

1 What are the different types of measures?

Interim and precautionary measures are intended for the protection of certain legal situations, and may include: a) interim measures within the scope of the legal framework for accompanied adults provided for by [Law No 49/2018 of 14 August 2018](#); b) provisional curatorship of an absentee's property (Article 1021 of the Code of Civil Procedure); c) appointment of a curator *ad litem* (Article 17 of the Code of Civil Procedure); or d) measures necessary to protect property comprising an estate in abeyance (Article 938 of the Code of Civil Procedure).

The purpose of precautionary measures (e.g. those provided for under Articles 362 et seq of the Code of Civil Procedure) is to eliminate the risk of serious or irreparable damage to the claim while proceedings are pending (*periculum in mora*) and to ensure that the final judgment can be enforced (Article 2 of the Code of Civil Procedure).

Except where the court orders the reversal of responsibility for bringing the main action (*inversão do contencioso*), precautionary proceedings are dependent on an action brought to establish the claim protected by the precautionary measure (Article 364 of the Code of Civil Procedure); they safeguard or provisionally anticipate the effects of the final measure, on the assumption that the decision handed down in the main proceedings will be favourable to the applicant.

The risk of harm (*periculum in mora*) entitles the court to preliminarily and summarily consider a substantive legal relationship, which will subsequently have to be examined at greater length. When this preliminary assessment is favourable to the applicant, measures are ordered with the aim of safeguarding against the risk.

Precautionary measures are intended to secure the practical outcome of the action, to avoid serious damage or to anticipate the enforcement of the right, while striking a balance, to the greatest extent possible, between the interests of speed and legal certainty.

Portuguese civil procedural law provides for two types of precautionary measure:

- a) common precautionary measures (Articles 362 to 376 of the Code of Civil Procedure);
- b) specific precautionary measures (Articles 377 to 409 of the Code of Civil Procedure).

The first are governed by Article 362 of the Code of Civil Procedure, which stipulates that where someone demonstrates a justified fear that another person may cause serious and irreparable damage to their claim, and if none of the precautionary measures laid down by law apply, they may request the appropriate preventive or anticipatory measure to secure enforcement of the right at risk (Article 362(1) of the Code of Civil Procedure). The applicant's claim may be based on an existing right or on a right established by the court in proceedings that are pending or will be brought (Article 362(2) of the Code of Civil Procedure). Common precautionary measures are not applicable when the intention is to safeguard against the risk of injury expressly covered by any of the specific measures (Article 362(3) of the Code of Civil Procedure).

Specific precautionary measures are those expressly established in the Code of Civil Procedure or in separate legislation.

The following specific precautionary measures are set out in the Portuguese Code of Civil Procedure:

- a) *provisional restitution of ownership* (Article 377 of the Code of Civil Procedure);
- b) *suspension of corporate decisions* (Article 380 of the Code of Civil Procedure);
- c) *provisional maintenance* (Article 384 of the Code of Civil Procedure);
- d) *provisional damages* (Article 388 of the Code of the Code of Civil Procedure);
- e) *seizure* (Article 391 of the Code of Civil Procedure);
- f) *embargoes on new works* (Article 397 of the Code of Civil Procedure);
- g) *freezing of assets* (Article 403 of the Code of Civil Procedure).

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

Where someone demonstrates a justified fear that another person may cause serious and irreparable damage to their rights, they can request the appropriate preventive or anticipatory measure to secure the effectiveness of the right at risk (Article 362(1) of the Code of Civil Procedure). The applicant's claim may be based on an existing right or on a right established by the court in proceedings that are pending or will be brought (Article 362(2) of the Code of Civil Procedure).

Measures of this kind are ordered if there is a high probability that the right is real and if there is a sufficiently well-founded risk of its being infringed (Article 368(1) of the Code of Civil Procedure). Measures may, however, be refused by the court if the damage to the defendant resulting from its application would considerably exceed the damage the applicant wishes to avoid through use of the measure (Article 368(2) of the Code of Civil Procedure).

Common precautionary measures may be applied for only where there is no specific precautionary measure that is appropriate to the facts of the case (Article 362(3) of the Code of Civil Procedure).

Thus, the **unspecified preventive measures** referred to in Article 362 of the Code of Civil Procedure have the following legal preconditions:

- a) the apparent existence of a right;
- b) the well-founded fear that another person may cause serious and irreparable damage to their right (*periculum in mora*);
- c) the practical suitability of the preventive or anticipatory measure to ensure the effectiveness of the right at risk;
- d) the measure to be obtained must not be covered by other precautionary procedures.

For the court to order precautionary measures, it is enough for it to find on swift examination that there is strong evidence for the right claimed (*fumus bonis juris*) and a justified fear that the time taken to reach a final resolution of the dispute may cause irreparable damage or damage that is difficult to repair (*periculum in mora*). The judge must be sufficiently convinced that the outcome of the main case will be favourable to the applicant, as precautionary measures entail clear interference with the defendant's legal situation (Article 368(1) of the Code of Civil Procedure).

With regard to **specific precautionary measures**:

- a) **Provisional restitution of ownership**: In the case of violent robbery, the owner may request that their property be provisionally returned to them, alleging the facts that constitute possession, robbery and violence. The judge may order restitution without summoning or hearing the robber if they believe, on examining the evidence, that the applicant had possession and was violently robbed of it (Articles 377, 378 and 379 of the Code of Civil Procedure).

b) **Suspension of corporate decisions:** If an association or company of any kind takes resolutions contrary to the law or the Articles of Association, any partner may, within 10 days (starting from the date of the meeting during which the resolutions were taken or the date on which the applicant became aware of them, if they were not duly summoned to the meeting), request that the implementation of these resolutions be suspended. They must substantiate their status as a partner and prove that implementation of the resolutions may cause considerable damage. The application must be accompanied by a copy of the minutes in which the resolutions were taken and, where a meeting is not required by law, the copy of these minutes is replaced by documentary evidence of the resolution (Articles 380 to 383 of the Code of Civil Procedure).

c) **Provisional maintenance:** A person entitled to maintenance may request the setting of the monthly amount they should receive in the form of provisional maintenance, as long as the first definitive payment has not been made. Once the court has received the application for provisional maintenance, a date is set for the hearing and the parties are advised that they must appear in person or be represented by proxy with special powers to settle. The defence is submitted during the hearing itself and the judge endeavours to reach an agreement on the setting of maintenance, which is then approved by judgment (Articles 384 to 387 of the Code of Civil Procedure).

In the absence of one of the parties or if the attempt to reach an agreement is unsuccessful, the judge orders the taking of evidence before delivering an oral judgment for which succinct grounds must be provided (Article 385(3) of the Code of Civil Procedure).

d) **Provisional damages:** In connection with claims for damages for death or bodily injury, the injured party and those who may be entitled to maintenance from them, as well as those to whom the injured party paid maintenance in compliance with a natural obligation, may request the award of a given monetary amount in the form of a monthly sum as provisional compensation for injury. The judge will grant the requested measure provided there is evidence of a situation of need as a result of the injuries suffered and evidence of the defendant's obligation to provide compensation. The provisional settlement, which will be taken into account in the final settlement of damages, will be determined equitably by the court. This also applies to cases where the claim for damages is also founded on injury which may seriously jeopardise the subsistence or living arrangements of the injured party. The aforementioned points relating to provisional maintenance also apply to the processing of this measure, *mutatis mutandis* (Articles 388 to 390 of the Code of Civil Procedure).

e) **Seizure:** Seizure allows a creditor who is justifiably afraid of losing the assets guaranteeing their claim to obtain judicial seizure of assets. The applicant for seizure submits the facts that support the claim and justify the alleged risk, listing the assets to be seized along with all the information necessary for seizure to be carried out. If seizure is requested against the buyer of the debtor's property, the applicant, if the purchase is not shown to have been judicially challenged, still submits the facts that make the challenge likely to succeed (Articles 391 to 396 of the Code of Civil Procedure).

After the evidence has been examined, seizure is ordered without hearing the other party, provided that the legal requirements are deemed to be satisfied (Article 393(1) of the Code of Civil Procedure).

In the case of seizure of ships or their cargo, the applicant is responsible for demonstrating, in addition to fulfilling the general requirements, that seizure is permissible given the nature of the claim (Article 394(1) of the Code of Civil Procedure). In this case, the seizure will not take place if the debtor immediately provides acceptable security to the creditor or, within two days, the judge deems it appropriate that the departure of the vessel be halted until security is provided (Article 394(2) of the Code of Civil Procedure).

f) **Embargo on new works:** Anyone who feels that their right to sole or joint ownership or any other right in rem or in personam of use or ownership is infringed as a result of new works or a new service which causes or is likely to cause them loss may request, within 30 days of the date on which they become aware of the fact, the immediate suspension of the works or service. The applicant may also impose the embargo directly out of court by notifying the developer, or failing that, the person in charge or their substitute, before two witnesses, to cease works. This nonjudicial embargo is void if confirmation is not requested from the court within five days (Articles 397 to 402 of the Code of Civil Procedure).

g) **Freezing of assets:** Where there is a reasonable fear of the loss, concealment or dissipation of moveable or immovable assets or documents, the freezing of assets may be requested. It is dependant on the action for the specification of the assets or proof of ownership of the rights to the frozen assets (Articles 403 to 409 of the Code of Civil Procedure).

This measure may be requested by any person with an interest in the conservation of the assets or documents, although creditors may request it only in cases where it is necessary to secure an inheritance. The applicant must summarily prove the right relating to the assets and the facts on which the fear of their loss or dissipation are based. If the right relating to the assets depends on a pending action or an action that is to be brought, the applicant has to convince the court of the likely validity of the application in question. Once the required evidence has been produced, the judge grants the measures if they believe that without them the applicant's interest is at serious risk.

2.1 The procedure

Except for the embargo on new works, for which it is possible to take initial out of court action followed by an application for confirmation by the court (Article 397(2) and (3) of the Code of Civil Procedure), all other precautionary measures are based on an initial application to the court in which the applicant provides summary proof of the right at risk and justifies the fear of injury. In this application, the list of witnesses is submitted and other evidence requested, with a limit of five witnesses, in accordance with Article 365 of the Code of Civil Procedure.

Upon request, in the decision ordering the measure the judge may waive the applicant's responsibility for bringing the main action if the evidence furnished in the proceedings supports the firm conviction that the protected right is real and if the nature of the measure ordered is appropriate to resolve the dispute (Article 369(1) of the Code of Civil Procedure). This waiver may be applied for until the end of the final hearing. In cases with no prior inter partes hearing, the defendant may object to the reversal of the responsibility for bringing an action at the same time as challenging the measure ordered (Article 369(2) of the Code of Civil Procedure).

The reversal of responsibility rules apply *mutatis mutandis* to the provisional restitution of ownership, the suspension of corporate decisions, provisional maintenance, embargoes on new works and other measures provided for in separate legislation which, by their nature, enable final settlement of the dispute (Article 376(4) of the Code of Civil Procedure).

Where there is no provision in law for ordering the precautionary measure without hearing the defendant, the defendant is heard by the court, unless the hearing would place the aims or effectiveness of the measure at serious risk (Article 366(1) of the Code of Civil Procedure).

When they are heard before the measure is ordered, the defendant is summoned to lodge an objection within ten days. The summons is replaced by a notification when the defendant has already been summoned in the main case (Article 366(2) of the Code of Civil Procedure).

When the deadline to lodge an objection has expired and the defendant has been heard, where appropriate, the evidence required or determined by the court is furnished (Article 367(1) of the Code of Civil Procedure).

If the defendant has not been heard and the measure is ordered, the defendant is only notified of that decision after it has been made (Article 366(6) of the Code of Civil Procedure). Following notification they are entitled to appeal, in general terms, against the order if they consider that, in light of the facts, it should not have been granted. They may also lodge an objection if they wish to put forward facts or produce evidence not taken into account by the court that may remove the grounds for the precautionary measure or reduce it (Article 372(1) of the Code of Civil Procedure).

The defendant may challenge, by any of the aforementioned means, the decision to reverse the responsibility for bringing an action (Article 372(2) of the Code of Civil Procedure). If the defendant lodges an objection, the court must decide whether to maintain, reduce or withdraw the measure ordered. This

decision and, where applicable, the maintenance or withdrawal or reversal of the responsibility for bringing an action is appealable and, where appropriate, the evidence required or determined by the court of its own motion must be furnished (Article 372(3) of the Code of Civil Procedure).

As regards territorial jurisdiction, Article 78 of the Code of Civil Procedure states that:

- a) applications for seizure and freezing of assets may be filed with the court where the related proceedings are to be brought, or in the place where the assets are located or, if there are assets in a number of districts, in one of them (Article 78(1)(a) of the Code of Civil Procedure);
- b) for an embargo on new works, the court of the place where the work is to be done has jurisdiction (Article 78(1)(b) of the Code of Civil Procedure);
- c) for the other precautionary measures, the court of jurisdiction is the court before which the related action is to be brought (Article 78(1)(c) of the Code of Civil Procedure).

If the responsibility for bringing the action is not reversed, the proceedings are joined to the files as soon as the action has been brought; if the action has been brought in another court, it is forwarded there and that court has exclusive jurisdiction over the next steps (Article 78(2) of the Code of Civil Procedure). If precautionary measures are requested while an action is pending, the request should be brought in the court where the corresponding action is being heard, unless the action is under appeal. In that case, the joinder only takes place when proceedings have finished or when the files of the main action are returned to the court of first instance (Article 364(3) of the Code of Civil Procedure).

Representation by a lawyer is mandatory where the value of the measure exceeds € 5 000.00 or where appeals are admissible, under Articles 58 and 1090 of the Code of Civil Procedure in conjunction with Article 44(1) of the Law on the Organisation of the Judicial System.

The value of precautionary measures is determined as follows:

- a) for provisional maintenance and provisional damages, based on the monthly payment requested, multiplied by twelve (Article 304(3)(a) of the Code of Civil Procedure);
- b) for provisional restitution of ownership, based on the value of the item of which the owner has been deprived (Article 304(3)(b) of the Code of Civil Procedure);
- c) for suspension of corporate decisions, based on the extent of the loss (Article 304(3)(c) of the Code of Civil Procedure);
- d) for embargoes on new works and unspecified precautionary measures, based on the loss to be prevented (Article 304(3)(d) of the Code of Civil Procedure);
- e) for seizure, based on the amount of the claim to be guaranteed (Article 304(3)(e) of the Code of Civil Procedure);
- f) for freezing of assets, based on the value of the assets concerned (Article 304(3)(f) of the Code of Civil Procedure).

2.2 The main conditions

When assessing the criteria for ordering a precautionary measure, the court must always examine whether the fear invoked is well-founded and how serious and difficult it will be to repair the potential injury. It will also assess whether the preventive or anticipatory measure is appropriate in the specific case at issue, with a view to safeguarding the right alleged to be at risk. It must establish that there is a risk associated with any delay.

It will also examine whether the proceedings are actually or potentially dependent on an action brought or to be brought in respect of the right protected by the measure.

In this type of proceeding, it is for the court to obtain a summary (i.e. less rigorous than in the main proceedings) demonstration that there is a real likelihood that the right to be safeguarded exists and that the fear of its being infringed is sufficiently justified.

All precautionary measures are regarded as urgent, taking priority over any other nonurgent judicial acts (Article 363(1) of the Code of Civil Procedure), and must be decided at first instance within two months at most or, if the defendant does not have to be summoned, within 15 days (Article 363(2) of the Code of Civil Procedure).

3 Object and nature of such measures?

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

Rights and movable and immovable property not totally or partially excluded by law may be subject to precautionary measures.

3.2 What are the effects of such measures?

Since they are ordered by the courts, precautionary measures are binding on all public and private entities and take precedence over measures adopted by any other authority (Article 205(2) of the Constitution of the Portuguese Republic). Any person who infringes the precautionary measure ordered will incur the penalty for qualified disobedience, notwithstanding any enforcement measures (Article 375 of the Code of Civil Procedure).

3.3 What is the validity of such measures?

Notwithstanding the applicant's being relieved of the responsibility for bringing the main action, Article 373 of the Code of Civil Procedure stipulates that the precautionary proceedings end and any measure ordered expires:

- a) if the applicant does not bring the action on which the measure depends within 30 days of the date on which they were notified that the decision ordering the measure became final (Article 373(1)(a) of the Code of Civil Procedure);
- b) if, after the action has been brought, proceedings have been stopped for more than 30 days by the applicant's negligence (Article 373(1)(b) of the Code of Civil Procedure);
- c) if the action is dismissed by a final decision (Article 373(1)(c) of the Code of Civil Procedure);
- d) if the action is dismissed on procedural grounds and the applicant does not bring a new action in time to take advantage of the effects of the previous action (Article 373(1)(d) of the Code of Civil Procedure);
- e) if the right which the applicant seeks to safeguard has lapsed (Article 373(1)(e) of the Code of Civil Procedure).

Notwithstanding the rules on the distribution of the burden of proof, as soon as the decision ordering the precautionary measure and reversing the responsibility for bringing the action has become final, the defendant is notified that any action to challenge the existence of the protected right must be brought within 30 days of notification, otherwise the measure will be deemed to resolve the dispute (Article 371(1) of the Code of Civil Procedure).

The same proviso applies when, after the action has been brought, proceedings have been stopped for more than 30 days by the applicant's negligence or if the action is dismissed on procedural grounds and the applicant does not bring a new action in time to take advantage of the effects of the previous action (Article 371(2) of the Code of Civil Procedure).

Once a final decision is handed down in the case, the precautionary measures expire (Article 371(3) of the Code of Civil Procedure).

4 Is there a possibility of appeal against the measure?

Ordinary appeals are admissible when the value of the measures exceeds the limit of the court before which the decision is appealed and the contested decision is disadvantageous to the party bringing the appeal by more than half of this amount (Article 629(1) of the Code of Civil Procedure). Appeals may also always be brought against decisions relating to the value of precautionary measures on the grounds that the value exceeds the limit of the court which took the contested decision (Article 629(3)(b) of the Code of Civil Procedure) and against preliminary refusals of initial applications for precautionary measures (Article 629(3)(c) of the Code of Civil Procedure).

Decisions ordering reversal of the responsibility for bringing the action are only appealable in conjunction with appeals against decisions on the requested measure; decisions to reject the reversal are final and unappealable (Article 370(1) of the Code of Civil Procedure).

No appeal may be brought before the Supreme Court of Justice (*Supremo Tribunal de Justiça*) against decisions ordering precautionary measures, including those ordering the reversal of responsibility for bringing an action, without prejudice to cases in which an appeal is always admissible (Article 370(2) of the Code of Civil Procedure).

A precautionary decision may be challenged by:

any party to the proceedings who loses the case (Article 631(1) of the Code of Civil Procedure);

anyone who is not a party to the proceedings but suffers direct and real harm as a result thereof (Article 631(2) of the Code of Civil Procedure).

The court with jurisdiction to hear the appeal is a court of second instance in the judicial district in which the court which handed down the contested decision is located.

The time limit for lodging an appeal is 15 days from notification of the decision (Article 638(1) of the Code of Civil Procedure). If the appeal also concerns the reappraisal of recorded evidence, the time limit increases by 10 days (Article 638(7) of the Code of Civil Procedure).

An appeal brought against an order which rejects outright or does not order the measure has suspensive effect (Article 647(3)(d) of the Code of Civil Procedure). In other cases it has a purely devolutive effect.

Applicable legislation

[Law No 41/2013 of 26 June 2013](#) – Code of Civil Procedure

[Law No 62/2013 of 26 August 2013](#) – Law on the Organisation of the Judicial System

Related links

Further information may be obtained from the following websites:

[Justice Portal](#);

[Directorate-General for Justice Policy](#)

[CITIUS Portal](#)

[Legal Document Database](#)

[Official Gazette of Portugal](#)

Note:

The EJN-Civil Contact Point, the courts or other entities and authorities are not bound by the information contained in this factsheet. Although updated on a regular basis, this factsheet does not replace the need to read the respective legislation in force and may be subject to changes in interpretation by the case-law.

Last update: 13/10/2021

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.