ground for the imposition of measures to secure a claim in accordance with the procedure laid down in Article 70 of the LAP, unless the applicant proves that, if the court adopts a decision in favour of the applicant, the removal of such negative consequences would be impossible or difficult (Supreme Administrative Court of Lithuania decision of 20th April 2012 in Administrative Case No. AS -149/2012¹⁴⁶ and others).

In summary, it can be reasonably concluded that the legal bases for the application of interim measures of legal protection (security measures) are not the same in civil proceedings and administrative proceedings, and that the composition of the conditions necessary for the application of such measures differs. Moreover, as is apparent from the rules of both proceedings, the institution of interim measures (measures to secure

claims) performs one and the same essential function, i.e. securing the claims brought by a party to the proceedings, but it is only in the civil proceedings that the application of interim measures is possible before the application is lodged before the court. This exceptional condition is influenced by the specific nature of civil proceedings. Moreover, the administrative procedure also provides an additional legal basis for the application of interim measures, by providing that interim measures may also be applied in cases where it is necessary to provisionally settle a situation relating to a disputed legal relationship, which is not the case in civil proceedings. Administrative proceedings may also provide for the imposition of measures on the initiative of the court, which is not the case during court proceedings in civil cases pending before the Court of First Instance, which do not have the characteristics of public interest.

Types of interim measures, their application and liability for injunctions

In civil proceedings, interim measures of protection may be of several types, depending on the nature and scope of the claims brought, including: (1) seizure of the defendant's immovable property; (2) record in the public register prohibiting the transfer of ownership; (3) seizure of movable property, funds or property rights belonging to the defendant and held by the defendant or by third parties; (4) the detention of property belonging to the defendant; (5) the appointment of an administrator of the defendant's property; (6) the prohibition of the defendant from engaging in certain transactions or actions; (7) the prohibition of the transfer of property to, or the performance of other obligations by, other persons; (8) in exceptional cases, a prohibition on the defendant's departure from his/her habitual residence and/or a prohibition on the removal of a child from his/her habitual residence without the authorisation of the court; (9) suspension of the realisation of assets in the event of an action for the lifting of the attachment of those assets; (10) suspension of recovery proceedings; (11) the ordering of temporary maintenance or the imposition of temporary restrictions; (12) the order to perform acts to prevent the occurrence or aggravation of damage; (13) any other measure provided for by law or ordered by a court, failing which the execution of the judgment may be rendered more difficult or impossible. It should be noted that the list of types of interim measures referred to in the provisions of Article 145 of the CPC is not exhaustive, which means that the court, taking into account the nature and scope of the claims or counterclaims specifically brought in the civil proceedings, may also apply other effective and specific interim measures, the non-imposition of which may make it more difficult or impossible to enforce the judgment. It should also be noted that in certain categories of civil proceedings the law may provide for the application of specific interim measures. In cases where there is a temporary restraint of ownership of a property belonging to the community of property, only the part of the property belonging to the person subject to the provisional measures may be seized. Where the share of the property in the community property has not been established, the whole of the property may be seized temporarily, pending the

establishment of the person's share in the community property.

In addition, the court may grant several interim measures, but the total amount of the interim measures must not be substantially higher than the amount of the claim. The interim measures shall be chosen in accordance with the principle of economy, but the court may not, at the request of the parties to the proceedings or of other interested persons or on its own initiative, impose the measures provided for in Article 145(1)(6), (7) and (12) of the CPC or any other interim measures which would limit the resolution of the financial sector entities in the procedure laid down by the Law on Financial Sustainability of the Republic of Lithuania, if provided for by any other law regulating the imposition of measures of impact on, or the imposition of measures aimed at enhancing the financial stability or the reliability of financial institutions.

In administrative proceedings, measures for securing a claim may be: 1) prohibition to perform certain actions; 2) suspension of recovery under an enforcement document; 3) suspension of the validity of a contested individual legal act, including one conferring subjective rights on a person other than the applicant; 4) any other measures imposed by a court or a judge (Art.70(3) of the LAP).

In both civil and administrative proceedings, the persons requesting the application of a measure to secure a claim must specify the circumstances constituting the grounds for securing the claim and provide evidence to support such circumstances (Supreme Administrative Court of Lithuania decision of 19th October 2016 in Administrative Case No eAS-900-662/2016). Moreover, the burden of proof for the application of interim measures of protection is always on the claimant or the applicant, i.e. the person who applies for such measures. It should also be noted that, in administrative proceedings, only such interim measures may be granted as are necessary to secure the specific claim brought in the proceedings, and not to resolve and secure the legal relationship between the parties to the proceedings.

The person whose property is attached shall be liable for the breach of the restrictions imposed from the moment of notification of the attachment order to him or her, or, in the absence of such notification, and in cases where the order for interim relief is made in the absence of the person concerned, from the moment of registration of the order in the register of seizure of assets.

In civil proceedings, a fine of up to 300 EUR per day may be imposed by a court order on the guilty party for breaching of the restrictions laid down in Article 145(1)(6), (7), (8) and (12) of the CPC. In addition, the claimant shall be entitled to recover from those persons the damages resulting from the non-compliance with the court's order for interim measures.

In administrative proceedings, if the prohibitions set out in the administrative court's order on the application of precautionary measures are infringed, the guilty parties may be fined up to 300 EUR by a court order. This decision can be appealed (Article 70(12) of the LAP).

In summary, it can be reasonably concluded that, given the fundamental differences between civil and administrative proceedings, different types of interim measures are also provided for in the law. As can be seen,

the number of types of interim measures in civil proceedings is considerably higher than in administrative proceedings, and the list of interim measures is not exhaustive, which means that the court may, at the request of the parties or on its own initiative, apply different types of interim measures in a particular civil case. In contrast, the list of possible interim measures in administrative proceedings is shorter, but it is also not exhaustive. The court may also, at the request of the parties or on its own initiative, grant other interim measures necessary in a particular administrative case. It can be reasonably concluded that such differences in the types of interim measures are influenced by the specific nature of the proceedings themselves and the fundamental differences in those proceedings. It should also be noted that in administrative proceedings the court is more active and may grant interim measures on its own initiative.

Examination of applications for interim measures of protection (precautionary measures)

The law on civil procedure regulates the application for interim measures in considerable detail.

Pursuant to the provisions of Article 147 of the CPC, applications for interim measures of protection shall be heard by the court of first instance and, in cases provided for in the Law on Commercial Arbitration, by the Vilnius Regional Court. Where the application for interim measures is contained in the application, the question of interim measures shall be decided only after the admissibility of the application for interim measures has been resolved. The court shall decide on the application for interim measures by written procedure as soon as possible, but at the latest within three working days of receipt of the application. In exceptional cases, where it is necessary to gather additional data necessary for the adoption of a decision on the application for interim measures, the court shall decide on the application for interim measures within seven working days of receipt of the application. Where the court considers it necessary, the defendant shall be notified of the hearing of the application for interim measures.

The parties to the proceedings have the right to submit applications for interim measures to the Court of Appeal and the Court of Cassation, where the merits of the dispute are before those courts.

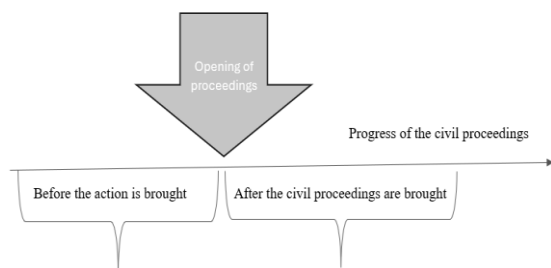


Fig. 1. Application of interim measures in civil proceedings

The court may grant interim measures on the basis of a reasoned written application for interim measures by an interested party, until the date on which the application is lodged with the court. When lodging such an application, the applicant shall state the reasons why the action was

not brought together with the application, provide evidence of the threat to the applicant's interests and pay the fixed amount of stamp duty prescribed in Article 80(5) of the CPC and a security deposit of half the amount of the stamp duty prescribed in Article 80(1) of the CPC. In the case of an application for interim measures relating to proceedings pending before national or foreign arbitrators or foreign courts, a deposit of 300 EUR shall be required. The court may, by order, reduce the amount of the deposit by the reasoned and substantiated request of the applicant on the ground of the applicant's serious pecuniary circumstances. The court shall, when granting interim measures, fix a time-limit within which the action must be brought. That time-limit may not exceed fourteen days. If the action is to be brought before a foreign court or arbitral tribunal, the time limit shall not exceed thirty days. Where compulsory mediation is compulsory before an action may be brought before a court in cases provided for by law, the period within which the action must be brought shall run from the date on which the compulsory mediation is completed. In that case, the applicant must submit, together with the application for interim measures, the details of the request for compulsory mediation and, at the end of the compulsory mediation, must notify the court of the termination of the compulsory mediation without delay. Failure to lodge an application within the time limit set by the court shall result in the lifting of the interim measures. Where the failure to bring an action is due to the fault of the person concerned, the security shall be forfeited. The application for interim measures referred to in this paragraph must be made to the court which, in accordance with the rules of jurisdiction, is required to hear the action itself. An application for interim measures relating to a case pending before a foreign court or a foreign or national arbitration shall be made to the Vilnius Regional Court.

Where the application for interim measures does not comply with the requirements as to the content and form of the pleading, but the applicant has paid at least half of the stamp duty provided for in Article 80 of the CPC, the court shall fix a time-limit within which to remedy the deficiencies in the application and shall immediately notify the applicant thereof. If the applicant, having received the court's order for the application to be discharged, applies for interim measures even if the application is defective, the court shall decide on the application for interim measures *mutatis mutandis* by applying the provisions of Article 147(3) of the CPC.

In administrative proceedings, the main procedural aspects of an application for interim measures are regulated in Article 70(4) to (5) of the LAP.

The application for interim relief shall be examined by the judge or the court of the administrative court within three working days of its receipt at the latest, without notice to the defendant or the other parties to the proceedings. If such an application is lodged together with a complaint (application, petition), it shall be dealt with no later than three working days after the receipt of the complaint (application, petition). Where the court or the judge considers that it is necessary to obtain the views of the defendant and/or the other parties to the proceedings on an application for interim relief, the

application shall be dealt with within ten working days of its receipt or of the lodging of the complaint/application. In that case, the defendant and/or the other parties to the proceedings shall be notified of the examination of the application for interim measures and shall be given a time limit within which the defendant and/or the other parties to the proceedings shall be required to submit their observations. The court or the judge shall make an order on the enforcement of the claim, specifying the procedure and the manner in which it shall be effected. The person to whom the measures are granted shall be notified of the adoption of the order granting the precautionary measures and shall be made aware of his liability for breach of the restrictions imposed.

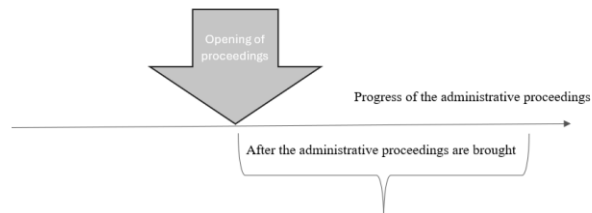


Fig. 2. Application of interim measures in administrative proceedings

Court orders granting interim measures (security measures) include: (1) the time and place of adoption of the order; (2) the name and composition of the court that adopted the order; (3) the reasons for the adoption of the order and the grounds for the interim measures; (4) the person to whom the interim measures are applied (name, surname, personal identification number (if known), place of residence of the natural person; name, registered office address, and business identification number of a legal person); (5) the person whose claims are secured by the interim measures (name, surname, personal identification number, place of residence of the natural person; name, registered office address, code of the legal person); (6) a description of the interim measures applied (where the interim measures relate to property, the name of the property, the asset code (if the property is registered in the asset register), a brief description of the property, the location and any other data identifying the property shall be provided); (7) where the interim measures relate to property, the owner (co-owners) of the property (name, surname, personal identification number, place of residence of a natural person; name, registered office address, code of a legal person); (8) the extent of the interim measures, the methods of enforcement, the order of satisfaction of the claims and the time-limit for the application of the interim measures (if any), defined by calendar date; (9) any other limitations of rights (if any) relating to the interim measures of protection; (10) where the interim measures of protection relate to property, the custodian or administrator of the property (name, surname, personal identification number, place of residence of a natural person; name, registered office address, code number of a legal person), if appointed by the court; (11) the procedure for the execution of the order; (12) the procedure for appealing against the order.

It should be noted that, where provisional measures relating to property are imposed, the details of the property may be omitted from the order if the property

seized is a movable object which is not registered in the property register or if, at the date of adoption of the order, the court does not know how much and what kind of property the defendant has. In such cases, the person at whose request the provisional measures are imposed must, within 14 days, apply to a bailiff for the purpose of locating and describing the defendant's assets. The bailiff shall make an initial adjustment of the details of the seized assets within 14 days of the date of enforcement of the order. After the initial adjustment, the details of the seized property shall be amended or supplemented in accordance with the procedure laid down in the Instructions for the Execution of Judgments. If the order is not submitted to the bailiff for execution within 14 days or if the bailiff does not make an initial adjustment of the data of the attached property within 14 days, the provisional measures shall cease to be valid.

It should be noted that applications for interim measures of protection (security measures) and other applications relating to interim measures of protection are dealt with in accordance with the time-limits and procedures laid down in the General Provisions at the other stages of the proceedings (appeal, reopening of the proceedings, etc.). Moreover, unlike in administrative proceedings, interim measures may also be applied in summary proceedings in civil proceedings (documentary proceedings, court order proceedings), whereas interim measures are not applicable in administrative summary proceedings (Art. 131-1(4) of the LAP Court order proceedings).

In summary, it can be reasonably concluded that the importance of interim measures of protection in cases also determines their prompt and expeditious application, i.e. the general three working day time-limit for their application (or refusal to apply them) provided for by the statutory provisions in both civil and administrative proceedings. This general short procedural time limit is considered to be an extremely short procedural time limit, which reflects the particular importance of the institute of interim measures in both civil and administrative proceedings, but the legislator has also provided a longer procedural time limit for the application of interim measures in both civil and administrative proceedings (seven working days in civil proceedings, ten working days in administrative proceedings), in case of complexity of the matter and the need to take into account more circumstances or collect more information. This freedom of the court or judge to choose the procedural time limit reflects the fact that the court or judge who applies the interim measures in a particular case, whether civil or administrative, has full discretion, i.e. the right to choose the time limit (shorter or longer) for the application of interim measures in a particular case. An application for interim measures in civil proceedings is subject to a fixed stamp duty, whereas in administrative proceedings there is no cost to the parties for lodging the application for interim measures before the court. In civil proceedings, interim measures may be granted before an action has been brought before a court or after the dispute has been arbitrated, which is not the case in administrative proceedings.

Validity of interim measures (security measures)

In administrative proceedings, it is provided that measures securing a claim may be amended or revoked on the initiative of the court hearing the case on the merits or upon a reasoned request submitted to that court by the parties to the proceedings (Article 70(6) of the Administrative Procedure Law). Where the measures taken by the court to secure a claim restrict, infringe or restrict the rights of persons who are not parties to the proceedings, those persons shall have the right to apply to the court hearing the case on the merits to modify or lift the measures to secure a claim against them. The measures shall be varied or revoked by order of the court hearing the main proceedings.

In civil proceedings, in accordance with the provisions of Article 148 of the CPC, the court may, at the reasoned request of the persons involved in the proceedings or of other interested parties, replace one interim measure with another. The court must notify the persons involved in the proceedings or other interested parties, who shall have the right to object to such an application, of the application for replacement of one interim measure. The court may dispense with interim measures if the defendant pays the amount claimed to the account of the court or if the defendant provides a guarantee. In addition, the defendant may pledge his assets for the benefit of the applicant. After the acts referred to in Article 148(2) of the CPC have been carried out after the interim measure has been granted, the court may, by order, modify or revoke the interim measure granted. The prohibition on the defendant's departure from the place of residence may be lifted by payment of the amount claimed to the account of the court or by the provision of a guarantee for the defendant.

Provisional measures of interim protection may be lifted by order of the court hearing the case on its merits, at the reasoned request of the persons involved in the proceedings or of any other interested party (Article 149 of the CPC). The court shall, on its own initiative, revoke interim measures where the person who applied for interim measures fails to bring an action within the time limit set by the court. No appeal shall lie against that order. Where the interim measures imposed by the court restrict, infringe or frustrate the rights of persons who are not parties to the proceedings, those persons shall have the right to apply to the court hearing the substance of the case for the interim measures to be lifted.

In administrative proceedings, if the court rejects the claim (complaint), the interim measures (measures to secure claims) that have been imposed are maintained until the court's decision enters into force. The court must decide on the question of lifting the interim measures (measures securing claims) by a decision (Article 70(9) of the LAP).

If the claim is upheld, the interim measures of protection (measures securing claims) shall remain in force until the judgment is enforced, except as provided for in Article 147(6) of the CPC. A similar provision is laid down in Article 70(10) of the LAP. If the complaint (application, petition) is partially upheld, the question of the validity of the security measures shall be resolved in the court's decision.

In summary, it can be stated that, given the nature of interim measures, the validity of interim measures is identical in both civil and administrative proceedings, i.e. interim measures remain in force until the legal basis for their validity ceases to exist. Moreover, in both proceedings it is also possible to lift or modify interim measures during the proceedings.

Appealing against and enforcing interim measures (security measures)

In civil proceedings, pursuant to the provisions of Article 151 of the CPC, all orders of the court of first instance on interim measures adopted in accordance with the established procedure may be appealed by the parties to the proceedings against the orders of the court of first instance by way of a separate appeal to a court of a higher instance, except for the cases provided for in the CPC. Persons not taking part in the proceedings may lodge an appeal only against orders of the court of first instance refusing to grant their applications for interim measures of protection. The lodging of an appeal does not stay the proceedings. Orders of the court granting interim relief are not subject to cassation proceedings.

In administrative proceedings, a separate appeal may be lodged against the administrative court's orders on matters relating to the securing of a claim (Article 70(7) of the LAP). The lodging of an appeal against an order securing a claim does not suspend the execution of the order and the hearing of the case.

Both in civil proceedings and in administrative proceedings, court orders to secure a claim or to apply interim measures are enforceable urgently, i.e. they are enforceable without waiting for the entry into force of the court order (Art. 152 of the CPC; Art. 70(8) of the LAP).

It should be noted that an order replacing one precautionary measure with another or lifting the precautionary measure shall be executed after the expiry of the time-limit for appealing against those orders, or, in the case of an individual appeal, after the adoption of an order rejecting the individual appeal. In addition, the rules of the CPC further provide that the court may authorise the immediate execution of an order replacing one interim measure with another or lifting an interim measure.

Court orders on the application of interim measures of protection or measures to secure claims shall be enforced in accordance with the procedure laid down for the enforcement of court judgments (Article 70(8) of the LAP). In accordance with the rules laid down in Part VI of the CPC, judgments, decisions, rulings and orders of the court and arbitration tribunals in civil cases, as well as in cases relating to administrative legal relations, shall be enforceable, among other documents (Art. 584 (1) of the CPC). Court judgments and decisions of authorities and officials on the application of interim measures of protection shall be enforceable documents (Article 587(1)(4) of the CPC). Judgments, sentences, rulings, decisions and orders shall be enforceable after they become final, unless the court decides to enforce them urgently (Art. 588 CPC).

The bailiff shall, upon execution of the judgment, notify the keeper of the relevant public register of the

termination of the application of interim measures in the case (Art. 150 of the CPK).

Moreover, the application of interim measures of protection (security measures) prohibits the seizure of the assets referred to in Articles 668 and 739 of the CPC. The attachment of funds held in the accounts of credit, payment and/or electronic money institutions shall be limited to the transactions specified in the court order. In authorising certain operations, the court shall instruct the bailiff to determine the specific amount of funds that may be used for operations during a calendar month. The seizure of the funds referred to in this paragraph, the authorisation of transactions with the seized funds in the order of the court, or the specific amount which the bailiff has determined may be used for transactions within one calendar month shall not suspend the enforcement of the same or a preceding order of priority of claims. In this case, recovery from seized funds held in accounts with credit, payment and/or electronic money institutions shall be carried out in accordance with the procedure laid down in the Instruction on the Enforcement of Decisions.

Article 146 of the CPC provides that, at the request of a party, the court may, by order, require the claimant or any other person applying for interim measures to provide, within a time limit to be determined by the court, security for the defendant's damages which may result from the application of interim measures. If the claimant fails to pay the money intended to secure the damages or to provide a bank guarantee within the time limit set, the court shall, within three working days of the expiry of the time limit, be obliged to revoke the interim measures imposed. There is no appeal against this order. The administrative procedure does not provide for such a remedy for the defendant.

In summary, the issues relating to the appeal and enforcement of interim measures are similar. The administrative procedure refers to the provisions of the law on civil procedure for the enforcement of orders.

Conclusions

In order to ensure that the individual's right to a judicial remedy, as declared by various international and national legal acts, which includes not only the standard of an effective and efficient civil procedure, but also the guarantee of proper implementation of the court decision, is realised, a procedural protection mechanism of a temporary nature has been established in procedural law - interim measures of protection (measures to secure claims).

Interim measures are understood in court proceedings as a set of prohibitions and restrictions on the right to property, as well as obligations to behave in a certain way, laid down in procedural laws, one or more of which may be imposed by the court at the same time to prevent the enforcement of a judgment from becoming difficult or impossible. It should be noted that the objectives of interim measures in both civil and administrative proceedings do not differ in principle. However, the rules of civil procedure provide for additional procedural measures to protect the defendant's interests, for example, by requiring the defendant to pay damages for possible

losses, which is not the case in administrative proceedings.

Interim measures are intended to temporarily settle or "freeze" a situation so that a future court decision (and thus justice) can be implemented. Interim measures of protection and measures to secure claims are, by their very nature, a temporary mechanism for the settlement of a contentious situation, applied on the legal grounds laid down by the law, in order to enable the future judgment to be enforced in reality. They do not constitute a remedy for the protection of a substantive legal relationship, since they merely provide procedural protection of a temporary nature, normally lasting until the judgment is enforced. They are 'provisional' in nature, as they can be modified or revoked and normally expire once the legal dispute has been finally settled. The principles of legal equality, economy of proceedings, fairness and other principles of judicial procedure are important in deciding whether to grant interim measures of protection or interim measures of security. However, they are not fully applicable to applications for interim measures in court proceedings. For example, the principle of the right to be heard is usually not fully realised at the initial stage of an application for interim measures, since the defendant is informed of the court's order without being heard, but has the procedural possibility to appeal against the order for interim measures at a later stage, or to ask the court to order the claimant to provide security for the defendant's potential damages.

Despite the differences in the regulation of civil and administrative proceedings, the substantive issues of interim measures are regulated in a similar way: the legislator has provided grounds for the application of these measures, provided a non-exhaustive list of the measures that may be applied in court proceedings, provided for an urgent mechanism to resolve these issues, and regulated the validity and enforcement of decisions on interim measures and measures to secure claims. The link between administrative and civil proceedings is also reflected in the redirecting legal provisions in the administrative procedure, which refer to the provisions of the CPC. However, one of the main differences is that administrative procedure does not provide for the possibility of applying for interim measures before the date of the acceptance of the complaint (application, petition). In administrative proceedings, the court is more active in examining applications for interim measures and may also apply such measures on its own initiative, and the application for interim measures is not subject to stamp duty. In addition, special laws may provide for a different mechanism for dealing with questions relating to interim measures.

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