Securing assets during a claim in EU countries

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European Judicial Network (in civil and commercial matters)

Estonia

1 What are the different types of measures?

The measures for securing an action are:

1. establishing a judicial mortgage on an immovable, ship or aircraft belonging to the defendant;
2. seizing the defendant's property which is in the possession of the defendant or another person and, on the basis thereof, making a notation concerning prohibition in the land register by which the prohibition on disposal is made visible, or making an entry in another property register by which the prohibition on disposal is made visible;
3. prohibiting the defendant from performing certain transactions or acts, including by imposing a restraining order;
4. prohibiting other persons from transferring property to the defendant or performing other obligations with regard to the defendant, which may also include an obligation to transfer property to a bailiff or to pay money into a bank account prescribed for that purpose;
5. obliging the defendant to deposit an object with the bailiff;
6. suspending the enforcement proceedings, permitting the continuation of the enforcement proceedings only against a security, or revoking the enforcement action if the enforcement instrument has been contested by an action being filed, or if a third party has filed an action for the release of property from seizure or for compulsory enforcement to be declared inadmissible for another reason;
7. prohibiting the defendant from leaving their place of residence, taking the defendant into custody and imposing detention on the defendant;
8. obliging the defendant and, above all, an insurer to make payments to the extent of the minimum amount likely to become payable in the course of proceedings pertaining to criminal damage or an insurance contract;
9. obliging the defendant to terminate the application of an unfair standard term or obliging the person recommending application of the term to terminate or withdraw the recommendation of the term in an action for termination of the application of an unfair standard term or an action for termination and withdrawal of the recommendation of the term by the person recommending application of the term;
10. any other measure considered necessary by the court.

In order to secure an action based on the infringement of copyright or related rights or industrial property rights, the court may, amongst other measures, seize goods in cases where there are suspicions that intellectual property rights may have been infringed or impose an obligation to hand over such goods to prevent them from being put on the market or distributed. If the seizure of the defendant's bank account or other assets is sought to secure an action based on infringement of copyright or related rights or industrial property rights for commercial purposes, the court may impose an obligation to hand over banking, financial or commercial documents or to allow them to be inspected.

In order to secure an action based on the unlawful acquisition, use or disclosure of business secrets, the court may, amongst other measures, seize goods where there are suspicions that the design, characteristics,

functioning, production or marketing of the goods benefits significantly from business secrets acquired, used or disclosed unlawfully, or impose an obligation to hand over such goods to prevent them from being put on the market or distributed.

In a matrimonial matter, maintenance matter or other family matter, the court may also regulate the following for the duration of the proceedings:

1. parental rights in respect of a common child;
2. communication of a parent with a child;
3. surrender of a child to the other parent;
4. compliance with maintenance obligations arising in law and, amongst other measures, obliging the defendant to provide financial support or security during the proceedings;
5. use of any items from the shared household and use of the common housing of the spouses;
6. surrender or use of any items intended for personal use by a spouse or child;
7. other matters relating to the marriage or family which need to be settled rapidly due to the circumstances.

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

2.1 The procedure

Petitions for securing an action are ruled upon by the court no later than on the working day following the date of submission of the petition. The court may rule on the petition for securing an action at a later date should it wish to hear the defendant beforehand.

The defendant and other participants in the proceedings are not notified of the hearing of a petition for securing an action. If it is clearly reasonable and, above all, if provisional regulation of the disputed legal relationship is requested by the petition, the court may first hear the defendant.

The court may also secure an action based on a petition before the action is filed. The petition should set out the reasons for the action not being filed immediately. The petition is to be filed with the appropriate court pursuant to the provisions concerning jurisdiction. If the court secures an action before the action is filed, the court will set a term during which the petitioner must file the action. The term should not be longer than one month. If the action is not filed in time, the court will cancel the securing of the action.

If necessary, a court may impose a measure for securing an action if the property in question lies within its territorial jurisdiction, even if the action has been filed or should have been filed with another Estonian court, a foreign court or an arbitration board. With respect to property that has been entered in a public register, a measure for securing an action may also be applied by the court whose jurisdiction covers the location of the register and, in the case of a ship, by the court whose jurisdiction covers the location of the home port of the ship.

The court may make the securing of an action or continuation of the securing of an action dependent on the provision of security in order to compensate for any possible damage caused to the opposing party and to a third party.

The court secures an action involving a monetary claim only in the case where security is provided in the amount of at least 5 percent of the amount of the claim, but not less than EUR 32 and not more than EUR 32 000. If detention of a defendant or prohibition of a defendant from leaving their place of residence is sought in order to secure an action, the amount of the security provided will be no less than EUR 3 200 and no more than EUR 32 000.

If the prerequisites for requesting security have been fulfilled, the court may still refuse to request the security in full or in part or order its payment in instalments if the plaintiff cannot be reasonably expected to provide the security for economic or other reasons and failure to secure the action may result in grave consequences for the plaintiff, or if requesting the security would be unfair on the plaintiff for any other reason.

2.2 The main conditions

The court may secure an action at the request of the plaintiff if there is reason to believe that failure to do so may render enforcement of a court judgment difficult or impossible. If it is clear that the enforcement of a court judgment is to take place outside the European Union and that enforcement is not guaranteed on the basis of an international agreement, it is presumed that failure to secure the action may render enforcement of the court judgment difficult or impossible.

In order to secure an action whose object is not a monetary claim against the defendant, the court may provisionally regulate a disputed legal relationship and, above all, the manner of use of an item, if this is necessary to prevent significant damage or arbitrary action or for another reason. This may be done regardless of whether there is reason to believe that failure to secure the action may render enforcement of the court judgment difficult or impossible. In a matrimonial matter, maintenance matter or other family matter, the court may also apply measures on its own initiative.

An action which includes a future or contingent claim, or an establishment action may also be secured. A contingent claim is not secured if the condition is presumed not to occur during the proceedings.

A court may also apply a measure for securing an action in connection with court proceedings or arbitration proceedings conducted abroad.

A measure for securing an action may also be applied where a plaintiff seeks to secure several claims against the same defendant.

A measure for securing an action is to be chosen so that the measure, when applied, would burden the defendant only in so far as this can be considered reasonable taking account of the legitimate interests of the plaintiff and the circumstances. The value of the action should be taken into account when securing an action involving a monetary claim. A court may apply several measures concurrently to secure an action.

Detention or prohibition of a person from leaving their place of residence in order to secure an action may be applied only if this is necessary to ensure compliance with a court judgement and where other measures for securing an action would clearly be insufficient to secure the claim, above all if there is reason to believe that the person is likely to leave for a foreign state or take his or her assets to a foreign state. Detention of a person is arranged by the police on the basis of a court ruling.

Detention or prohibition of a person from leaving their place of residence may be used for securing a proprietary claim only if the value of the action exceeds EUR 32 000.

If the court imposes detention or prohibits a person from leaving their place of residence by a ruling on securing an action involving a monetary claim or a ruling on securing an action, the court determines the sum of money that is to be paid into the bank account intended for such purposes, or for which a bank guarantee needs to be supplied. Once the money is paid or the guarantee supplied, enforcement of the ruling on securing the action is terminated. In such cases, and on the basis of the defendant’s application, the court will cancel the measure for securing the action and replace it with a sum of money or a bank guarantee.

Provisional legal protection can be applied in proceedings on petition only in cases where this is provided for by law. Provided that provisional legal protection can be applied pursuant to the law in a matter on petition, this can be done if it is necessary for the preservation or temporary regulation of an existing situation or status unless otherwise provided for by law. Unless otherwise provided for by law, the provisions concerning securing an action apply to provisional legal protection. If proceedings can be initiated only on the basis of a petition, the court may apply provisional legal protection and annul or amend the ruling on provisional legal protection only on the basis of a petition unless otherwise provided for by law.

3 Object and nature of such measures?

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

Depending on the nature and aim of a measure, measures can be applied to both movable property and immovable property, including money, as well as to ships and aircraft.

3.2 What are the effects of such measures?

- Seizure of property

In the case of seizure of property, the defendant may not dispose of the property. In addition to the seizure of other movable property, except a ship entered in the ship register or an aircraft entered in the civil aircraft register, the right of security upon seizure is created.

When immovable property or registered movable property or another object is seized, a notation concerning the prohibition on disposal of the property is to be entered in the land register or another register to the benefit of the plaintiff on the basis of the plaintiff's petition and the ruling on securing the action. At the request of the plaintiff, the court forwards the ruling for the purpose of entering the notation concerning the prohibition in the register independently.

Based on an application by the plaintiff or defendant, the court may order the sale of a seized object and the proceeds raised from the sale to be deposited in the bank account intended for such purposes if the value of the object may decrease significantly or storage of the object would involve unreasonable costs.

Seizure of property is arranged by a bailiff. The bailiff takes the seized object under his or her supervision on the basis of an application from the person who petitioned for the securing of the action. In such cases, the bailiff prohibits the use of the object in part or in full and may give orders in respect of the object, including to organise the storage of the object.

- Judicial mortgage

Unless otherwise provided for by law, a judicial mortgage established on an immovable, a ship entered in the ship register or an aircraft entered in the civil aircraft register gives the person who requested the securing of the action the same rights with regard to the other rights encumbering the object as those given to a mortgagee by a mortgage or maritime mortgage, or those given to a pledgee by a registered security.

The sum of the mortgage is the amount of the secured claim which is entered in the land register, ship register or civil aircraft register. If the principal claim remains under EUR 640, a judicial mortgage will not be established, provided that it is possible to apply other measures for securing the action which are less detrimental to the defendant.

A judicial mortgage is entered in the land register, ship register or civil aircraft register to the benefit of the plaintiff on the basis of the plaintiff's petition and the ruling on the securing of the action. At the request of the plaintiff, the court forwards the ruling for the purpose of entering the judicial mortgage in the register independently. The mortgage is created when it is entered in the register.

On establishment of a judicial mortgage on a ship or aircraft, the bailiff takes the ship or aircraft under his or her supervision on the basis of an application from the person who requested the securing of the action. In such cases, the bailiff prohibits the use of the ship in part or in full and may give other orders in respect of the ship.

- Prohibition on leaving the place of residence

A prohibition on leaving the place of residence obliges the person in question not to leave his or her place of residence for longer than twenty-four hours without the permission of the court. In order to apply a prohibition on leaving the place of residence, the court summons the defendant if the defendant is a natural person, or a member of the managing body of the defendant if the defendant is a legal entity, and obtains his or her signature to that effect.

3.3 What is the validity of such measures?

If the court imposes detention or prohibits a person from leaving their place of residence by means of a ruling on securing an action involving a monetary claim or a ruling on securing an action, the court determines the sum of money that is to be paid into the bank account intended for such purposes, or for which a bank guarantee needs to be supplied. Once the money is paid or the guarantee supplied, the enforcement of the ruling on securing the action is terminated.

At the request of a party, a court may, by means of a ruling, substitute one measure for securing an action with another.

If a judicial mortgage is established on several immovables, ships or aircraft, the court indicates in the ruling on securing the action a sum of money for each encumbered object that is to be paid into the bank account intended for such purposes or for which a bank guarantee needs to be supplied. Once the money is paid or the guarantee supplied, the securing of the action is cancelled. If the securing of an action is cancelled or a measure for securing the action is substituted, the owner of the immovable property, ship or aircraft becomes the owner of the mortgage. At the request of the owner, the judicial mortgage is deleted from the land register, ship register or civil aircraft register on the basis of a ruling cancelling the securing of the action.

If the circumstances change and, above all, the cause for securing an action ceases to exist or security is offered, or due to another reason provided for by law, the court may cancel the securing of an action at the request of a party. Non-monetary securing of an action may be cancelled or amended by substituting it with a monetary payment only with the consent of the plaintiff or for a good reason.

The court cancels the securing of an action by means of a court judgment if the action is not satisfied, or by means of a ruling if the action is not admitted or the proceedings in the matter are terminated. The court also cancels the securing of an action if the decision to secure the action was taken by another court, unless otherwise provided for by the law.

In a matrimonial matter, maintenance matter or other family matter, the court may amend or annul a ruling on securing an action on its own initiative.

4 Is there a possibility of appeal against the measure?

A party may file an appeal against a ruling by which a county court or circuit court secures an action, substitutes one measure for securing an action with another or cancels the securing of an action. A ruling made by a circuit court concerning an appeal against a ruling of a county court is subject to appeal to the Supreme Court (*Riigikohus*) only if the value of the secured action exceeds EUR 100 000 or if a person has been detained or prohibited from leaving their place of residence as a securing measure.

Rulings on provisional legal protection may be appealed. Circuit court rulings on such appeals may not be appealed to the Supreme Court, unless otherwise provided by law.

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