

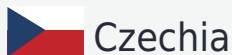
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Securing assets during a claim in EU countries

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European Judicial Network
(in civil and commercial matters)



1 What are the different types of measures?

Interim measures:

Interim measures are used to govern the parties' relations in the interim, i.e. provisionally, or in a situation where there are concerns that the enforcement of a judicial ruling may be undermined.

Generally, interim measures issued prior to the commencement of proceedings on the substance of the case are governed by Article 74 *et seq.* of the Code of Civil Procedure (Act No 99/1963, as amended), while interim measures issued after the commencement of such proceedings are governed by Article 102 of the Code. Special interim measures for certain specific situations are governed by the Act on Special Judicial Proceedings (Act No 292/2013), namely interim measures governing the situation faced by a minor who has not been duly cared for (Section 452 *et seq.*) and interim measures to provide protection against domestic violence (Section 400 *et seq.*). Section 12 of Act No 292/2013 also lays down certain special rules supplementing the general arrangements in place for interim measures, covering those types of proceedings that fall within the scope of that Act.

Securing of evidence:

Evidence is secured if there is concern that evidence-taking in the future will be impossible or severely hampered (e.g. defective performance of a purchase agreement, the object of which comprises perishable goods or the examination of a witness who is seriously ill and in a life-threatening condition).

2 What are the conditions under which such measures may be issued?

2.1 The procedure

Interim measures:

- Article 74(3) of the Code of Civil Procedure (Act No 99/1963, as amended) provides that proceedings to obtain an interim measure are commenced upon application.
- However, Section 12 of Act No 292/2013 lays down that an interim measure may be ordered by a court on its own motion if it is also permitted to commence the proceedings in question on its own motion (e.g. proceedings on the care of a minor, incapacitation proceedings, guardianship proceedings, and proceedings concerning a missing person, or death). In these cases, the court orders an interim measure *ex officio*.
- The court competent to issue an interim measure is the court with jurisdiction as to the substance; exceptions to this rule can be found in Sections 400 and 453 of Act No 292/2013.

Evidence may be secured:

- prior to the commencement of proceedings on the substance of the case, upon application. The competent court is the court that would have jurisdiction as to the substance or the court in whose district the evidence at risk is situated.
- during the proceedings, even in the absence of an application.

The parties to the case should be present when evidence is secured, unless any delay in this regard could pose a risk.

Evidence may also be secured by means of notarial deed (*notářský zápis*) or an enforcement officer's record (*exekutorský zápis*), if this process takes place in the presence of a notary or enforcement officer or if a notary or enforcement officer has testified on the situation.

2.2 The main conditions

An interim measure may be ordered:

- if provisional arrangements need to be in place to govern the parties' relations;
- if there is concern that the enforcement of a judicial ruling will be compromised;
- to govern relations on a provisional basis.

The assessment of whether there is any need for provisional arrangements governing the parties' relations depends on the circumstances of the particular case. An interim measure will be ordered only if there is a demonstrable need for provisional arrangements to govern the parties' legal relations. As regards other circumstances relevant to the ordering of such an interim measure, it is sufficient for at least facts critical to the imposition of the obligation under the interim measure to be proven.

- Undermining of the enforcement of a ruling

If an interim measure is to be ordered in response to concerns that the enforcement of a ruling could be undermined, the entitled party must be in possession of a decision or other instrument constituting grounds for the [enforcement of the ruling](#). An interim measure may be ordered only until the ruling becomes enforceable, or if there are serious reasons why the entitled party has so far been (temporarily) unable to require that the obligation imposed be met by means of judicial enforcement. At the same time, facts justifying the concern that the [enforcement of the ruling](#) would be compromised (mainly on account of the obligor's behaviour) must be substantiated.

An application for an interim measure must contain the particulars laid down by Article 42(4) and Article 75 of the Code of Civil Procedure (Act No 99/1963), including:

- information indicating the court to which the application is addressed;
- who is submitting the application and what case it concerns, i.e. an account of the facts justifying the interim measure being sought;
- the aim pursued by the application, i.e. what interim measure the applicant is seeking;
- the date on which it was drawn up, and the signature of the applicant or the applicant's representative;
- a description of the fact that provisional arrangements are need to govern the parties' relations, or that there is concern that the enforcement of the judicial ruling will be compromised.

Any instruments to which the applicant refers need to be attached to the application.

By the date on which the application is submitted, the applicant is required to remit a deposit of CZK 10 000 on his own initiative, i.e. without prompting by the court; in cases that concern business-to-business relations deriving from business activities, the deposit is CZK 50 000. Applications are exempt from the requirement to remit a deposit if they concern social welfare issues (e.g. maintenance, employment, or compensation for personal injury). The application is rejected if the deposit requirement is not met.

The deposit serves as security for a claim to compensation for damage or other loss which may be incurred by the parties or by third parties (i.e. persons not party to the interim measure proceedings) if an interim measure is ordered.

Section 12(3) of Act No 292/2013 provides for exemption from the need to remit the deposit prescribed by this law.

Securing of evidence:

Prior to the commencement of proceedings on the substance of the case, evidence may be secured (if so proposed) if there is concern that evidence-taking in the future will be impossible or severely hampered. Evidence is not secured if it clearly carries no weight in the proceedings. The court refuses to accept an application for evidence to be secured if it suspects that the applicant, rather than seeking to protect evidence, has actually submitted the application in a bid to achieve a different goal (e.g. to obtain otherwise non-accessible information on another person's activities).

Besides the general particulars, an application to secure evidence must include a description of the facts that are to be the subject of the evidence-taking. The evidence that is to be secured also needs to be specifically identified.

3 Object and nature of such measures?

3.1 What types of assets can be subject to such measures?

Interim measures:

Article 76 of the Code of Civil Procedure provides that an interim measure may order a party, for example, to pay maintenance, to lodge a sum of money with the court, to place an item in the custody of the court, not to dispose of certain items or rights, to do something, to refrain from doing something, or to allow something to be done. The measure may relate to any item owned by the party in question.

Under an interim measure, a court may impose an obligation on someone other than a party to the proceedings where this can justifiably be required (e.g. if someone is buying a property in the full understanding that he is purchasing it from an owner who has not duly met payment obligations towards creditors).

Special interim measures under Act No 292/2013:

The special interim measure governing the situation of a child under Section 452 *et seq.* is applied if a minor has not been duly cared for, regardless of whether or not anyone has the right to care for the child, or if the child's life, normal development or other important interests are seriously endangered or have been undermined. The court's interim measure governs the child's situation for the time strictly necessary by placing the child in a suitable environment, as indicated in the court order.

A special interim measure under Section 400 *et seq.* can be imposed on a defendant, requiring him or her to leave a shared household and the immediate surroundings thereof, to stay away from and not to enter the shared household, to refrain from coming into contact with the applicant, or to refrain from the stalking and harassment of the applicant in any way whatsoever. The application must contain a description of facts showing that the co-existence of the applicant and the defendant in the house or flat in which they share a household is intolerable for the applicant because of physical or mental violence perpetrated against the applicant or another person living in the shared household, or a description of facts demonstrating the stalking or harassment of the applicant.

Securing of evidence:

The application should also explain why the applicant is applying for evidence to be secured. All means by which the status of a case is ascertainable, especially the questioning of witnesses, an expert opinion, the reports and observations of authorities and legal persons, etc., can be used as evidence.

One special means of securing of evidence entails the securing of an object of evidence in a case relating to intellectual property rights (Article 78b of the Code of Civil Procedure (Act No 99/1963)). A person who has witnessed a violation of an intellectual property right has *locus standi*. The competent court is the regional court in whose jurisdiction the object has been secured. The following may be secured: the goods in question; materials and tools; documents relating to the goods in question.

3.2 What are the effects of such measures?

Interim measures:

An interim measure is a provisional ruling intended to protect the applicant. It is issued for the protection of a right of the applicant that has been infringed or is at risk. When an interim measure is issued, this does not confer on the applicant rights that have yet to be settled. Nor is it a means of addressing a preliminary question. Likewise, the simple fact that an interim measure has been issued must not affect the court's decision-making on the substance of the case. Even after an interim measure has been issued, obligors may continue to dispose of their property, but must act in accordance with the measure issued.

Anyone who grossly impedes the course of proceedings, in particular by failing – without good reason – to present himself before the court or by disobeying a court order, may be ordered by the court to pay a fine of up to CZK 50 000. A court may enforce a ruling on an interim measure if the party liable fails to heed that ruling voluntarily. The penalty for obstructing the enforcement of an official decision or an expulsion (from a shared household) is also enshrined in Section 337(2) of Act No 40/2009, the Criminal Code, which establishes the misdemeanour of obstructing the enforcement of an official decision or expulsion.

3.3 What is the validity of such measures?

Interim measures:

- Fixed-term interim measure

In an order issuing an interim measure, a court may determine that the measure is to be limited in time, even if this is not sought by the plaintiff (applicant).

- Imposition of an obligation to bring an action or to file another application for the initiation of proceedings

A court ordering an interim measure also requires the applicant (plaintiff) to submit an application to the court for the initiation of proceedings (an action) on the substance within a time limit set at the same time as the measure is issued.

An interim measure remains in force until it lapses or is lifted by the court.

An interim measure lapses if the applicant does not apply for the initiation of proceedings within the time limit set by the court; if the application on the substance of the case is not upheld; if the application on the substance of the case is upheld and more than 15 days have passed since the ruling on the case became enforceable; or if the term fixed for the interim measure has expired.

A court lifts an interim measure if the reasons for which it was ordered cease to exist.

Section 400 *et seq.* of Act No 292/2013 provides that an interim measure is to last for a month from the date on which it becomes enforceable (Section 408), and that this term may be extended, depending on the start of proceedings on the substance of the case.

Section 452 *et seq.* of Act No 292/2013 provides that an interim measure is to last for a month from the date on which it becomes enforceable (Section 459), and that this term may be extended.

Securing of evidence:

Evidence is secured within the time specified by the court or as soon as possible. The parties may be present when evidence is secured, but it is not their right to be there if any delay would constitute a risk. After the initiation of proceedings on the substance of the case, the parties have a right to respond to the evidence offered and to all evidence taken. In addition, the parties may be questioned.

4 Is there a possibility of appeal against the measure?

Interim measures:

Decisions on interim measures take the form of court orders. An order imposing an interim measure becomes enforceable upon publication. If it is not published, it becomes enforceable once it has been served on the liable party thereunder. A written copy of an interim measure is served on the parties to the proceedings and on a third party (where an obligation is incumbent on that third party) and, if the measure concerns the obligation not to dispose of immovable property, a copy is also delivered to the competent land registry. An order issuing an interim measure becomes enforceable upon publication or service (Article 76d of the Code of Civil Procedure) and constitutes grounds for the enforcement of a ruling.

Appeals against orders issuing interim measures are admissible. Appeals are filed with the court that issued the contested ruling, but are actually heard by second-instance courts, i.e. by regional courts or high courts. Appeals are filed within 15 days of receipt of a written copy of the ruling.

If an admissible appeal is filed in a timely manner by an entitled party, the ruling does not become final until the appeal court has reached a final decision on the appeal. However, an order issuing an interim measure becomes enforceable (i.e. procedure according to that order is followed) upon expiry of the time limit for performance, which commences on the date of service; alternatively, it becomes enforceable upon service if it imposes no obligation of performance. A court may decide that an order issuing an interim measure is enforceable only after the court's ruling becomes final, unless this is precluded by the nature of the interim measure or would defeat its purpose.

Sections 409 and 463 of Act No 292/20013 contain provisions on appeals against special interim measures under that law.

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