

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Croatia]

2020



TABLE OF CONTENTS

	Page
MULTILAW LITIGATION AND DISPUTE RESOLUTION PRACTICE GROUP	1
I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES	1
1. Is it possible to apply for an interim measure in order to ensure the effective enforcement of a Court decision?	1
2. Is it mandatory to pay court fees for this type of application?	1
3. What is the ordinary/average length of time for this kind of procedure?	1
II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES.	1
1. For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc.)	1
III. PROCEDURE	2
1. Competent Court	2
2. When can the application for interim and precautionary measures be submitted?	2
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)	3
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?	3
5. Criteria used by the court for granting these measures	3
6. Procedure	4
7. Opposition of the defendant	4
8. Appeal	5

IV.	EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.	5
1.	Is it possible to enforce the interim measure when the other party obstructs it?.....	5
2.	Is it possible to modify a previous interim measure?	5
3.	When is it possible to raise an interim measure?	5
4.	Are there any rules concerning the costs (e.g., lawyers' fees, etc.) related to the application?.....	6
V.	ARBITRATION	6
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?.....	6
2.	Are the arbitrators entitled to order an interim measure?.....	6
VI.	FOREIGN PROCEDURE & ARBITRATION	6
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?	6

I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

1. Is it possible to apply for an interim measure in order to ensure the effective enforcement of a court decision?

Answer: Yes, it is possible. General rules are stipulated in the Croatian Enforcement Act (Ovršni zakon).

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

Answer: Yes. The court fees depend on the value of the dispute (generally determined as monetary value of the claim) and range from HRK 150 (approx. EUR 20) to EUR 7,500 (approx. EUR 1,000). For appeal, court fee ranges from HRK 100 (approx. EUR 13) to HRK 5,000 (approx. EUR 675).

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

Answer: The length of such procedure varies, measure may be granted within several days or weeks. In more complicated cases, the procedure may last up to several months. The county court or High Commercial Court should decide on the appeal within 30 days from receipt thereof, but in practice it may take longer.

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: Any measure that achieves the purpose of securing monetary or non-monetary claims may be granted as an interim measure. The Enforcement Act contains a non-exhaustive list of interim measures, so the court may:

- prohibit the secured debtor from alienating or encumbering movables and to seize these objects;
- prohibit the secured debtor from alienating or encumbering real estate or rights in rem that are registered on the real estate in his favour, with an annotation of this prohibition in a land register;
- order a bank to refuse payment from the secured debtor's account to the secured debtor or third party at the secured debtor's request;
- prohibit the alienation and encumbrance of shares, stakes or participating interests, as well as other rights; to prohibit the use or exercise of rights on the basis of such shares or equity shares; to entrust shares, stakes or participating interests to the management of a third party; to set up an interim management board in a company;
- prohibit the secured debtor from undertaking any actions which might cause damage to the applicant; or to order the secured debtor to undertake

certain actions necessary to preserve movables or real estate or to preserve the current state of objects;

- to authorise the applicant to retain the secured debtor's objects that are kept with him and to which the claim refers until the litigation is settled or to undertake certain actions or obtain certain objects alone or by proxy.

On the other hand, the list of precautionary measures is closed, and includes, among others, the following:

- Registration of a lien on the secured debtor's real estate or on a right entered on real estate;
- Entry of a lien on the secured debtor's movables, monetary claims, bank account, shares and other securities, business shares etc.;
- Prohibition of a bank to pay from the account of a secured debtor or a third party an amount for which a preliminary measure has been ordered.

III. PROCEDURE

1. Competent Court

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

Answer: Interim and precautionary measures are granted by municipal or commercial courts that would otherwise have had jurisdiction to adjudicate on motions to enforce. After issuing proceedings, the jurisdiction to adjudicate on interim measures lies with the court before which the proceedings were issued. Competent county court or High Commercial Court decides on the appeal filed against the decision of municipal or commercial court.

2. When can the application for interim and precautionary measures be submitted?

Is it possible to apply for it at the time the underlying lawsuit is filed? If YES: Are there any special requirements when so doing?

Answer: Application for interim measures may be filed before the lawsuit is filed, during the proceeding and after the proceeding is finished, until the enforcement is successfully conducted. There are no special requirements for application of interim measures in different phases of the proceeding.

The application for precautionary measure cannot be filed at the time the underlying lawsuit is filed.

3. **Is it possible to apply for interim precautionary measures before filing the underlying lawsuit? If YES: Are there any special requirements when so doing? (e.g., deadline to submit the lawsuit)**

Answer: Please see the above answer to question 2.

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: Application for interim measure may be filed after the proceeding is finished, until the enforcement is successfully conducted. There are no special requirements for application of interim measure in different phases of the proceeding.

The application for precautionary measure may be filed on the basis of court decision which has not yet become final, if the claim determined therein is not yet due, and expires within 15 days from the date on which the claim becomes enforceable, at the latest.

5. **Criteria used by the court for granting these measures**

What requirements must be fulfilled in order to apply for an interim measure? (e.g. *periculum in mora*, *fumus boni iuris*, security, etc)

Answer: The application for interim measure to secure a monetary claim may be granted if the applicant demonstrates as probable:

- the existence of the claim; and
- the risk that without such a measure the secured debtor would prevent or make significantly more difficult the collection of the claim by alienating his property, concealing it or disposing of it in some other way.

For the purpose of securing a non-monetary claim an interim measure can be ordered if the applicant demonstrates as probable:

- the existence of his claim; and
- the risk that the secured debtor would, without this measure, prevent or make significantly more difficult the enforcement of the claim, in particular by altering the current situation; or
- that the measure is probably necessary to prevent violence or the occurrence of irreparable damage.

For both monetary and non-monetary claims, the applicant does not have to prove a risk if he shows it is probable that the secured debtor would sustain only insignificant damage by the proposed measure and it is considered that the risk has been demonstrated if the claim has to be enforced abroad.

The court may grant an interim measure even when the applicant has not demonstrated as probable the existence of a claim and risk, if the applicant has provided security for damage that the secured debtor might incur by the ordering and implementation of an interim measure.

Application for precautionary measures may be granted to secure monetary claims based on a court decision that has not yet become legally effective, if the claim determined therein has not yet become due. The applicant must demonstrate as probable the risk that the realisation of the claim would be made impossible or significantly more difficult if not secured.

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: For both interim and precautionary measures, the main steps of the procedure are the following:

- Submission of the application for interim or precautionary measure to be granted;
- Examination of the application and accompanying evidence by the court and rendering of the decision on granting the measure;
- The debtor may file an appeal within 8 days from receipt of the decision;
- The appellate court should adopt a decision on the appeal within 30 days from the receipt of the appeal.

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. Both precautionary and interim measures can be granted without hearing the other party first. The other party can file an appeal within 8 days from the delivery of the decision by which the measure has been granted.

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

Answer: Please see answer under 6.a) above.

7. Opposition of the defendant

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

Answer: Yes. Please see answer under 6.a) above.

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

Answer: Yes.

8. Appeal

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

Answer: Yes. Both parties may file an appeal within 8 days from receipt of the decision. The appeal is not sent to the opposing party for review and answer.

The appellate court should adopt a decision upon the appeal within 30 days from the receipt of the appeal.

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

Answer: Yes. Once an appeal is filed, it is possible to enforce the interim measure.

IV. EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.

1. Is it possible to enforce the interim measure when the other party obstructs it?

Answer: Yes. Due to their nature, the enforcement of precautionary measures is less dependent on the other party's actions, as liens are registered in the relevant registries and seizure is ordered to the bank.

Interim measures mostly depend on the actions of the other party, so, in cases where the other party obstructs the enforcement of the interim measures, monetary fines and even imprisonment may be imposed.

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

Answer: The duration of precautionary and interim measures may be extended, upon the applicant's proposal, provided that the circumstances under which the measure was ordered have not changed. With respect to the precautionary measures, their duration may be extended up to the moment when the underlying court decision becomes enforceable.

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

Answer: Precautionary measures may be raised, at the debtor's proposal, if:

- The debtor deposits to the court the due amount of secured claim, with interest and costs;
- The debtor demonstrates as probable that the claim was already settled or properly secured at the time when the decision on granting precautionary measures was rendered;
- It is finally and definitively decided that the claim did not arise or it ceased to exist;

- The underlying decision on the basis of which the precautionary measure was granted is annulled following the successful legal remedy;
- Within 15 days from the expiry of the precautionary measure, conditions for enforcement are not satisfied; or, where they are satisfied, if the creditor does not initiate enforcement proceedings within the set time period, as well as when it initiates the enforcement proceedings after the claim becomes enforceable.

Interim measures may be raised, at the debtor's proposal, if:

- The applicant does not file a lawsuit within the set date;
- The interim measure has expired; and
- The circumstances for which the interim measure was granted have changed so it is no longer necessary.

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

Answer: Subject to a successful application for measure, the debtor shall be under the obligation to borne the costs of the procedure. The final amount of costs is determined by the decision of the court.

V. ARBITRATION

1. Is it possible to apply for an interim measure in order to assure the effective enforcement of an arbitration award in your country? If YES: what is the enforcement procedure?

Answer: Yes. The procedure is equivalent to the procedure described above.

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

Answer: Yes, if the parties did not agree otherwise.

Upon request of one of the parties, the arbitral tribunal may order any party to undertake certain actions the tribunal considers necessary for the subject matter. Also, the party may be ordered to provide security in connection with such interim measures. If such a party does not voluntary abide by the measure, the party which proposed the measure may file the application to the competent court.

VI. FOREIGN PROCEDURE & ARBITRATION

1. Is it possible to apply for an interim measure before your country's courts in order to assure the effective enforcement of a foreign court decision or arbitration award? If YES: how is this procedure executed?

Answer: Yes. The procedure is equivalent to the procedure described above.

Submitted by

	Contact 1	Contact 2 (optional)	Contact 3 (optional)
Contact Name:	Dora Horvat		
Firm Name:	Ilej & Partners in cooperation with Karanovic & Partners		
Email:	dora.horvat@ilej-partners.com		
Phone #:	+38515634111		
Website:	www.ilej-partners.com		