



Interim measures (for example, civil cases)

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Abstract

In this article it is described the measures on securing of claim (on the example of civil cases), the foundation for the securing of claim. As well as it is analysed the measures on securing claim, consideration of an application for interim relief, consequences of appeal a complaint or appeal against a ruling on securing the claim, research of theoretical, practical and scientific aspects of this institution.

Keywords: Grounds for action, measures to ensure the claim, consideration of an application for interim relief, cancellation of securing a claim

Introduction

In recent years, in the Republic of Uzbekistan in a phased implementation of the judicial reform is a priority to ensure equality of substantive and procedural rights and interests of the parties in the courts in the resolution of disputes and the achievement of rendering legal, grounded and just decision of the court on the case.

Full provision of the rights and legitimate interests of the persons who come to the court, the completion of the execution of judgments, storage assets having material value, which are the subject of dispute, goals and actions to participate in full actors in the proceedings in the court session is carried out by Institute for securing the claim in civil procedure law.

Chapter 24 (Articles 248-258) of the Civil Procedure Code of the Republic of Uzbekistan devoted to the institution to secure the claim.

According to this, under the provision of the claim refers to the application of measures provided for by law in respect of the defendant in preparing the case for trial or trial, on the initiative of the court or the parties involved in the case on the facts of the case to ensure the execution of the decision.

Ensuring action is allowed not only in the proceedings in the court, but also in the course of action and it is provided to enforce. Secured claim seeking enforcement (prevention of the destruction of the object of the claim, complexity of execution, saving the possibility of execution, etc.) the decision.

Securing a claim - it is considered to safeguard the rights and interests of citizens and legal persons, which is enshrined not only in the law of civil procedure, and it is enshrined in the norms of the criminal procedure law.

Ensuring action - aims to redress and the full restoration of the violated property rights of citizens and legal entities as a result of criminal acts or civil legal disputes.

Civil Procedural Law does not provide for securing the future of the claim, it is applied only after the initiation of civil proceedings.

Measures to ensure the claim can also be used in the course of the preliminary investigation on the basis of the criminal procedure law.

According to the analysis of the judicial practice, to ensure that

a claim for the award of the measures permitted in litigation matters, and helps to complete the claim.

Paragraph 12 of Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On application by the courts of some rules of civil procedure law," courts should bear in mind that stated in Art. 249 Code of Civil Procedure of the Republic of Uzbekistan interim measures apply if their failure may make it difficult or impossible to enforce court decisions, both in the process of preparing the case for trial, and in consideration of the case.

According to the theoretical rules of civil procedure, to ensure the claim is a separate institution is carried out mainly with a view to resolving any disputes between the parties of action proceedings, enforcement of judgments on the stated requirements and secure. At this time, in the civil courts^[1] in cases of property division, debt collection makes the determination "of the seizure of property", in cases of cancellation or annulment of decisions on residential areas, land plots - a definition of "the suspension of construction", "on the demolition of illegal buildings," in cases of recognition author of the work - the definition of "suspension of publication of the work" for the various categories of civil cases - the definition of "prohibiting the defendant leaving the territory of the Republic of Uzbekistan", "suspension of the defendant's actions that led to the dispute", on this basis, to ensure the immediate implementation of these definitions, they sent respectively to the judicial departments, notaries, police, border guards and the national security service.

According to the content of Article 248 of the CPC of Uzbekistan foundation to ensure the claim can be divided into two forms: the material foundations for the claim and procedural foundations of the claim. The material foundations of security for a claim related to the emergence of the need for action, on the basis of pre-supposed that the execution of court decisions directly on the case is complicated or is impossible. Procedural basics of security for the claim as provided for in the measures implemented and provided at the initiative of the court or the parties involved in the case (Article 33 of the Civil Procedural Code of Uzbekistan).

In Article 249 of the CPC of Uzbekistan stipulates measures to

secure the claim, according to which measures to secure the claim are the following:

- 1) seizure of property or sums of money belonging to the defendant and held by him or another person;
- 2) prohibiting the defendant from performing certain activities;
- 3) the prohibition of other persons to transfer property to the defendant or to carry out in relation to its other obligations;
- 4) suspension of the sale of property in the case of a claim for the release of his arrest;
- 5) The suspension of recovery under the executive document, contested by the debtor in court if such a challenge is permitted by law.

According to the analysis of the judicial practice and statistics for 2015, the courts civil cases took 20.3 percent of the material nature of the case, and only in respect of 15 per cent of these cases, interim measures have been taken.

In the production of civil cases, mostly, measures have been taken to ensure the claim, as the seizure of property, car and housing, as well as the application of the prohibition to travel abroad in respect of the defendant in cases alimony. This means the full protection of rights and legitimate interests of citizens and legal entities, as well as the restoration of property rights and strict enforcement of its judgments.

Legislation specifies the cases in which no measures are taken to secure the claim. Securing a claim by seizure of wages, income, pensions and scholarships, in addition to claims for alimony, compensation for damage caused by injury or other impairment of health, as well as the death of the breadwinner, for damages caused by the theft of another's property is not allowed.

Where necessary, the court can be applied to several types of maintenance claims so that their total amount does not exceed the price of the claim.

The above measures, in terms of content, are used against the defendant. In this sense the goal of action advisable characterized as follows:

- **At first**, maintenance of the claim is brought to the end of the aims and objectives of action for handling citizens in court;
- **Secondly**, it protects the rights and interests of the plaintiff;
- **Third**, it is the means of application of measures stipulated by law substantive and procedural coercion against the defendant is not in force at the relevant requirements;
- **Fourth**, it serves to strengthen the existing procedure in order of the court.

According to the Civil Procedure Code of the Republic of Uzbekistan the application for interim relief allowed by the judge (court), considering the case, the same day without notifying the defendant and other persons involved in the case.

Definition for interim relief is to be executed immediately following the procedure established for the execution of the judgment.

As explained in the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On decisions in civil cases of first instance court" ruling on securing the claim belongs to the category definitions, submitted as a separate document.

Article 253 of CPC of Uzbekistan establishes liability for failure to comply with measures to ensure the claim, according to which in case of violation of these prohibitions guilty persons are, by definition, the court fined five times the

minimum wage. The plaintiff on the general basis entitled to recover from the loss of these individuals caused by the failure of the court for interim measures.

Measures to ensure the claim can be cancelled by the court considering the case. In the event of a failure in the lawsuit claim maintenance measures will remain until the court decision comes into force. However, the court may at the same time with the decision or after the decision to make a determination on the abolition of security for the claim.

On determination on issues of private complaint or lawsuit brought by a private protest may be filed. If the definition for interim relief was made without notice to the person who filed the complaint, the deadline for filing a complaint shall be calculated from the date of delivery of a copy of the definition or when it became known that definition.

In Article 257 of the CPC of Uzbekistan stated consequences complaint or protest on a ruling on securing an action, this procedure creates a condition for the full enforcement of judgments handed down.

Filing a private complaint or private protest bringing to a court for interim relief shall not suspend the execution of this definition. Filing a private complaint or private protest bringing to the court decision on cancellation of securing the claim, or the replacement of one species by another provision of the claim shall suspend the execution of this definition.

The court in a case on the basis of the principle of equality of arms, protects the interests of not only the plaintiff but the defendant, so the purpose of cost recovery as a result of security for the claim, the court (judge) with the claim provision may require the plaintiff compensation for damage that may be caused respondent. Defendant after the entry into force of which the claim is denied, the right to demand from the plaintiff's damages caused by him at the request of the plaintiff accepted measures to secure the claim.

The plaintiff, defendant and third persons equally have the right to judicial protection.

Based on the principle that legal proceedings in civil cases is based on the equality of the parties specified in Article 8 of the Civil Procedure Code, in procedural legislation also allows the protection of the interests of the defendant in the process of securing the claim.

In particular:

- Participation in the hearing to replace one type of security for a claim by another;
- While ensuring an action for recovery of a sum of money the defendant has the right to return of enforcement measures to make the deposit account of the court the amount claimed by the plaintiff;
- By a particular decision of the trial court brought a private complaint and private protest may be filed;
- The defendant after the entry into force of which the claim is denied, the right to demand from the plaintiff's damages caused by him at the request of the plaintiff accepted measures to secure the claim;
- In addition, in accordance with Article 258 of CPC of Uzbekistan the court (judge) providing a lawsuit, the plaintiff may require the defendant to provide the possible losses.

Securing a claim is allowed during the initial claim and counterclaim in the process. But in many cases, at the stage of preparing the case for trial can also be provided with a lawsuit. In addition, in most cases, it allowed the claim security in the

stage of execution of judicial acts and acts of other bodies.

Analysis of the types of action suggests that measures to ensure the claim shall apply in respect of claims for the award. These measures are not only in the courts of first instance, but also in the higher courts (appeal, cassation, supervisory authority) in accordance with the law. For example ^[2], in the inter-district court of Tashkent in civil matters when considering the action to evict the plaintiff TH the defendant BY, taking into account the receipt of the statement on the application of interim measures, considered the materials of the case, the court as a measure to secure the claim of the defendant applied the arrest of residential premises and made the appropriate determination. The Court for the purpose of enforcement of definitions on the civil case sends a copy of the determination of notarial bodies, cadastral services of technical inventory, and other organizations involved in activities related to the subject of the arrest.

In conclusion, it should be noted that the features of the claim to ensure reveal the essence of the Institute to ensure the claim, are the study of theoretical, practical and scientific aspects of the institution, the development of appropriate conclusions and manifested in the following:

- **At first**, Institute to ensure the claim is a separate institution from the legal point of view, directly regulated by the Civil, Civil Procedure, Criminal, Criminal Procedure, Economic Procedure Code of the Republic of Uzbekistan and the laws of the Republic of Uzbekistan "On arbitration courts", "On the performance of judicial acts and acts of other bodies ", " On Notary "and other legislative acts.
- **Secondly**, to ensure the claim is a procedural measure of coercion tangible and intangible nature of the defendant.
- **Third**, in the CPC of Uzbekistan foundation, and measures to ensure the claim specifically mentioned, their expansion is not allowed, the measures can be replaced by others.
- **Fourthly**, the definition for interim measures shall take effect immediately.
- **Fifth**, the decision of the court for interim measures may be appealed or protested.
- **Sixth**, for non-provisional or protective measures in the legislation established a measure of responsibility.
- Based on the foregoing, with respect to the institute to ensure the claim separately highlighted some of the features:
 - **First**, the court may apply several measures to ensure the claim, but the total amount shall not exceed the price of the claim;
 - **Second**, the court may substitute one measure to secure the claim to the other;
 - **Thirdly**, the measure to ensure the claim can be applied in relation to the initial claim and counterclaim against. Although this issue is not specifically listed in the Code of Civil Procedure, it is permitted on the basis of common rules. But there is no indication on the non-use of provisional or protective measures in respect of counter-claims.
 - **Fourth**, measures to ensure the claim can be used in criminal procedural law in the resolution of civil claims.

But this procedure is not explicitly stated in the Code of Civil Procedure of the Republic of Uzbekistan. According to the research of judicial practice, the application of provisional or protective measures in the resolution of civil claims by

necessity will allow to maintain the claims and the subject of the claim fully enforce the judicial decisions.

In the process of securing the claim the courts should take into account that, in procedural legislation does not specifically indicate what measures securing the claim shall apply in relation to certain actions.

Applied interim measures must comply with terms of the plaintiff asserted claims.

Do not use provisional or protective measures, not provided for in the procedural law.

These circumstances serve to further improve the standards to ensure the claim in the trial and in the course of execution of judicial acts.

References

1. For example, the definitions of inter-district of Tashkent city courts on civil cases in 2013.
2. The definition for interim inter-district court of Tashkent city civil affairs.