



## Overview of Interim Injunctions in Romania and Cyprus

**Phd. Eugen Sarbu, attorney-at-law**

**Christopher Lytras, attorney-at-law**

### *Abstract*

*The present study focuses on the regulation of interim injunctions in Romania and Cyprus. The study is made from the perspective of two highly specialised lawyers with experience in interim injunctions in Romania and Cyprus respectively. Part (A) focuses on Interim Injunctions in Romania and Part (B) analyses interim injunctions in Cyprus. Both parts are structured similarly: 1. An overview of the respective legal system; 2. Jurisdiction for issuance of interim injunctions and legal test; 3. Forms of interim injunctions available in the respective jurisdiction; 4. Injunctions in aid of foreign judgements and international arbitration; 5. Application and Procedure relating to Interim Injunction; 6. Conclusions.*

*Keywords: interim injunction; Romanian law; Cyprus law; international arbitration; foreign judgements; seizure; garnishment; anti-suit injunction; freezing order.*



## **(A) Interim Injunctions in Romania**

### **1. Overview of Romanian legal system**

Romania has a civil law legal system, based on codification and a high volume of written law. The substantive and procedural civil law were overhauled in 2011 and 2013, respectively, when a new Romanian Civil Code (“RCC”) and a new Romanian Civil Procedure Code (“RCPC”) were adopted, modifying a legal framework that had been in force for more than 100 years.

The RCC establishes the substantive civil law, while the RCPC regulates the civil procedure before the Romanian courts.

It is important to note that precedents are not a source of law in the Romanian legal system. However, parties usually present precedents in order to substantiate their interpretation of the law, and courts may rely on them in the interest of uniform practice.

### **2. Jurisdiction for issuance of interim injunctions and legal test**

In most cases, the court with jurisdiction to decide on interim measures is the court competent with the substantive proceedings in first instance.

In practice, this means that the competent court for interim measures is either the district court of the respondent's domicile or seat or the tribunal of the respondent's domicile or seat. The district courts have jurisdiction for claims of up to 200,000 lei (approximately EUR 40,000), while the tribunals have jurisdiction for all claims above this threshold.

### **3. Forms of interim injunctions**

#### **3.1. Freezing order**

According to Art. 952 RCPC, the freezing order is an interim measure consisting in the freezing of the debtor's movable and/or immovable assets until the creditor obtains an enforceable award. The assets may remain in the debtor's possession or be placed in the custody of a third party.

Art. 953 RCPC regulates the conditions that must be met for the issuance of a freezing order. The conditions are different depending on the creditor's claim or other circumstances:



**a. The creditor who doesn't have an enforceable award, but whose claim is evidenced in writing and due, must prove that he has applied for substantive proceedings**

In the first scenario, the creditor's claim benefits from a prima facie appearance of right because the claim is evidenced in writing. Romanian jurisprudence and doctrine have long debated what constitutes a claim evidenced in writing in the context of interim measures. In a first opinion, it was stated that "by written document must be understood any document which, regardless of the form, contains a mention of the creditor's receivable." In another opinion, it was stated that "in other court decisions, it has been held that a written document is any type of document that establishes a claim, even an unquantified or conditional one."

Nevertheless, Romanian courts have been favourable in granting interim measures when the creditor's claim was evidenced by a non-enforceable foreign arbitral award or a non-enforceable court award.

The requirement to prove that the creditor has applied for substantive proceedings reflects the ancillary nature of the interim measure in relation to the main claims. In practice, this means that, if the interim measure is granted, it will follow the fate of the main proceedings. If the creditor wins on the merits, the interim measure is automatically enforceable. If the creditor loses, the debtor can apply for the measure to be revoked.

According to Art. 953 para. 1 RCPC, in this scenario the court granting the interim injunction may order the creditor to pay a security in the amount fixed by the court. However, the court is not obliged to order the payment of a security and it will decide on a case-by-case basis.

**b. The creditor whose claim is not evidenced in writing and due must prove that he has applied for substantive proceedings and must also provide a security equal to half of the amount claimed**

In this scenario, the law requires the creditor to provide a mandatory security of half of the amount claimed, because the claim is not evidenced in writing and therefore the freezing of assets entails more risks for the debtor in case the claim is rejected on the merits.

**c. The creditor whose claim is evidenced in writing but not yet due must prove that he has applied for substantive proceedings and must show that special circumstances are in place**



In this scenario, the creditor's claim is not yet due, which makes a freezing order very burdensome for the debtor. However, the measure may be ordered on the basis of special circumstances relating to the likelihood of a future enforcement:

- if the debtor, by his own actions, has reduced or refused to provide the guarantees promised;

or

- if there is a risk that the debtor will evade enforcement, conceal his assets, dissipate his fortune or facing insolvency;

In such cases, for the freezing order to be issued, the creditor must provide a security in an amount determined by the court and submit evidence that proves the debtor's poor financial situation or reluctant conduct.

### **3.2. Precautionary garnishment**

According to Art. 970 RCPC, precautionary garnishment may be ordered on sums of money, securities or other movable intangible property which are due to the debtor from a third party or which will be due in the future on the basis of an existing legal relationship.

This interim measure is very useful in practice in cases where the debtor has no seizable assets but is expected to receive money or other movable property from a third party.

The conditions for issuing a precautionary garnishment are the same as those for freezing order analysed above, reason why they will not be analysed further.

### **3.3. Judicial seizure**

As per Art. 972 RCPC, judicial seizure means the freezing of the goods or assets which are the subject of an ongoing litigation by putting them under the guard of a third-party called the seizure administrator.

This measure may be applied in disputes relating to property or other rights in rem, to the possession of movable or immovable property, or to the use or management of common property, where the measure may be necessary to preserve the right in dispute.

The interested party may apply for the judicial seizure to the court that heard the main action or, in certain special cases, to the court where the frozen assets are located.

The seizure administrator may be a person agreed upon by the parties or, in the absence of agreement, a person appointed by the court.



## **4. Injunctions in aid of foreign proceedings and international arbitration**

### **4.1. Injunctions in aid of foreign proceedings**

According to Art. 1066 para. 1 RCPC, in foreign proceedings Romanian courts have jurisdiction to rule on matters including interim measures when the respondent's domicile or residence (for natural persons) or main headquarters, secondary headquarters or goodwill (for legal entities) are located in Romania at the time the application is submitted.

Art. 1075 RCPC further provides that, in urgent situations, Romanian courts may have jurisdiction to issue interim measures in respect of persons or property located in Romania at the time the application is made, even in matters where the courts may not have jurisdiction to rule on the merits, according to the RCPC.

Summarising, foreign creditors can apply for interim injunctions against Romanian debtors or debtors with assets placed in Romania before Romanian courts, according to the rules set out by the RCPC explained above.

### **4.2. Injunctions in aid of international arbitrations ruled by a Romanian arbitration court**

According to the Rules of Arbitration of the Court of International Commercial Arbitration from Bucharest ("CICA"), the main arbitral institution in Romania, the arbitral tribunal may, at the request of a party and by means of a procedural order rendered under an expedited regime, grant any interim or conservatory measures that it deems appropriate.

Such measures include the freezing order, precautionary garnishment and judicial seizure regulated by the RCPC, but the CICA Rules of Arbitration also provide for more flexible interim measures, giving arbitral tribunals the discretion to order interim measures appropriate to the particularities of the dispute.

For example, arbitral tribunals may order any interim measures relating to the management and preservation of evidence, security for costs, suspension of recurring payments, suspension of an enforcing a bank guarantee, suspension of a declaration for unilateral termination of a contract, measures to preserve the status quo pending the award etc.



## **5. Application and Procedure relating to Interim Injunction**

### **5.1. The form of the application**

Any application for an interim injunction must be made in writing and it must contain the identification details of the parties, the legal basis for the application, a brief summary of the facts, a legal justification for the application and the signature of the applicant or his legal or conventional representative and the evidentiary documents that prove the applicant's case.

In an application for freezing order, the creditor is not obliged to identify the assets which he wishes to freeze.

When applying for a precautionary garnishment, except for the garnishment of the debtor's bank accounts, the creditor must identify the third parties who owe money to the debtor.

### **5.2. The court's decision**

All applications for interim injunctions follow an expedited procedure and the courts render the decision without summoning or hearing the parties. Not summoning the parties is essential in interim injunctions because it prevents the debtor from anticipating an enforcement and potentially dissipating his fortune or entering insolvency.

Depending on the applicable legal provisions, the court will establish in the interim order a security to be paid by the creditor. Failure by the creditor to provide security within the prescribed period will result in the de jure revocation of the interim measure.

According to Art. 954 para. 4 and 999 para. 4 RCPC, the court may not delay the decision by more than 24 hours after deliberating and it must motivate the decision within 48 hours.

### **5.3. Appeals to the court's decision**

The decision of the court of first instance on interim measures is subject to appeal to the higher court.

The appeals shall be judged as a matter of urgency and as a priority and the parties shall be summoned and heard by the instance of appeal.



#### **5.4. Enforceability of the interim measure**

Interim measures ordered under Romanian law are instantly enforceable, meaning that they do not need to follow a separate enforcement procedure.

The interim measures are enforced by a bailiff in accordance with the applicable civil enforcement procedures.

#### **5.5. Time and costs estimations**

Interim measures benefit from a fast-track and simplified procedure, which means that they will be very time-efficient from the applicant's perspective. Depending on the court's caseload, an applicant can obtain a final enforceable interim measure within two weeks up to two months of filing the application at first instance, taking into account any likely appeals filed by the defendant.

Costs will consist of a court fee which must be paid by the applicant in advance for its application to be heard. Court fees depend on the value of the claims and are calculated according to Government Emergency Ordinance no. 80/2013.

Any party can request the court to decide on costs allocation, including any legal fees incurred. The court shall decide regarding the allocation of the costs when deciding on the interim measure, taking into account the circumstances of the dispute and the parties' procedural conduct. Usually, the losing party bears all legal costs and will be ordered to pay the winning party any and all legal costs related to the case.

### **6. Conclusion**

Romanian law provides for various interim measures at the disposal of a creditor who seeks to secure a future enforcement of its claims. Court practice is favourable in cases where the conditions are well substantiated in the application and proven by relevant evidence. It is to be noted that recently the courts have developed a positive attitude towards granting interim injunctions in very specialised situations.



## **(B) Interim Injunctions in Cyprus**

### **1. Overview of the Cypriot Legal System**

The Cyprus legal system is interwoven and principally based on the English common law system. Pursuant to section 29 of the Courts of Justice Law (Law 14/1960), the Cyprus Courts, in the absence of contrary legislation, must follow the principles of common law and equity. A fortiori, English case law is extensively applied and provides valuable guidance to the Cyprus Courts.

Under the Common Law doctrine of stare decisis, Cypriot courts are bound to follow decisions, meaning that decisions of higher courts, particularly the Supreme Court of Cyprus and the newly established Court of Appeal, bind all lower courts.

### **2. Jurisdiction for issuance of interim injunctions and legal test**

The District Courts in Cyprus generally have jurisdiction to issue interim injunctions.

Section 32 of the Courts of Justice Law (Law 14/1960) is deemed the jurisdictional backbone of injunctions. It vests the court with broad discretion to issue any injunction deemed just and necessary, provided the below conditions are met:

**(a) a serious question arises to be tried at the hearing of the main proceedings;**

The applicant must show that the underlying claim is neither frivolous nor vexatious and that there is a legitimate dispute that requires resolution. This threshold is not particularly high— the applicant need not prove a likelihood of success at trial but must demonstrate that the claim is credible and has some prospect of success.

**(b) it appears that the applicant has a probability of obtaining a favourable judgment in the main proceedings;**

The standard required for the claimant to overcome the evidential hurdle of the above requirement is not very high; he/she is only required to establish “a probability” of success. The concept of “a probability” imports something more than a mere possibility but something much less than the “balance of probabilities”, the standard required for proof of a civil action.

“A probability”, in the context of the above proviso, has been interpreted that the applicant is only required to demonstrate that he has a visible chance of success.

**(c) there is a great risk that, if the relief is not given, it will be difficult or impossible to achieve justice at a later stage;**





The applicant must show that there is a risk of irreparable harm if the injunction is not granted, and that damages would not be an adequate remedy. This is deemed the most challenging part in obtaining an injunction and, naturally, the most contested part in most cases.

**(d) the balance of convenience is in favour of the applicant.**

Finally, the court must consider whether the "balance of convenience" favours granting the injunction. This involves weighing the potential harm to the applicant if the injunction is refused against the harm that the respondent may suffer if it is granted.

**When can an injunction be obtained?**

Pursuant to the introduction of the new Civil Procedure Rules of 2023, which are principled-based and modelled after the Civil Procedure Rules of England, the District Courts are vested with the power to issue injunctions (a) during ongoing proceedings; or (b) independently in anticipation of the substantive claims.

**Without notice Injunctions**

Section 9 of the Civil Procedure Law (Cap.6) allows the issuance of interim injunctions without giving notice to the other party (ex-parte) if the test provided in CPR 25.3 is met. The test provides that the court shall issue an injunction on an ex-parte basis when:

- (a) the matter is urgent; or
- (b) other special circumstances exist.

Such applications take priority and are usually examined by the court within a matter of hours or days following their filing.

**3. Forms of interim Injunctions**

Injunctions, deriving from the principles of equity, have been aptly described as inherently flexible. This grants courts broad discretion to issue injunctions of various forms and types, tailored to meet the specific needs of each case.

This has been the case recently, whereby the Cyprus Courts took a strong stance by issuing an anti-anti-suit injunction (AASJ) against a number of Russian defendants. The AASJ aimed to prohibit them from continuing their torpedo proceedings in Russia and advancing an anti-suit injunction on the bases of Article 248 of the Commercial Procedural Code of the Russian Federation and participating.



### **Freezing Order (Mareva Injunction)**

A freezing order, previously known as the Mareva injunction, is an order that seeks to restrain a respondent from disposing of or dealing with assets up to a specified value. The gist of such an order is to ensure that substantial assets remain available to satisfy a potential judgment in favour of the applicant.

The quintessential element of Freezing injunctions is to ensure that the defendant does not take steps before the judgment that would deprive any judgment in favour of the claimant of being enforced, as has recently been described in the enforcement principle.

Freezing orders have developed into one of the most useful tools and intrusive remedies, and thus, courts grant them in cases involving risks of asset dissipation.

Such injunctions may have local or worldwide -Worldwide Freezing Order (WFO).

### **Chabra Injunction**

If there is "good reason to suppose" that the assets are beneficially owned by the lead respondent, a Chabra injunction is utilized to freeze them. This form of injunction is very useful in complicated fraud cases with many countries and companies.

### **Proprietary Injunction**

A proprietary injunction is an order that prohibits a respondent from dealing with property or assets in which the applicant claims ownership. A proprietary injunction is based on the applicant's unique proprietary rights over the disputed assets, as opposed to a freezing order, which merely prohibits the use of assets to assure their availability to settle a judgment.

### **Prohibitory Injunction**

A prohibitory injunction restrains the respondent from undertaking specific actions that may harm the applicant's rights. This form of relief is common in situations involving alleged breaches of contract, intellectual property disputes, or other circumstances where continuing wrongful conduct is claimed.

### **Norwich Pharmacal Order**

A Norwich Pharmacal order compels an innocent third party, who has been innocently mixed up in wrongdoing, to disclose information enabling the applicant to identify the wrongdoer or bring a claim. These orders are typically used in cases involving fraud or intellectual property theft, where crucial information is needed to identify the perpetrator.

Such orders are usually accompanied by a Gagging order, preventing the respondent from disclosing certain aspects of the case to avoid prejudicing the proceedings.



## **Mandatory Injunction**

A mandatory injunction is an order that requires the respondent to take a specific action, rather than merely restraining them from doing something. These injunctions are typically granted when a failure to act would cause significant harm that cannot be adequately remedied through damages.

## **Search Order**

A search order, also known as an Anton Piller order, allows the applicant to enter the respondent's premises to search for and secure evidence that might otherwise be destroyed or concealed. This type of order is granted in exceptional cases, usually without notice to the respondent, to ensure the preservation of crucial evidence, often in intellectual property or commercial disputes involving allegations of fraud or breach of confidentiality. Due to its intrusive nature, the court requires strong evidence of potential destruction or concealment before granting such an order.

## **Anti-Suit Injunction**

An anti-suit injunction is an order that restrains a party from initiating or continuing legal proceedings in a foreign jurisdiction, where such proceedings would be vexatious, oppressive, or contrary to the interests of justice. This type of injunction aims to prevent parallel litigation, which could result in inconsistent judgments or undermine the jurisdiction of the Cyprus courts.

## **Appointment of an interim receiver**

The appointment of an interim receiver is an order that appoints an independent third party to manage, preserve, or protect assets pending the outcome of a legal dispute. This remedy is often sought where there is a risk that the respondent may mismanage or dissipate assets, rendering any future judgment ineffective. Interim receivers are typically appointed in complex commercial cases, such as insolvency proceedings, where it is crucial to maintain the value of the business or assets in question.

## **Person Unknown Injunction**

A person unknown injunction is an order granted against persons whose identities are unknown but who are carrying out identifiable unlawful acts. This type of injunction is often used in cases involving anonymous online wrongdoers. The purpose of such an injunction is to restrain specific conduct, even though the individuals involved cannot be specifically named at the time of application.



#### **4. Injunctions in aid of foreign proceedings and international arbitration**

Cypriot courts have jurisdiction (and the power) to issue interim injunctions supporting a plethora of foreign proceedings or international arbitration.

##### **Arbitration**

In arbitration proceedings pursuant to Section 9 of the International Commercial Arbitration Law of 1987 (No 101/1987), which incorporates the UNCITRAL Model Law, for the issue of interim protective measures in aid of international commercial arbitration cases pending or contemplated.

Such measures usually include worldwide freezing orders or prohibition orders.

##### **EU framework**

The Cyprus Courts, pursuant to (a) Article 35 of the Brussels Recast Regulation (EU) No 1215/2012; and (b) Article 31 of the Lugano Convention 2007, have the jurisdiction (and power) to issue interim protective measures (including freezing orders) in aid of proceedings pending or contemplated in other member states of the EU (except Denmark), Switzerland, Iceland and Norway, without filing substantive proceedings in Cyprus.

Such protective measures can also include worldwide freezing orders or even search orders.

##### **In aid of any other proceedings**

With the introduction of Section 32(AB) to the Courts of Justice Law (Law 14/1960), enriches the arsenal of civil litigators since Cyprus Courts have the jurisdiction to issue interim injunctions at any time, including the time prior to the filing of a claim or after the issuance of a judgment, in relation to both judicial or arbitration proceedings that took place, are taking place, or will take place within or outside the jurisdiction of Cyprus.

The power of the Cyprus courts to issue such orders extends to situations where:

- (a) the respondent is situated within the jurisdiction of Cyprus; or
- (b) the property or subject matter of the remedy sought is located within the jurisdiction of courts; or
- (c) there is such other connecting link with Cyprus that the local courts are rendered appropriate to hear and decide on such application.



## **5. Application and Procedure relating to Interim Injunction**

### **5.1. Form of the Application**

An application for an interim injunction must be made in writing and supported by an affidavit containing the facts of the case and the legal basis for the claim. In without-notice applications, the affidavit must also explain the urgency of the matter and include an undertaking as to damages.

### **5.2. Procedure**

Applications for interim injunctions are generally heard urgently. The opposing parties will be served and will have the opportunity to oppose it.

### **5.3. Enforceability of Interim Measures**

#### **Contempt of Court**

If an injunction is violated, it typically results in a contempt of court sanction. Enforcement is generally pursued through committal proceedings, which means applying to imprison the individual who breached the injunction. Alternatively, the court may impose a fine on the person in breach. It also has the authority to order an act to be performed at the expense of the disobedient party. Additionally, a third party who assists in breaching the injunction may also be found in contempt of court.

It is well-established that a director may, under certain circumstances, be committed for contempt if their company breaches an injunction.

#### **Unless order**

Recently the Cyprus Courts have demonstrated their readiness to issue "unless orders" in connection with particular injunctive reliefs to ensure strict compliance with those orders. An "unless order" is a type of court order that attaches a conditional sanction to the requirement of performing a specified act by a given deadline. In other words, if a party fails to comply with an unless order (i.e. Unless you comply with the disclosure order), they will not be allowed to be heard before the courts. This reflects the severity of disregarding the authority of the Cyprus Courts and serves as a powerful mechanism to enforce compliance.

In *Agrawal Commercial Corp. v. Metarus Holdings Limited and others*, Claim No.: 2548/20, dated 22 July 2021, the District Court of Limassol issued an unless order against Defendants 5-12. The order required the defendants to cease preventing the interim Receiver from taking control of the shares of Defendants 5-8 by registering either himself or any other person as a shareholder and appointing either himself or any other person as an officer of the Russian Companies or terminating any other corresponding administrative body of the Defendants. The order provided that unless



they comply with the receivership order they would not be heard in connection with the reopening application.

The above underscore that disobedience of a Cyprus Court order can result in serious repercussions, such as being deprived of the right to be heard in court, thereby leaving the party in breach without an opportunity to defend themselves.

## **6. Conclusion**

In conclusion, the Cypriot legal framework for interim injunctions, while influenced heavily by English common law, has evolved to meet the unique needs of its jurisdiction. This ensures the protection of the applicant's rights, prevents irreparable harm, and upholds the proper administration of justice. The flexibility and variety of interim measures available reflect the courts' commitment to adapting equitable remedies to fit the demands of modern, often cross-border, litigation.