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INTERIM REMEDIES IN CIVIL LAWSUIT

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CONCEPTUAL POINTS OF RESEARCH

Topicality and relevance of the addressed issue.

Courts and magistrates have always had a special role in the defence of human rights. However, the power of the magistrate is not unlimited, and bad faith debtors are becoming more and more inventive in identifying various methods and tricks to avoid the obligations they have or will, predictably, have. That way, the defence of subjective rights, even if carried out through the courts, cannot always guarantee the effective reinstatement of the violated right and the execution of justice in any absolute sense. Thus, given a constant globalization movement, liberalization of the movement of a person, services and goods not only at the level of a community, but also at the international level, the task of justice to effectively restore the rights of the person becomes more and more difficult without specific and liable instruments to be used immediately to keep up with the increasingly fast-paced life of the 21st century.

One of these tools that are made available to the litigant to make it possible to restore his rights, is the institution of civil interim remedies. This legal institution is intended to introduce a status *quo* over a certain patrimony or assets, which, as a rule, belong to the debtor-defendant and which could be squandered by a bad-faith debtor to the detriment of his creditor when he is proactive in the defence of his rights and "threatens" the debtor with forced execution of obligations.

The apparent simplicity of the task of this legal instrument is, however, marked by a series of submerged rocks that prevent litigants from anchoring safely in the realm of justice. It is thus important to note that implementing interim remedies represents an interference in the life and rights of the potential debtor, therefore, they should be implemented with particular care so that the noble goal of protecting the creditor does not turn into an unjustified sanction for debtor. We also must not ignore the hypothesis of a bad-faith creditor who simulates the seriousness of the situation in order to harm the debtor and obtain a certain advantage. Such a hypothesis must be treated with all seriousness, and the law must create sufficient mechanisms to make sure that the coercive force of the state is not applied abusively. Thus, we can easily observe that the judge, in his capacity as an independent observer of the litigation submitted for examination, is constrained, on the one hand, by the hypothesis of a bad-faith debtor, and, on the other hand, by the risk of impinge on the defendant's rights without sufficient justification, all this under the relentless pressure of time imposed by rigid regulations and which can be a crucial factor in the effectiveness of remedies, if they are still needed.

To ensure continuity of the above hypothesis of the bad-faith creditor-plaintiff, the law must allow the potential debtor-defendant to be able to repair the damages caused by the implementation of interim remedies, if he succeeds. An insolvent or low-asset plaintiff can and should consider this hypothesis. In this case, the damages caused to the defendant will no longer be able to be recovered from the plaintiff, a perspective that further complicates the task of those involved, especially the court.

These situations denote both the importance and the complexity that is hidden behind some relatively summary regulations of this legal instrument, which, although normatively enshrined for a sufficient period of time, has not yet found a full practical application of all the legally established possibilities.

In another perspective, it must be taken into account that the situations brought by litigants before the court can be particularly diverse and complex, so that the remedies that the court can order, to ensure that the eventual court decision can be effectively executed, must be varied enough to satisfy the needs of litigants in particular and justice in general. In this sense, the legislator, on the one hand, proposed to the judge and those interested a series of remedies that can be used to ensure the possibility of effective restoration of their rights, but, on the other hand, left open the possibility of applying any other remedies that correspond to the requirements of the law. Thus, the interested participant, on the one hand, is free to let his imagination run wild and request any remedy that will ensure the intended purpose, and the court, on the other hand, has the role of examining and deciding on the legality and appropriateness of such a request, being required to decide, practically immediately, if he satisfies the complaint of the creditor-plaintiff and limits the defendant or, on the contrary, does not apply the requested remedy, relying on the good faith of the defendant.

In particular, common law states have a varied range of interim remedies that they apply. In contrast, states applying continental law and, in particular, national courts are relatively reluctant to diversify the interim remedies they apply, limiting themselves to a narrow but time-tested set of interim remedies, even if they neither correspond to the purpose nor subscribe to the legal definitions. In this study, the causes of this divergence are elucidated, as well as future perspectives regarding the institution of civil interim remedies.

Purpose and objectives of the thesis

The **purpose of the work** consists in researching the institution of the remedy so as to identify its authentic meaning and the meaning of interim remedies applicable in the civil proceedings as well as the stages of application of interim remedies in order to highlight the

existing dysfunctions, inaccurate, deficient or incomplete regulations, as well as identifying viable solutions of legislative interpretation or intervention that could be implemented by legislators or practitioners.

The purpose of the thesis is not only defined by theoretical or practical visions, but also by the symbiosis of scientific methods of approaching the topic chosen in order to develop theoretical knowledge for the development of the science of law, as well as scientifically based and practically useful solutions for the identified difficulties.

To achieve the expected purpose, we propose the following **objectives**:

- analysing the notions of "institution of interim remedies" and "civil interim remedies" through the lens of national and international legislation, as well as doctrinal approaches to elucidate the terminology to establish clear criteria for the delimitation of similar notions and to clarify the authentic meaning of the notions in the regulatory acts applicable to the institution researched;

- elucidating and developing legal characteristics of the researched institution and the interim remedies;

- identifying and describing interim remedies applicable in the civil case;

- determining the procedure to be carried out by the court and the participants to apply the interim remedies;

- analysing the means of defence of the persons affected by the interim remedies applied;

- identifying the existing difficulties in applying the institution of interim remedies and developing interpretive or legislative solutions to overcome them;

Research hypothesis. The research was based on the following hypotheses: the institution of interim remedies is a viable and indispensable tool for the effective reinstatement of the plaintiff's allegedly violated right that is defended in the civil proceedings; the application of interim remedies represents an interference in the rights of individuals, thus, the interim remedies must be applied only when clear conditions that ensure a fair balance between the interests of all those involved are met.

Summary of the scientific research methodology. A set of methods, techniques and procedures were used in the preparation of the PhD thesis. They include the logical (including deduction and induction), historical, analytical, grammatical, prospective, interview, empirical and comparative-legal method.

When developing the thesis, the laws, doctrinal works and relevant judicial acts were studied. Also, both the specialized doctrine in the field of civil procedural law, dedicated to the

researched institution, and the doctrine related to other branches of law, such as the Roman private law and the history of law, were subjected to research in order to identify the historical evolution of the researched institution. Note that both domestic and foreign doctrine was studied, mainly from Romania and the Russian Federation, but also from the Anglo-Saxon legal system - Great Britain and the United States of America.

With regard to the normative support, the Constitution of the Republic of Moldova, the Code of Civil Procedure of the Republic of Moldova, the Administrative Code of the Republic of Moldova and other laws that contain regulations regarding the institution of interim remedies, as well as other similar institutions, were subjected to examination, as distinguished in this work. The legal seats of the interim remedies in other European states, as well as in the Anglo-Saxon law, were also examined.

The scientific research was also carried out by approaching the judicial practice, accumulated from the practical experience of the author, from the judicial documents published on the official portals of the courts of the Republic of Moldova, as well as from discussions with practitioners in the field of law (lawyers, judges, bailiffs, administrators authorized and legal advisors). A significant imprint on this research was also highlighted by the study of the judicial practice of the states with the Anglo-Saxon legal system, which differs, in particular, by the fact that it is used as a source of law for the examination of other judicial cases, but also through a bold approach to solving practical dilemmas that cannot be found in local practice.

A pragmatic way of research was materialized by the author's use of the researched institution as a lawyer. This activity allowed the effective understanding of the application method of all the constituent elements of the researched institution, as well as the perception of the approach to different aspects of this institution by the practitioners.

CONTENT OF THE THESIS

Chapter 1 - General considerations regarding the institution of civil interim remedies is dedicated to the analysis of the situation in the field of institution of interim remedies with a focus on several components: the historical examination, the identification of domestic and foreign doctrinal approaches, the examination of national, foreign and international regulations, followed by the identification and description the legal characteristics of interim remedies.

Subchapter 1.1. entitled Conceptual and historical milestones regarding the institution of civil interim remedies makes a brief historical foray into the interim remedies, followed by the examination of the concept of the interim remedies as approached by the Romanian, Russian, local, USA and Great Britain doctrinaires.

In this sense, it has been established that the institution of civil interim remedies has deep roots in history. An institution similar to the interim remedies was also found in Roman law, where, in lawsuits regarding the defence of the right to a slave or the right other than property, the parties could promise a certain amount of money that they would pay if they lost the lawsuit.[1] This means was like a guarantee of the solvency of the participants in the suit and, even if it is a way that does not meet contemporary requirements, in fact, it pursues the same goal – to guarantee the solvency of a possible debtor. In Romania, the forms of interim remedies were included in the Civil Code of 1865 in the form of assurance and judicial sequestration (Articles 610-620)[2]. In the same code, the Decree no. 132 of 1952 amended Articles 581-582 and introduced the Presidential Ordinances providing for the p*reservation of a right that would be forfeited by delay, preventing imminent harm that cannot be remedied, as well as removing obstacles that may arise during execution*."[3,4]In Anglo-Saxon law, particularly in the Great Britain, there were no provisions or judicial practice related to the application of prohibitions to dispose of goods pending the examination of the case. As regards the territory of the Republic of Moldova, the institution of interim remedies was present in the Code of Civil Procedure of 1964, which stipulated in Article 135 *that the court or the judge, at the request of the participants in the lawsuit or ex officio, may order interim remedies. The institution of interim remedies is allowed in any phase of the suit if failure to do so can make it difficult or impossible to execute the court decision.*[5]

[1] JAKOTA, Mihai Vasile. Dreptul Roman. Vol. 1. Iași: Editura Fundației Chemarea, pag.125.
[2]Codul de Procedură Civilă al României din 1865, [citat 15.08.2017], disponibil: https://lege5.ro/Gratuit/heztqnju/codul-de-procedura-civila-din-1865-al-romaniei/18
[3] CIUTACU Florin, Codul de procedură civilă Român adnotat, Ed. Sigma 2001, ISBN 973-8068-45-2, pag. 178
[4] BOROI, Gabriel, RĂDUCAN, Gabriela. Codul de procedură civilă (Adnotat). Bucureşti: CHISINAU, 2000 ISBN 973-9435-90-4, pag. 176.
[5] Codul de procedură civilă al RSSM, Ed. Cartea Moldovenească, Chișinău, 1983.

The institution of interim remedies is studied in the civil procedural doctrine of any state. Although the content of definitions offered for the researched institution differs from one state to another and, of course, from one author to another, the essential elements of this institution are maintained.

Thus, as early as 1957, I. Stoenescu and R. Hilsenrad, concerned with the institution of interim remedies, although did not offer an express definition of the institution, mentioned that these remedies aim *in the case of real actions - to avoid the disappearance or degradation of the good that forms the subject matter of the litigation, and in the case of personal actions - to prevent the decrease of the debtor's property assets".*[6] This definition, although incomplete for contemporary realities, defines the most important components of the institution of interim remedies in civil lawsuit. The same definition, with insignificant adaptations, is used again over 70 years in Civil Procedural Law[7] by the authors Gabriel Boroi and Mirela Stancu. The great Romanian proceduralist Ioan Les explains: the institution of interim remedies in civil lawsuit represents the means that the legislator has made available to the plaintiff in good faith, by which he can preserve the assets that form the object of the litigation in order to prevent unfavourable situations, such as those in which in the interval between the promotion of the remedy and the execution of the judgment, the asset acquired by the judgment is destroyed or the debtor's property asset is diminished.[8]/[9] After more than 20 years and after the adoption of the new Code of Civil Procedure in Romania, the explanation offered by the same author for the institution of interim remedies remained unchanged.[10] According to the researcher Florea Magureanu,[11,12]*interim remedies refer to the possibility recognized by law for the plaintiff to request from the court remedies of preservation, such as to prevent the defendant, during the suit, from destroying or alienating the property that constitutes the object of the litigation or the property asset, when the object of the litigation is a sum of money."* The definitions of the Romanian doctrinaires, cited above, with certain differences in wording, were also shared by other Romanian authors, such as:

[6] STOENESCU Ilie, HILSENRAD Arthur, Proces civil în R.P.R., editura Ştiința, Bucureşti, 1957, citat de CIOBANU Viorel Mihai, Tratat teoretic și practic de procedură civilă. București: Național, 1997, vol. 2, pp. 60-61. ISBN 973-97574-1-3., pag. 61.
[7] BOROI Gabriel, STANCU Mirela, Drept Procesual Civil, ed. a 5-a, Ed. Hamangiu, 2020, ISBN 978-606-27-1428-4, pag.451
[8] LEŞ Ioan, Tratat de drept procesual civil, ed.2, Ed. AllBeck, 2002, ISBN-973-655-233-0, pag. 161
[9] LEŞ Ioan, Principii şi instituţii de drept procesual civil, volumul 1, Ed. Lumina Lex. 1998, ISBN 973-588-073-3, pag. 254
[10] LEȘ, Ioan, et al. Specialty 553.03 - CIVIL PROCEDURAL LAW Vol. 2. Ed. a 2-a. București: Universul Juridic, 2020. ISBN 978-606-39-0723-4, pag. 271.
[11] MĂGUREANU Florea, Drept Procesual Român, vol.I, editura Lumina Lex, 1997, pag. 262.
[12] MĂGUREANU Florea, Drept Procesual Civil, Ediția IV, Ed. Allbeck 2001, ISBN: 973-655-114-8, pag. 229

Gabriel Homotescu[13], Constantin Crișu[14], Dragomir Eduard and Roxana Palita[15], Raducan Gabriela[16] and Liviu-Narcis Pirvu[17].

The doctrine of the Russian Federation defines the institution of interim remedies in a similar way to the one above, in this respect, with small variations, or set out by various Russian authors and researchers such as М.К. Треушников[18/19], М.С. Шакарян [20,] В.В. Ярков [21], Osokina G.[22], Власов А.А., etc.

The institution of interim remedy has been defined on various occasions by local authors including Dorfman Ina[23], Macinskaia Vera, Adelina Bicu[24], Novac Svetlana[25], Olga Pisarenco[26], Al. Prisac[27].Elena Belei[28] and Svetlana Filincova [29] and others.

Starting from the doctrinal opinions regarding the definition of this institution, especially that of local authors Elena Belei and Svetlana Filincova[30], we have formulated and proposed a more comprehensive definition according to which: *interim remedies are the institution of civil procedural law that consists of a series of temporary and urgent compulsory remedies, which can be applied by the court, at the request of the stakeholder, in order to ensure the effective execution of a final court decision.*

For the correct and full identification of the content of the institution of civil interim remedies, the legal provisions that regulate it were also subjected to research, for which subchapter

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[13] HOMOTESCU Gabriel, Litigii Patrimoniale, Soluționarea pe calea arbitrajului, Ed. LuminaLex,2000, ISBN 973-588-128-4, pag. 81.
[14] CRIȘU Constantin, Ghidul Juristului ed.4, Ed. Juris Argessis, 2001, ISBN 973-99578-9-7, pag. 83.
[15] DRAGOMIR Eduard, Paliță Roxana, Drept procesual civil: sinteze pentru pregătirea examenului de admitere și definitivare în profesia de avocat, Ed. Nomina Lex, 2009, ISBN 978-973-88153-7-7, pag. 150-151.
[16] RĂDUCAN Gabriela, Drept Procesual Civil, Ed. AllBeck, 2005, ISBN 973-665-558-5, pag. 113.
[17] PÎRVU Liviu Narcis, Elemente de procedură civilă și contencios administrativ, Ed. Lumina Lex, 2003, ISBN 973-588-613-8, pag. 205- 206
[18] Гражданский процесс, учебник 3-е изд., под ред. М.К. ТРЕУШНИКОВА, ООО. Городец, 2000, ISBN 078-5-906815-71-2, pag. 205.
[19] Ibidem, pag. 239.
[20] Гражданское процессуальное право, учебник, под ред. М.С. Шакарян, ООО. Из. Проспект, 2005, ISBN 5-482-0073-7, pag. 221.
[21] Гражданский процесс, учебник, отв. ред. проф. В.В. Ярков, ООО. Из. Бек 2000, ISBN 5-85639-264-7, pag. 253.
[22] ОСОКИНА Галина, Гражданский процесс, общая часть., Юристь 2004, ISBN 5-7975-0636-x, pag. 485.
[23] DORFMAN Ina, Drept procesual civil: (note de curs), Chișinău, 2003, ISBN 9975-9511-5-5, pag.85
[24] BÎCU Adelina, Drept Procesual Civil, partea generală, Chișinău, 2013, ISBN 978-9975-56-094-8, pag. 261.
[25] MACINSKAIA Vera., NOVAC Svetlana, Asigurarea acţiunii. în: Manualul judecătorului la examinarea pricinilor civile, coordonator Poalelungi Mihai, Cartier juridic, 2006, ISBN 978-9975-79-412-1, pag.140
[26] PISARENCO Olga, Drept procesual civil: (note de curs), Chișinău, 2012, ISBN 978-9975-45-180-2, pag.199
[27] PRISAC Alexandru, Drept Procesual Civil, Partea generală, Cartier, Chişinău, 2013, ISBN 978-973-664-653-9, pag. 307.
[28] Drept Procesual Civil. Partea Generală: Manual, coord. BELEI Elena, Chișinău, 2016, ISBN 978-9975-4072-9-8, pag. 278.
[29] FILINCOVA Svetlana, Belei Elena, Asigurarea acţiunii. În Manualul judecătorului pentru cauzele civile, coord. M.POALELUNGI, E.BELEI, I. SÎRCU, 2013, ISBN 978-9975-53-197-9, pag.164.
[30] Ibid.

1.2 is dedicated – The legal seat of the institution of civil interim remedies and aspects of comparative law. The normative acts that contain regulations regarding the institution of interim remedies include: The Code of Civil Procedure of the Republic of Moldova[31]; the Administrative Code of the Republic of Moldova[32]; the Enforcement Code[33]; the Civil Code of the Republic of Moldova[34]; the Law on the Protection of Industrial Designs no. 161 of 12.07.2007; the Law about arbitration no. 23 of 22.02.2008; the Law on international commercial arbitration no. 24 of 22.02.2008; the Law on the protection of trademarks no. 38 of 29.02.2008; etc.

One of the objectives of this research was to elucidate and develop the legal characteristics of interim remedies. In this regard, subchapter 1.3. entitled The nature and legal characteristics of interim remedies - was dedicated to this aspect, and it was established that according to point 1 of SCJ Plenary Decision no. 32 of 10.24.2003 there are four particularities of the interim remedies: 1. they are urgent; 2. they are temporary in nature; 3. they aim to protect the property rights of the applicant[35]; 4. they should be consistent with the scope of the remedy. The research explained their correspondence with the legal nature of the institution researched, while explaining the critical attitude towards the formulation of the third characteristic, being argued that in fact the purpose of the interim remedies is to ensure the possibility of the effective enforcement of court decisions. In the content of the same paragraph, the need to accept additional legal characteristics was discussed and supported: 5. they are binding and enforceable; 6. they are applied exclusively by the court; 7. they are exceptional remedies; 8. they are accessories in relation to the main remedy.

Chapter II - Interim remedies and their distinction from other legal institutions

The institution of interim remedies, as we identified in the previous chapter, aims to guarantee the enforcement of a final decision in a certain civil case. The court decision and how it is enforced is conditioned by the civil action brought before the court, more precisely by its subject-matter. Similarly, in the previous chapter we identified that the interim remedies should be consistent with the subject-matter of the remedy. Consequently, the court will apply different interim remedies or a combination of several interim remedies, depending on the specific circumstances of a concrete case, provided that they correspond to the subject-matter of the case and favour the achievement of the goal - guaranteeing the effective enforcement of a final decision.

[31] Code of Civil Procedure of the Republic of Moldova adopted by Law no. 225 of 30.05.2003.
[32] Administrative Code of the Republic of Moldova, adopted by Law no. 116 of 19.07.2018
[33] Enforcement Code of the Republic of Moldova, adopted by Law no. 443 of 24.12.2004
[34] Civil Code of the Republic of Moldova, adopted by Law no.1107 of 06.06.2002
[35]The name was kept as indicated in the SCJ Plenary Decision no. 32 of 10.24.2003

That way, the need to identify interim remedies that the litigant can ask the court to defend against a bad-faith debtor comes into play.

The local legislation provides for such remedies; however, from Article 175 para. (2) of the CCP we find that the legislator did not provide exhaustively and restrictedly the interim remedies that can be requested by the parties and, respectively, applied by the court. From the mentioned considerations, the author proposed the classification of interim remedies into two large categories, depending on whether or not they are expressly provided by law: a) *specified* – which are provided by law, and b) *unspecified* – which are not provided by law. Based on this classification, the following compartments were structured.

In subchapter 2.1. - specified interim remedies - the interim remedies resulting from the national legislation were exposed and explained, thus revealing and discussing the following remedies: seizing assets or sums of money of the defendant, including those held by other persons, noting the remedy in the publicity registers in relation to the rights of the defendant, prohibiting the defendant from performing certain acts, prohibiting other persons from performing certain acts regarding the subject-matter of the litigation, including transferring assets to the defendant or fulfilling other obligations towards him, suspending the sale of the seized assets in the case of an action to lift the seizure on them (deletion from the inventory document), suspending the prosecution, based on an enforceable document, contested by the debtor through the courts, suspending the enforcement of the contested individual administrative act, appointing a provisional administrator, total or partial cancelling of the debtor's right to manage the enterprise, seizing the debtor's assets and his commercial correspondence, suspending the individual pursuits of creditors and enforcement against debtor's assets, as well as limiting the right to demand enforcement of their claims against the debtor, prohibiting the alienation of his assets by the debtor or deciding that they can only be alienated with the express permission of the provisional administrator, stopping interests, increases or penalties of any kind or any other expenses related to claims born before the observation period from running, prohibiting the leaving of the country or the place of residence for a maximum of 6 months, prohibiting the spread of the litigation information, seizing the circulation containing the contested information, prohibiting the destruction of the audio and video recordings, prohibiting the defendant and/or intermediaries to continue the alleged violations of the right in question or ensuring guarantees to ensure compensation of the plaintiff, seizing or confiscating the assets alleged to violate a right provided for by this law, in order to prevent their introduction or spread in the commercial circuit, blocking bank accounts, submitting bank, financial or commercial documents.

Particular attention was paid to interim remedies in the form of seizure, which is the most frequent in national courts. In the thesis, but also on the occasion of previous studies[36]/[37] it was found that this remedy is often wrongly applied and that de facto the parties and participants in the suit see this as having certain different effects than those resulting from the law. Thus, seizure was defined as *the interim remedy through which the assets in question will be investigated in kind by the bailiff, who prepares, in this sense, a report[38], which, as the case may be, is sent to the relevant authority for registration in the publicity register[39], and subsequently these assets are transferred (left) for safekeeping to the debtor or creditor or a third party (administrator) or are given for safekeeping based on a deposit contract.*[40]

Other aspects related to the application of seizure or other interim remedies were also examined and the difficulties of interpretation or deficient regulations were identified which allowed the formulation of recommendations to overcome them.

Subchapters 2.2 and 2.3 of the research referred to unspecified interim remedies and, respectively, interim remedies applicable in other states.

Subchapter 2.2. described 6 interim remedies that are not expressly regulated by normative acts, but whose application has been encountered in local judicial practice, such as: Obliging the party to perform certain acts. For example, to store goods under certain conditions and/or at a certain address, not allowing him to leave the country or town, banning him from creating obstacles, impediments, suspending the civil contract, obliging him to renew a license, temporarily leaving children in the care of one of the parents. By this sub-paragraph, we do not intend to exhaust the whole subject. Both the parties and the court, depending on the concrete circumstances of the case, may consider it appropriate to apply any of the remedies that they would consider necessary in order to ensure the enforcement of a final decision, and, in this sense, the enumeration made on throughout this paragraph cannot be exhaustive and definitive. Also, the choice of interim remedies must be conditioned both by the satisfaction of the purpose and the subject-matter of the remedy.

In subsection 2.3. more than 50 types of remedies were highlighted from the legislation or judicial practice of other states such as Romania, the Russian Federation, Germany, India,

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Botnari Veaceslav Varietățile măsurilor de asigurare a acțiunii civile și efectele acestora. In: *Studia Universitatis Moldaviae (Seria Ştiinţe Sociale)*, 2015, nr. 8(88), pp. 81-89. ISSN 1814.3199.

[38] Article 115-118 Enforcement Code of the Republic of Moldova.

[39] Article 115 para. 9 Enforcement Code of the Republic of Moldova, if the asset is subjected to state registration.

[40] Article.1 567, 1537 Civil Code and Article 120 Enforcement Code of the Republic of Moldova.

Switzerland, Montenegro, the USA and Great Britain. Romania and the Russian Federation, Germany, Montenegro have regulated remedies to ensure civil action similar to those of the Republic of Moldova. The USA and Great Britain, operate with interim remedies that can be considered exotic for the realities of the Republic of Moldova, e.g. prohibitions, ordinances (1. regarding the retention, transmission for safekeeping, preservation of goods; 2. regarding the inspection/ the research of assets; 3. regarding conducting an experiment on an asset; 4. regarding the sale of perishable assets; 5. for taking samples from a specific property; 6. regarding the payment of income generated by a specific asset until the case is resolved); order granting permission to a certain person to enter a building in order to execute an order; freezing order (prohibiting a party from removing assets outside the jurisdiction of the court; prohibiting the party from disposing of any assets within or outside the jurisdiction), order requiring a party to disclose information about the whereabouts of assets subject to a freezing order; order (search order) obliging a party to allow the other party access to a building or land so that it can collect the necessary evidence[41]; order prior to the filing of the action regarding the presentation of documents or permission to inspect a certain asset[42]; payment order of certain sums of money; order regarding the payment of a sum of money to the court's account or the presentation of other equivalent guarantees in exchange for which it will provisionally receive the asset whose claim it is requesting; order in intellectual property cases by which the infringer may be allowed to continue his actions on the condition that guarantees are provided.

This exercise allowed us to observe the wide variety of injunctive relief that other jurisdictions accept in civil cases and served as a source of inspiration for the formulation of a *lex ferenda* recommendation to allow defendants to seek security for court fees from plaintiffs. This is a fundamentally new institution for the Republic of Moldova and could positively favour civil proceedings.

Subchapter 2.4 entitled Distinguishing the institution of civil interim remedies from other similar legal institutions has carried out a short comparative analysis between the institution of the

[41]Regarding this remedy, the local author Bicu Adelina rightly mentioned that it represents real searches, see Bacu A., Măsurile de asigurare în procesul civil englez, in International Scientific Conference "30 Years Of Economic Reforms In The Republic Of Moldova: Economic Progress Via Innovation And Competitiveness", Chisinau 2021, page. 276.
[42]A variation of this remedy was applied in Norwich Pharmacal Co v Customs and Excise Commissioners [1973] UKHL 6 (26 June 1973), [cited 2023-02-10] Available http://www.bailii.org/uk/cases/UKHL/1973/6.html in which the plaintiff is a US pharmaceutical corporation holding a patent for a pharmaceutical product that is mixed into the feed of some birds. The plaintiff suspects that some UK companies are importing the same but counterfeit preparation. The plaintiff does not know who exactly imports the said preparation and wants the Customs Services (as well as other defendant authorities) to make available to the plaintiff the documents regarding the imports of this preparation in order to identify who the importers are and to subsequently be able to file an action against them. The court accepted this remedy, despite the fact that it was not regulated at the time.

remedy and other similar institutions by content or by name including Institution of criminal interim remedies, Insurance of evidence, Insurance of the enforcement of the enforcement document, Suspension of the license of emission or suspension of the right to broadcast audiovisual commercial communications for a certain period, Procedure for suspending and withdrawing the permissive acts concerning the activity of an entrepreneur, the remedies guaranteeing the enforcement of civil obligations, insurance clauses used in contracts *and* the insurance contract. In this section, I have revealed the criteria that distinguish the institution of civil interim remedies from the other mentioned institutions.

Chapter III Procedure for the institution of civil interim remedies

The procedure for the institution of civil interim remedies and the application of interim remedies are an integral part of the lawsuit and, therefore, will be carried out based on general principles characteristic of the civil procedure, with the exceptions that are considered to be decisive for the institution in question. Thus, within the limits stipulated in Articles 174-182 of the CCP, the principles established by the legislator in Articles 5, 9, 16 of the CCP and those in Chapter II of the CCP will apply. Note that the adversarial principle has a limited application, given that the action is usually ensured *ex parte.* In detail, the procedure for the institution of the civil interim remedies is regulated at the headquarters of the institution mentioned above in Articles 174-182 of the CCP. This chapter analyses the legal norms that regulate this procedure, the position of the SCJ in its explanatory and recommendatory documents, the judicial practice, as well as the opinions of the doctrinaires regarding the analysed subject.

In subchapter 3.1. *Requesting interim remedies* - the elements to be met in order for an interim remedy request to have the perspective of its substantive examination have been addressed. That way, starting from the provisions of Article 174 of the CCP, the extent to which the participants in the lawsuit have the right to submit requests for interim remedies was analysed and I noted that not all participants can have this right. According to the argumentation brought for each individual subject, the right to submit a request for interim remedies is closely related to the existence of the interest in submitting such a request. Lack of interest, in our opinion, deprives the applicant of the right to admit the request. This does not mean that the application will not be examined, but only that it will be rejected not for substantive reasons, but because it was submitted by a disinterested person.

Thus, despite the fact that in Article 174 para. 1 of the CCP the legislator provides as subjects any participant in the suit, in fact, not all participants will actually have this right. To remove any inadvertences in the interpretation of the question regarding the existence or not of the

right of some subjects from those listed in Article 174 of CCP in conjunction with Article 55 of CCP, to interim remedies, we consider that the phrase "in the lawsuit" in Article 174 para. 1 of CCP should be replaced by “those interested".

Next, I studies how to formulate the request for interim remedies (written or verbal), the time limits when the request can be submitted and the competent court to examine the request for such remedies.

I revealed that the law does not provide for the form of the request for interim remedies and that, as the case may be, it can be submitted both in writing and verbally; however, I recommended the written form so as to achieve an effective judicial review. It was established that the submission of the request for interim remedies can take place, at the earliest, simultaneously with the day of submission of the request for summons - in the content of the request for summons or as a separate act and, at the latest, in the pleadings, during the examination of the case to the Court of Appeal. However, there are also certain categories of litigation, for which the law provides that the request can be submitted even before an action is filed, such as: The law on freedom of expression (Article 22 paras. 1 and 6; Article 17 para. 1), the Law on copyright and related rights (Article 114 paras. 1 and 6), the Administrative Code (Article 214 para. 1 and Article 215 para. 1).

In the content, atypical situations that may arise in judicial practice were subjected to research, such as the possibility of instituting the remedy during the suspension of the case or between the time of the judgment and the filing of the appeal request, and I argued that the remedy must be possible in both cases. As for the jurisdiction of the court, this aspect leaves room for debate, especially when, according to special laws, the request can be submitted before the action and in the period between the delivery of the decision and until the implementation of the appeal.

If in the previous section we examined the elements whose compliance is up to the applicant and are prior to submitting the request, then in subchapter 3.2. *Examination procedure of the request for interim remedies* I continued chronologically with the stages that must be followed for the remedies with the examination of those aspects that must be respected by the court that receives the request, being thus discussed: the term in which the request must be examined; the examination mode (present or ex-parte); the important circumstances for the settlement of the request; burden of probation; the powers of the court, the act issued and its content. Among other things, I agreed to the *ex-parte* examination of the requests for interim remedies, but I opined about the need to give the court the possibility, when it considers it appropriate, to provisionally apply certain remedies in the absence of the parties, and subsequently to be able to invite the trial

participants to the meeting to provide a final decision on the interim remedies. A particularly important aspect for respecting the rights of all those involved is the identification of the important circumstances that the court must take into account when deciding on the need to apply interim remedies, such as: if failure to apply interim remedies would make it impossible to enforce a court decision; if the material subject-matter of interim remedies belongs to the party to whom the remedy is applied or, as the case may be, that it is the material subject-matter of the case. However, special laws may also provide for various other circumstances that need to be taken into account. Next, in order to assess the impossibility of enforcement, the request for interim remedies is to be examined through the lens of sufficient criteria. The plenary session of the Supreme Court of Justice, in point 32 of the Explanatory Decision of the plenary session of the Supreme Court of Justice no. 32 of 24.10.2003, proposed that the following criteria be taken into account: the rationality and validity of the applicant's requirements regarding the application of interim remedies; the probability of causing damage to the applicant in case of failure to apply such remedies; if there is *periculum in mora* (danger of disappearance, degradation, alienation, waste of the asset or bad administration); ensuring a balance between the interests of the stakeholders; preventing public interests or the interests of third parties from being affected in the event that the remedies are applied; to what extent the method of ensuring the requested remedy is correlated with its subject-matter and whether it will actually ensure the achievement of the purpose of interim remedies. Examining them allowed us to find that they, for the most part, correspond to the expression "balance of inconveniences" used in the argumentation of its solutions by English magistrates.

Subchapter 3.3. *Enforcement of civil interim remedies* - includes the research of relevant aspects related to the filing, carrying out and completion of the procedure for the enforcement of interim remedies, thus, on the one hand, the enforcement is an integral part of the lawsuit and, on the other on the other hand, the application of interim remedies that have not been actually enforced creates a real danger that they will not produce the expected effects.

The decision on the remedy is enforced immediately, in the order established for the execution of court documents. The enforcement of decisions on the remedy is fully subordinated to the principle of availability, which is a characteristic principle of the lawsuit and, respectively, will start only due to the will of the creditor expressed in the manner provided by law, that is, by submitting a request to the bailiff.

Specific to the procedure for the enforcement of interim remedies is the fact that, by virtue of their immediate enforcement, the bailiff will immediately carry out all possible actions, without

waiting for voluntary enforcement from the debtor, as expressly provided in Article 27 para. 41 of the Enforcement Code. To enforce the remedy, the bailiff will carry out those actions provided by the Enforcement Code that will be more suitable for the fastest possible execution of the enforcement document.

The interim remedies carried out by the bailiff retain their effect until the enforcement of the court decision or until the annulment of the conclusion pursuant to which they were applied. In the latter case, the bailiff will order the annulment of remedies. Thus, it is essential that the remedies will be enforced by the bailiff and he will also lift them if the act by which they were applied has been annulled.

The last section of this chapter – 3.4. was dedicated to examining the particularities of the institution of remedies in certain specific categories of cases such as: in insolvency proceedings, in arbitration proceedings, in cases concerning freedom of expression, in litigation regarding the defence of intellectual property and in administrative litigation. Within this subchapter, derogatory aspects from the general procedure explained in the first paragraphs of the chapter were studied.
The research carried out in Chapter III was particularly fruitful in the identification of regulatory deficiencies and the formulation of *lex ferenda* proposals.

Chapter IV - Means of defence of the party affected by interim remedies is structured in three subchapters that contain the legislative, doctrinal and judicial practice research for the examination of the means of defence held by both the participants in the lawsuit affected by the application or failure to apply the interim remedies, and the third parties affected by the application of remedies on their goods in a lawsuit in which they are not a party.

Subchapter 4.1. Substitution of interim remedies was dedicated to the mechanism established by Article 179 of the CCP. During the examination of the case, certain circumstances may change, which will cause interim remedies initially ordered to be inoperative (e.g., a seizure has been applied to the funds from the bank accounts, but the defendant does not have bank accounts), unsuitable for the purpose (seizure was applied to an asset, when de facto the litigation concerns another asset) or inconsistent with Article 176 CCP (seizure was applied to a building, but later it was established that there are bank accounts with sufficient funds). In addition, the need to apply interim remedies has not disappeared. Precisely in these situations, the institution regulated by Article 179 of CCP can be used.

I opined that the phrase "*substitution of a form of interim remedies by another form*" should be interpreted *lato sensu* and include not only the substitution of forms of institution (interim remedies), but also the material subject-matter affected by the previously ordered remedy.

After studying this instrument, I came to the conclusion that the substitution of the interim remedy has a double effect: 1. Annulling the interim remedy; 2. Instituting a new interim remedy. In this context, I found it unclear the difference between the conclusion regarding the substitution of the interim remedy and the conclusion by which the ineffective remedy is annulled and a new remedy is ordered, or a remedy with a different subject-matter. The enforcement of the last conclusion will be carried out, according to the rules discussed above, namely: the remedies instituted are enforced immediately, and the annulment of the remedies - only after the respective judicial act becomes final. Such a mechanism is, in our opinion, more rational as contesting the conclusion regarding the substitution of the interim remedy suspends its enforcement. In connection with the mentioned findings, I proposed the exclusion of Article 179 of the CCP.

Subchapter 4.2. *Cessation of the effects of interim remedies.*

Given the temporary nature of the interim remedies, it becomes an absolutely certain matter that they are to cease their effects. More than that, without prejudice to the purpose for which they were applied, it is preferable that they cease as soon as possible, so that, on the one hand, they do not cause unnecessary interference in the rights of the party affected by these remedies, and, on the other hand, to minimize the state of uncertainty created by the lack of a decision on the merits of the case. As a rule, these remedies produce effects until a final decision is issued on the merits of the case in the case of rejection of the action, or until the enforcement of the decision, in the case of admission of the action. However, there are also cases when the interim remedies cease until the above conditions are met. These situations are[43]: a) annulment of interim remedies by the court that issued them; b) the annulment of interim remedies in connection with the annulment of the conclusion by which they were applied through the exercise of appeals; c) lifting the seizure regarding the assets of a third person who is not a party to the lawsuit.

Thus, this subchapter is structured in 3 sections: 4.2.1. Annulment of civil interim remedies, 4.2.2. Contesting of civil interim remedies, and 4.2.3. Lifting of the seizure.

During the research, we established that the annulment of civil interim remedies only operates on request and I argued the need to change this aspect. In our opinion, the court must have the right to lift the remedies applied, in whole or in part, ex officio. In support of this opinion comes, first of all, the fact that the previous remedies, even if they were requested by a certain participant, were ordered by the court. This court had the obligation to ensure that the institution of the remedy, the concrete remedy and the extent is legal and justified. Thus, the interference in

[43]Botnari Veaceslav Contestarea, anularea și substituirea măsurilor de asigurare a acțiunii civile. In: *Studia Universitatis Moldaviae (Seria Ştiinţe Sociale*), 2021, nr. 11, pp. 130-135. ISSN 1814-3199, pag.131

the rights and freedoms of a participant or third party was achieved through the act of disposition of the court. It must not have a passive role, but a leading one, i.e. to react when the situation calls for it. Respectively, when the remedies were applied erroneously (because the court was not aware of certain circumstances or due to the fact that it was not sufficiently diligent) or when the important circumstances for the previous application of the remedies have changed, the court must have the possibility to cancel in whole or in part the previously ordered remedies. This opinion is also supported by the local author Alexandru Prisac[44].

The law establishes that the annulment of civil interim remedies always takes place in the meeting. However, after a historical interpretation, we found that the meaning of this regulation was not *ad literam*, but to exclude the ex-parte examination of a request on the annulment of civil interim remedies. Currently, we have a number of cases that are typically examined without a court hearing, such as: cases in the simplified procedure both at first instance and on appeal, as well as cases on appeal. For these situations, when the proceedings are conducted without a public hearing, it does not seem logical to invite the participants to a hearing only to decide on the annulment of interim remedies. Thus, in an interpretation that corresponds to current realities, we should admit that the issue of annulling such remedies could be resolved in written procedure as well, when the main case is resolved in writing, but with due regard to notifying other participants and providing them with the opportunity to submit their written position on the matter discussed.

Also in section 4.2.1., the grounds for which the remedies may be annulled have been examined.

Given the presence of the human factor, as well as conflicting interests in judicial cases, it may happen that the court, either due to lack of diligence or because it was misled by the applicant, applies, contrary to legal norms, certain interim remedies. In this case, the interested participant, usually the person against whom the remedy was applied, is entitled to challenge it by appeal. The next section examined the method of challenging the conclusions on remedies. The Supreme Court suggests that the following categories of conclusions can be appealed: those admitting the request for interim remedies; those rejecting the request for interim remedies; those annulling the interim remedies; those substituting one form of interim remedies with another. In the content of the section, I argued that all conclusions addressing issues related to the institution of interim remedies should be subject to separate appeals.

[44] PRISAC Alexandru, *Drept Procesual Civil - Partea generală*. Chișinău: Cartier 2013. ISBN 978-973-664-653-9, pag. 309.

Section 4.3. The *lifting of the seizure* revealed important aspects of the mechanism available to third parties who are not participants in the civil case, where a seizure has been applied to their property. They have at their disposal a distinct means of defence, regulated in Article 164 of the Enforcement Code, but unfortunately it only applies to seizure and not to other remedies, which also could seriously interfere with a person's rights (e.g., prohibition on alienation). This instrument involves filing a separate case from the one in which the seizure was applied. In the thesis, we argued that it seems unfair to require the unfairly affected third party by an interim remedy to file a separate action, which must go through all stages of the lawsuit. In our opinion, it would be appropriate to allow the affected third party to directly address a request to the court that ordered the remedy. Even if the third party is not a participant in the lawsuit, it does not claim that it should be, but only that it is affected by certain procedural actions and not by the substance of the case. Therefore, the court could consider the request of the affected third party in the same proceedings in which the interim remedy was ordered.

Subchapter 4.3. *Compensation for damages* caused by the institution of interim remedies examines an instrument that, in the author's opinion, is greatly under-appreciated and underutilized. As mentioned, the application of interim remedies creates a certain discomfort, and sometimes even severe limitations on the defendant's rights. The situation of use in bad faith of the right to request civil interim remedies in order to harm the defendant is not excluded. Such situations can vary - from unfair competition and raiding attacks to simple family litigations, where former spouses would rather see the other party receive nothing than receive what is rightfully theirs. For such cases from bad-faith plaintiffs, the law, under Article 182 of the Civil Code of Procedure, expressly allows the defendant to seek compensation for damages caused by civil interim remedies. The content of this section examines the legal conditions for successfully pursuing an action for compensation for damages caused by such remedies: There must be an irrevocable judgment rejecting the plaintiff's claim, the remedies must have been ordered at the plaintiff's request, there must be damage caused to the defendant by the application of such remedies. It is also essential to establish that guilt is not a condition of the party who requested the interim remedies (usually the plaintiff). This subchapter highlights that, currently, the law only grants the right to bring such actions to the defendant regarding the remedies requested by the plaintiff. However, as demonstrated by the above research, interim remedies are not always requested by the plaintiff and are not always applied against the defendant. Therefore, in our opinion, it would be correct to differentiate between the "applicant for the interim remedy" and the "person against whom interim remedies have been applied."

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The institution of civil interim remedies is essential in carrying out the act of justice and contributes to the effective exercise of the rights of the person. Judicial practice demonstrates that the institution of interim remedies is an active tool used in the civil lawsuit. The popularity of this tool is justified by its efficiency, simplicity of use, lack of immediate expenses for the applicant, etc. We believe that these characteristics are favourable for the institution in question to continue to know a particularly frequent application.

The application of interim remedies, however, affects the rights of some participants in the lawsuit, and sometimes even of third parties, thus, their application must be carried out with caution and only based on the reasoned and proven need for their institution.

Within the framework of the thesis, the institution of interim remedies was subjected to a thorough examination through the prism of doctrinal approaches and normative regulations, being accompanied by the study in the light of the comparative law that allowed to obtain results that would solve the scientific problem.

1. The legal characteristics of interim remedies that were recognized at the national level were identified and described (they are urgent, they are temporary, they aim to ensure the effective enforcement of a court decision and they are consistent with the subject-matter of the remedy). At the same time, the author proposed and argued the need to accept other legal characteristics (they are mandatory and enforceable; they are applied exclusively by the court; they are exceptional remedies; they are accessories in relation to the main action) that describe the legal nature of the investigated institution.

2. The accumulation of conceptual examinations and the identification of the legal characteristics of interim remedies allowed the author to develop and propose a complex definition of the remedy, which, in our opinion, reflects the essence of the researched institution more fully. Thus, the institution of civil interim remedies has been defined as a *procedural legal institution consisting of a series of temporary and urgent coercive remedies that can be applied by the court, at the request of the interested party, with the purpose of ensuring the effective enforcement of a final court decision.* (Chapter 1, paragraph 1.1.)

3. The symbiosis of doctrinal research and case law has allowed for the compilation of a considerable number of interim remedies that have been examined through the lens of regulations, theoretical studies (where available), and application in national or international practice. The research conducted enabled the author to define each of the identified interim remedies and to determine their authentic meaning, conducting a comprehensive analysis of the content of the

interim remedies addressed. These results contribute, on the one hand, to the creation of a theoretical basis for the study of interim remedies, and on the other hand, they theoretically support the application of certain interim remedies that, although provided for by law, are not defined or not specified in the law, but have found practical application.

4. The scientific study paid meticulous attention to researching the stages and aspects of the procedure for applying interim remedies, determining, structuring, and examining all procedural stages and relevant elements of these stages, including: the subjects entitled to submit such a request, the formal and substantive conditions of the request for remedies, the time limits for submitting a request for remedies, the competent court to examine requests for remedies, the deadline for examining the request, the important circumstances for resolving the request, the manner of executing interim remedies, etc. This resulted in the development of a coherent structure of stages and elements, described and explained, so that they can serve as both a theoretical support and a practical guide.

5. Procedural defence mechanisms for individuals affected by interim remedies have been identified and described, examining instruments such as: the substitution of interim remedies, the annulment of interim remedies, appealing them, the lifting of seizure of third-party assets, as well as the compensation for damages caused by the remedy. The study of these elements allowed the author to develop a restructured regulatory model aimed at optimizing and streamlining the practical use of defence mechanisms for individuals affected by interim remedies in civil proceedings. The research on this subject, along with the obtained results, are presented in Chapter 4 of the thesis, previously addressed and published in the author's publication in the "Studia Universitatis Moldaviae" Journal.

The results obtained demonstrate the achievement of the established objectives and have contributed to solving an important scientific problem by *developing a conceptual framework* for defining and describing the institution of the remedy and applicable interim remedies in civil proceedings, as well as all procedural elements in the use of this instrument, *which will contribute to the development* of theoretical knowledge and *guide practitioners* in the use of this legal institution.

Various proposals for adjustment, removal of legislative omissions, or supplementation of the law with fundamentally new instruments to ensure correct application and streamline the use of this instrument have been formulated at the presentation of interim conclusions. Among these, we mention, by way of example: the provisional application of interim remedies and the guarantee of court fees. The author's recommendations for legislative interventions were numerous, so they

were compiled and simulated for integration into the content of current regulations, being reflected in their entirety in Annex no.1 to the thesis.

From judicial practice, however, it is obvious that the institution of the remedy is often used contrary to its purpose. Sometimes, parties to a lawsuit attempt to use this institution to create prejudice and inconvenience to their opponents, and the courts do not always react promptly to them. The development of the institution of civil interim remedies must be accompanied by the improvement of the legal framework and the promotion of the correct interpretation of applicable norms. It has been observed that the most vulnerable, in terms of application compared to regulations, is the interim remedy in the form of seizure. In this research, we proposed a definition of the seizure as an interim remedy derived from existing legislation. We also came up with adjustments to procedural norms to highlight one of the essential elements of this remedy, which, in our opinion, will lead to a reduction in cases of inappropriate application of seizure.

Throughout the paper, it was explained that the *ex parte* examination of the institution of interim remedies, although it has positive effects, does not necessarily result in its correct resolution. Thus, we have developed a new mechanism through which the judge can decide on the *ex parte* provisional application of some remedies, in order to offer the parties the possibility of adversarial debate on the request for such an institution. It is possible that in the framework of such debates, a certain guarantee or the application of the ban on a certain concrete asset will be proposed by the concerned party, which, on the one hand, will satisfy the interests of the applicant, and, on the other hand, will not affect seriously the activity of the other party. Such practices are common in other states. In English and US law, *ex parte* examination is the exception but not the rule. In this context, we believe that in the Republic of Moldova, even if we do not change the rule, we can, at least, offer an alternative to be used by the court when the situation calls for it.

Following all the approaches and findings made throughout the thesis, several recommendations for interventions have been proposed as "*lex ferenda*", including:

1. To amend Article 174, para. (1), second sentence with the following content:

"Interim orders are admitted at any stage of the process until the stage at which the court decision becomes final, in case the prima facie remedy appears grounded, and failure to apply interim remedies would make the enforcement of the court decision impossible."

2. To complete Article 175, paragraph 1, letter a) with the phrase "in litigation" after the word "goods".

3. To replace in the title and content of Article 176 the word "*seizure*" with the phrase "*interim remedies*" in the grammatical form corresponding to the case.

4. To complete Article 176 with a new paragraph with the following content:

"*The order provided in paragraph 1 shall not apply if the remedy targets a specific individual asset.*"

5. To introduce a new article with the following content:

*"**Article 177**[1] Provisional application of interim remedies*

(1) Depending on the circumstances of the case, the court, by reasoned decision, may apply interim remedies under the conditions of this chapter or in conjunction with the special laws applicable, for a determined period of time or until the first appearance of the parties, if this is anticipated in less than 30 days from the delivery of the decision according to this paragraph. The decision delivered pursuant to this paragraph shall be executed under the conditions of Article 178.

(2) In the situation referred to in paragraph 1, the court shall grant the defendant a reasonable period to present his position on the issue of interim remedies, which shall not exceed that provided for in paragraph 1.

(3) At the first appearance of the parties or in a special session, scheduled within the period provided for in paragraph 1, specifically for the examination of this issue, the court and the parties may start an argument about the issue of the interim remedy as well as the application of Article 176, 179 and 182 paragraphs (1) - (11) of this Code.

(4) When examining the issues of this article, the court may order the parties to be summoned even in sessions that are usually examined in the absence of the parties or may order examination in written form. If the court decides to settle the issue set out in paragraph 2 in written form, it is not necessary to schedule a court hearing." If the court decides to resolve the matter set out in paragraph 2 in writing, it is not necessary to set a court hearing.

(5) At the well-founded request of the person affected by the application of remedies according to this article, the court may postpone the meeting referred to in paragraph 2. The court, through an unreasoned conclusion, will extend the term for which the remedies were applied until the next meeting or until another date indicated by the court.

(6) Failure to appear of the person affected by the interim remedies or to communicate his position regarding remedies shall not prevent the examination of the request for interim remedies.

(7) After examining the request for interim remedies, the court will definitively decide on them and at the same time cancel the provisional remedies."

6. To repeal Article 179.

7. To complete Article 180 with two new paragraphs with the following content:

"(6) In the case of the institution of the remedy demanding the payment of a sum, the defendant is entitled to deposit the amount claimed by the plaintiff into the court's deposit account instead of the interim remedies. In other categories of cases, the court may cancel the interim remedies related to the deposit of the security, only if it deems it appropriate.

(7) When a person is not a party to the proceedings, but interim remedies have been applied to him or his property, he may submit a request to the court that ordered the interim remedies or has the case pending to cancel the remedies taken against him. This request is to be considered a priority matter in the same manner as the merits of the case are examined. If the request of the affected third party is rejected, he is entitled to bring an action to lift the interim remedies in contentious proceedings."

8. To amend Article 181 with the following content:

"(1) All conclusions issued in accordance with the provisions of this chapter may be appealed, with the exceptions provided by this Code.

(2) The provision regarding the annulment of interim remedies, issued in accordance with Article 180 para. (2)[1] of the CCP and Article 390 para. (3)[1] of the CCP, shall be challenged together with the merits of the case, and if the interested person does not contest the merits of the case then he shall file a separate appeal in the general order.

(3) Appeals against orders imposing interim remedies shall not suspend the enforcement of these orders, and appeals against orders cancelling interim remedies shall suspend the enforcement thereof."

9. To introduce a new article with the following content:

*"**Article 182[1].** Guarantees for court fees*

(1) The defendant and any participant who has joined him in the proceedings may request the plaintiff, under the conditions of Articles 174-176 and/or 182 paragraphs (1) - (11) of this Code, the establishment of interim remedies against the plaintiff regarding the court fees to be borne in the proceedings, if there is a risk that the plaintiff will not be able to reasonably compensate the court fees that will be awarded in case the action is dismissed. For the purpose of this paragraph, the total fees incurred or forecast by all applicants may be taken into account.

(2) The request addressed under paragraph (1) shall be examined in adversarial proceedings, and the court shall decide on it at its own conviction based on the arguments and evidence of the participants in the proceedings, appreciating the prima facie reasonableness of the fees invoked, as well as the specific circumstances of the case.

(3) The court grants the request mentioned in paragraph (1) by a reasoned decision that can be separately appealed with an appeal and orders the application of one or more interim remedies

against the plaintiff, indicating the limits of their application, but not exceeding the value indicated by the applicant. The provisions of Articles 174-176, 178, 179, 180, 182 paragraphs (2) and (3) of this Code shall apply mutatis mutandis."

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ADNOTARE

Botnari Veaceslav, ”Asigurarea acțiunii civile”, teză de doctor în drept, Specialitatea 553.03 – drept procesual civil, Chișinău, 2024

Structura tezei. Prezenta lucrare însumează 238 de pagini ce includ: adnotare în limbile română, rusă și engleză, lista abrevierilor, introducere, patru capitole, concluzii generale și recomandări, bibliografie ce conține 276 de titluri, 1 anexă. Rezultatele obținute sunt publicate în 3 lucrări științifice și 8 comunicări la conferințe științifice.

Cuvinte-cheie: asigurarea acțiunii civile, măsuri de asigurare, sechestru, interdicție, instanță, proces civil, cauțiune, suspendare.

Scopul general al tezei constă în realizarea unei cercetări complexe a actelor normative aplicabile, studierea opiniilor doctrinare, a practicii judiciare naționale și internaționale în vederea examinării și interpretării exhaustive a modului în care este reglementată instituția asigurării acțiunii civile.

Obiectivele tezei: analiza noțiunilor ”asigurarea acțiunii civile”, ”măsuri de asigurare a acțiunii civile” prin prisma legislației naționale, străine, internaționale, precum și a abordărilor doctrinare pentru elucidarea terminologiei, pentru stabilirea unor criterii clare de delimitare a noțiunilor asemănătoare și pentru clarificarea sensului autentic al noțiunilor din actele normative aplicabile instituției cercetate; determinarea naturii juridice și a caracterelor instituției cercetate; determinarea procedurii ce trebuie realizată de instanță și de participanți în scopul asigurării conforme a acțiunii civile; evaluarea eficacității mijloacelor de apărare a persoanelor afectate de măsurile de asigurare aplicate; identificarea dificultăților existente la aplicarea instituției asigurării acțiunii civile; identificarea unor soluții interpretative sau legislative pentru depășirea deficiențelor; formularea unor viziuni și propuneri privind evoluția instituției asigurării acțiunii civile atât sub aspect de practică judiciară, cât și sub aspect de reglementare.

Noutatea și originalitatea științifică rezultă, în primul rând, din faptul că până în prezent în Republica Moldova nu au fost elaborate studii fundamentale dedicate acestei instituții de drept. De asemenea, este demonstrată și prin analiza complexă a asigurării acțiunii care a permis dezvoltarea definițiilor existente, identificarea unor noi caractere juridice, a dificultăților de interpretare și aplicare practică.

Rezultatele obținute contribuie la soluționarea unor probleme științifice importante care rezultă în stabilirea caracterelor juridice ale instituției asigurării acțiunii, elucidarea conținutului măsurii de asigurarea a acțiunii sub formă de sechestru, propuneri de lege ferenda pentru îmbunătățirea cadrului normativ, precum și pentru introducerea unor concepte noi, dar utile pentru apărarea drepturilor în cadrul proceselor civile.

Semnificația teoretică. Lucrarea elucidează diverse abordări doctrinare privind instituția asigurării acțiunii și elementele acesteia și este demonstrată prin analiza comparativă și istorică a diverselor surse examinate.

Valoarea aplicativă se exprimă prin enunțarea unor viziuni critice asupra modului de interpretare și aplicare practică a anumitor elemente ale instituției cercetate. Procesul de cercetare a permis elaborarea unor argumentări bazate pe doctrină, practică judiciară și analiză proprie pentru a servi avocaților, judecătorilor și altor categorii de juriști la aplicarea instituției asigurării acțiunii civile și uniformizarea practicii.

Implementarea rezultatelor științifice. Rezultatele cercetării sunt utilizate în procesul didactic și științific din cadrul USM. De asemenea, rezultatele cercetării se exprimă prin transferul cunoștințelor către mediul academic și științific, precum și către practicienii din domeniul dreptului.

АННОТАЦИЯ

Ботнарь Вячеслав, „Обеспечение иска в гражданском судо производстве" диссертация на соискание ученой степени доктора наук. Специальность 553.03 – Гражданское процессуальное право. CHISINAU, 2024

Структура диссертации. Данная работа состоит из 238 страниц, включающих: аннотацию на румынском, русском и английском языках, список сокращений, введение, пять глав, общие выводы и рекомендации, библиографию из 276 источников. Полученные результаты опубликованы в 3 научных работах и в 8 докладах на научных конференциях.

Ключевые слова: обеспечение иска, обеспечительные меры, арест, запрет, суд, гражданский процесс, залог, приостановление.

Цель дипломной работы заключается в проведении комплексного исследования применимых нормативных актов, изучении доктринальных мнений, национальной и международной судебной практики с целью исчерпывающего изучения и толкования того, каким образом институт обеспечение гражданского иска регулируется.

Задачи диссертации: анализ понятий «обеспечение гражданского иска», «меры обеспечения гражданского иска» в свете национального, зарубежного, международного законодательства, а также доктринальные подходы к уточнению терминологии, установлению четких критериев разграничения сходных понятий уточнить смысл понятий из нормативных актов, применимых к институту обеспечения иска, определение правовой природы и характеристик исследуемого института; определение порядка действий суда и участников в целях обеспечения иска; оценка эффективности средств защиты лиц, пострадавших от применяемых мер для обеспечения иска; выявление существующих сложностей в применении института обеспечения гражданских исков; определение интерпретационных или законодательных решений для преодоления выявленных сложностей; формулирование видений и предложений по развитию института обеспечения гражданских исков как с точки зрения судебной практики, так и с точки зрения регулирования.

Новизна и научная оригинальность обусловлена, прежде всего, тем, что до сих пор в Республике Молдова не проводились фундаментальные исследования, посвященные этому правовому институту. К тому же посредством комплексного анализа обеспечения иска, удалось развить существующие знания об обеспечения иска и выявить новые юридические признаки, преодолеть трудности толкования и практического применения данного института.

Полученные результаты способствуют решению важных научных проблем, следствием которых является установление правовой характеристики института обеспечения иска, выяснение содержания меры обеспечения иска в виде наложения ареста, предложения по внесению поправок в законодательство для совершенствования нормативной базы, а также для введения новых норм.

Теоретическая значимость. Работа освещает различные доктринальные подходы к институту искового страхования и его элементам и демонстрируется через сравнительный и исторический анализ различных изученных источников.

Прикладная ценность выражается в критических взглядах на толкование и практическое применение элементов исследуемого института. Процесс исследования позволил разработать аргументы, основанные на доктрине, судебной практике и собственном анализе, которые послужат адвокатам, судьям и другим специалистам в области права в применении института страхования гражданского иска и единообразия практики.

Внедрение научных результатов. Полученные выводы могут послужить учебным материалом при подготовке студентов и магистров в юридических вузах. Также достигается за счёт передачи знаний академической и научной среде, а также среди практикующих юристов.

ANNOTATION

Botnari Veaceslav „Interim remedies in civil lawsuit", PhD thesis in law, Specialty 553.03 – Civil Procedural Law. CHISINAU, 2024

Structure of the thesis. This work includes 238 of text pages, annotation in Romanian, English and Russian, list of abbreviations, introduction, four chapters, general conclusions and recommendations, bibliography consisting of 276 titles. The results obtained are published in 3 scientific papers and in 8 communications in scientific forums.

Keywords: interim orders, interim remedies, seizure, prohibition, court, civil procedure, bail, suspension.

The purpose of the thesis is to carry out a complex research of the applicable law, doctrinal opinions, national and international practice in order to establish the true meaning of the different elements of interim remedies and the procedure for granting them.

Main objectives of the research: the examination of the concept of "interim remedies" through the national, foreign, international legislation, as well as doctrinal approaches to clarify concept, to establish clear criteria for delimiting it from other similar concepts; establish the legal nature and characteristics of the researched institution; establish the procedure to be carried out by the court and the participants in order to grant interim remedies; estimation of the effectiveness of the means of defense against interim measures; identification of existing difficulties in applying interim remedies and provide interpretative solutions or recommendations of improvements of the law; development of views and proposals on the evolution of the institution of interim remedies in civil proceedings both in terms of judicial practice and regulation.

The novelty and scientific originality consists primarily in the fact that until now in the Republic of Moldova no fundamental studies dedicated to this legal institution have been carried out. The paper is a complex research of all the elements of the different interim measures as well as of the procedure to be followed by the court and participants.

The obtained results helped to solve important scientific issues in particular – establishment of the legal characteristics of the interim measures, the true meaning of the seizure as an interim measure, recommendations of *lege ferenda* for the improvement of the legal framework as well as for the introduction of new but useful concepts of the defense in civil proceedings.

The theoretical significance resides in the research and analysis of various doctrinal approaches regarding interim remedies and its elements and is demonstrated through the comparative and historical analysis of the various examined sources.

The applicative value is expressed through critical views on the interpretation and practical application of certain elements of the researched institution. The research process has allowed the development of arguments based on doctrine, judicial practice and own analysis that will serve lawyers, judges and other legal professionals in the application of the institution of civil interim remedies and the standardization of judicial practice.

Implementation of scientific results. Research results are used in the teaching and scientific process at Moldova State University. The research results are also expressed through the transfer of knowledge to the academic and scientific community as well as to legal practitioners.

BOTNARI, VEACESLAV

INTERIM REMEDIES IN CIVIL LAWSUIT

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Summary of the PhD in Law

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