Provisional Measures in Serbian Arbitration
Part One: The Role of National Courts and Arbitral Tribunals in Granting Interim Relief

JPM | PARTNERS

Provisional Measures in Serbian Arbitration - Part 1

Publisher: JPM | Partners
Delta House, 8a Vladimira Popovića street
www.jpm.law
Authors: Dusan Žegarac, Senior Associate, Petar Mrdja,Associate
Design and prepress: JPM | Partners

Properly defined, provisional measures are awards or orders issued for the purpose of protecting one or both parties from the potential damage during the court process.

Most often, provisional measures are intended to preserve a factual or legal situation in order to safeguard a right, the recognition of which is sought from the court having jurisdiction over the substance of the case.

Additionally, provisional measures can extend beyond merely preserving the factual or legal status quo to require restoring a previous state of affairs or taking new actions.

I Introduction

In the legal system of the Republic of Serbia, provisional measures are regulated by the **Law on Enforcement and Security** (Zakon o izvršenju i obezbeđenju)[1] , which prescribes the conditions, types, and procedural framework for their issuance by national courts. These provisions allow for a wide range of protective measures, from freezing injunctions to specific performance orders, provided that the applicant demonstrates both the probability of success on the merits and the risk of irreparable harm.

to the concept of interim measures as understood in the context of domestic enforcement Serbian arbitration law is rooted in international and comparative arbitration practice. However, the concept of interim measures in international and comparative arbitration law does not fully correspond law, despite the identical terminology.

This series of articles seeks to provide a comprehensive analysis of the legal framework governing provisional measures in arbitration under the laws of the Republic of Serbia. It aims to examine the statutory basis, procedural conditions, jurisdictional aspects, and practical implications of granting such measures.

The first part of the series focuses on provisional measures issued by Serbian national courts in relation to arbitration proceedings. It addresses the legal conditions under which national courts may grant such measures, the scope of their authority notwithstanding the existence of an arbitration agreement, and the distinctions between judicial and arbitral jurisdiction in this regard. This article furthermore explores relevant procedural provisions, including those contained the Law on Enforcement and Security, the Law on Arbitration, the Rulebooks of Serbian arbitral institutions, as well as applicable legal concepts that may clarify the proper method for judicial support of arbitral proceedings through interim measures.

II Provisional Measures ordered by Arbitral Tribunal

International arbitration law treats the preservation of evidence as a form of interim measure, whereas under Serbian procedural law, this issue is governed separately in the Law on Enforcement and Security.

Moreover, in comparative legal systems, arbitral tribunals lack coercive powers and thus cannot enforce interim measures by compulsion, unlike state courts. Consequently, when interpreting terms used in Serbian arbitration law, one must adopt a qualification that reflects the specific nature of arbitration, rather than relying strictly on terminology and concepts derived from domestic rules of civil enforcement procedure[2].

According to the **Law on Arbitration of the Republic of Serbia** (Zakon o Arbitraži)[3] , the legal framework concerning provisional measures is set in Articles 15 and 31. Article 15 governs the procedural timing and scope of court intervention in relation to provisional measures. *It stipulates that, prior to the commencement of arbitral proceedings or during the course thereof, either party may submit a request to the competent court for the issuance of an interim measure, and the court may grant such a measure*.

Furthermore, the provision expressly provides that it shall also *apply where the arbitration agreement refers to arbitration seated in a foreign jurisdiction*. Article 31 regulates the arbitral tribunal's power to grant provisional measures. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of either party, *order any provisional measure it deems necessary in relation to the subject matter of the dispute. In doing so, the tribunal may also require the requesting party to provide appropriate security* as a condition for issuing the measure.

These provisions reflect a dual-track approach, allowing both judicial and arbitral authorities to provide urgent relief in support of the arbitral process. While Article 15 facilitates judicial assistance, particularly in situations where coercive enforcement is required or the tribunal is not yet constituted, Article 31 empowers the tribunal to act within the arbitral proceedings themselves, thereby enhancing procedural autonomy and efficiency.

As provisional measures are a vital procedural mechanism in arbitral proceedings, serving to preserve the status quo, prevent irreparable harm, and ensure the effective enforcement of final awards. **Both the Rules of the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia (PKS Rules)[4] and the Belgrade Arbitration Center Rules (BAC Rules)[5]** recognize the arbitral tribunal's authority to grant such measures. A close comparison of the relevant provisions reveals substantial alignment between the two sets of rules, both in structure and substance.

Both the PKS Rules and the BAC Rules provide that, unless otherwise agreed by the parties, the arbitral tribunal or sole arbitrator may, upon a party's request, order any provisional measure it deems necessary, taking into account the subject matter of the dispute. In both sets of rules, the tribunal is also empowered to require the requesting party to provide appropriate security as a condition for granting such relief.

This formulation reflects a modern and flexible approach, enabling the tribunal to tailor measures to the specific needs of the dispute, whether through the preservation of assets, protection of evidence, or the issuance of injunctive relief.

Both rule sets incorporate the principle of due process, providing that provisional measures are ordinarily to be issued only after the opposing party has been given an opportunity to respond to the request. This adversarial safeguard ensures procedural fairness and the right to be heard.

However, both the PKS and BAC Rules allow for *ex parte* interim measures in exceptional circumstances — namely, where prior notice would defeat the purpose of the requested relief. In such cases, the tribunal may act without hearing the opposing party, provided that the requesting party demonstrates a sufficient probability that immediate action is necessary to secure the effectiveness of the measure.

Even in such instances, both sets of rules require the tribunal to allow the opposing party to present its views as soon as the circumstances permit. After considering those views, the tribunal may revoke, amend, or uphold the previously issued measure.

The PKS and BAC Rules identically provide that the arbitral tribunal retains discretion to revoke, modify, or terminate any provisional measure it has granted if the circumstances of the case no longer justify its continuation. This flexibility ensures that interim measures remain proportionate and responsive to the evolving dynamics of the dispute.

The almost identical wording of the relevant provisions in both rulebooks indicates a shared intention to align with international best practices, notably those reflected in the **UNCITRAL Model Law (2006)** [6]. Both institutions recognize the need to strike a balance between procedural fairness and the urgency often associated with interim relief. Furthermore, the express inclusion of security as a condition reflects a pragmatic approach to risk allocation and enforcement predictability.

From a practical standpoint, parties choosing either institutional framework can expect a comparable standard of protection and procedural safeguards in relation to interim measures. The choice between the PKS and BAC rules in this respect will likely rest on other institutional considerations, as the legal regime governing provisional relief is materially identical.

III Jurisdiction of the National Courts to Order Provisional Measures

Considering that, through the arbitration agreement, the parties delegate the authority to the arbitral tribunal to resolve their future disputes or disputes arising from a particular legal relationship [7], the question is raised whether the national courts are competent to issue provisional measures if the parties concluded an arbitration agreement.

When concluding an arbitration agreement, the prorogation of arbitral jurisdiction simultaneously constitutes a basis for the derogation of the jurisdiction of the national courts that would otherwise be competent to resolve the dispute in the absence of such an agreement [8].

The situation is, however, different when it comes to issuing provisional measures. The Serbian Law on Arbitration considers the national courts competent to issue the provisional measures and prescribes that: "Before the commencement of arbitration proceedings or during the proceedings, any party may submit a request to the court for the issuance of provisional measures, and the court may grant such measures" [9].

Such a request to the judicial authority is also not deemed as incompatible with the arbitration agreement, and it is not to be considered as a waiver of the said agreement [10]. The domestic courts of the Republic of Serbia may therefore issue provisional measures notwithstanding the agreed place of arbitration or if the arbitral tribunal has already been constituted [11].

Should a party request issuing a provisional measure in connection with the arbitration proceedings, the competence of the court is determined by the Serbian Law on Enforcement and Security. The Article 448 para. 2 of the Law prescribes that If the motion for ordering provisional measure is submitted before or during the arbitration proceedings, it shall be decided by the court that would have local jurisdiction to decide on a motion for enforcement, which is further referred to the competence court in whose jurisdiction the Respondent has a registered seat [12].

The competence of the national courts for issuing provisional measures in connection with an ongoing or yet to be initiated arbitration proceedings therefore, remain unchallenged under Serbian substantive and procedural Law.

IV Conditions for Granting Provisional Measures by National Courts in Contrast to Arbitral Tribunals

The Law on Enforcement and Security stipulates that In addition to securing claims entailing obligations to give, act, refrain from acting, or endure, provisional measures may also be ordered to secure claims seeking declaratory relief regarding the existence or non-existence of a right or legal relationship, claims for protection against infringement of personal rights, as well as claims concerning the authenticity or falsity of a document, or requests for modification of substantive or procedural legal relations.

The Law further describes that in order to order a provisional measure for securing a monetary claim, the applicant, in addition to establishing the likelihood of the claim's existence, must also demonstrate the likelihood that, without the provisional measure, the debtor will frustrate or significantly hinder the collection of the claim by disposing of, concealing, or otherwise handling their assets or funds.

Thus, a risk to a monetary claim is one of the primary conditions which need to be fulfilled in order for the court to issue said provisional measure.
Further, the Law stipulates that a risk to a monetary claim is considered to exist if:

a) the enforcement proceedings have already been initiated against the debtor for the collection of due installments of support obligation;
b) the claim is to be enforced abroad, even when the domestic court has jurisdiction over enforcement;
c) the enforcement debtor's regular income is less than their support obligations and those established by a final court or other authority decision;
d) the enforcement was attempted against the debtor but failed because the debtor refused to provide information about the location of their assets.

The applicant is however, not obliged to prove the risk to the claim if he makes it probable that the debtor may suffer only minor damage due to the provisional measure or if the claim is to be enforced abroad [13].

The Serbian Law on Enforcement and Security thus provides detailed regulation on the conditions and requirements needed in order for the court to issue a provisional measure. The Law on Arbitration, however, does not.

As seen above, the Article 31 of the Law on Arbitration only prescribes that the arbitral tribunal may, order any provisional measure it deems necessary in relation to the subject matter of the dispute, and may simultaneously require the opposing party to provide appropriate security, without stating the procedure, the applicable form of the decision or if the motion is to be delivered to the opposing party.

Considering that the arbitral tribunal is not under obligation to act under the Law on Enforcement and Security, the said provision of the Law on Arbitration should be further developed [14].

The existing aforementioned ambiguities within Law on Arbitration however, often discourage parties from seeking such measures and limit the arbitrators' willingness to grant them, which is reflected by the limited arbitral practice in granting such measures in the Republic of Serbia.

V Conclusion

Provisional measures serve as essential procedural mechanisms to maintain the current state of affairs, avert irreparable damage, and ensure the successful resolution of disputes in both court and arbitration processes.

While the Serbian Law on Enforcement and Security provides a detailed and structured regime regulating the conditions and procedures for provisional measures issued by courts, the Law on Arbitration contains broader, less detailed provisions concerning the arbitral tribunal's authority in this regard.

Although the current legal regime offers a foundation for effective interim relief in arbitration, enhanced clarity and practical guidance will be essential to fully realize the potential of provisional measures as a means of safeguarding rights and promoting the efficacy of arbitration in Serbia.

Endnotes:

1 Law on Enforcement and Security („Official Gazette of RS“ No. 106/2015, 106/2016 - authentic interpreta tion, 113/2017 - authentic interpretation, 54/2019, 9/2020 - authentic interpretation and 10/2023 – other law).

2 Maja Stanivuković PhD, Professor, University of Novi Sad Faculty of Law, Interim measures in Arbitration Anali PFB 2/2025, p. 2-3.

3 Law on Arbitration, Republic of Serbia (“Sl. glasnik RS”, br. 46/2006).

4 Rules of the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia (2017).

5 Rules of Arbitration of the Belgrade Arbitration Center (2022).

6 UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006

7 Law on Arbitration („Official Gazette of RS“ No. 46/2006), Article 9 para. 1

8 Prof. dr Milena Petrović, Validity of arbitration agreement, Zbornik radova „Harmonizacija građanskog prava u regionu“, 2013, p.. 481.

9 Law on Arbitration („Official Gazette of RS“No. 46/2006), Article 15 para. 1

10 UNCITRAL Arbitration Rules (2021), Article 29 para. 9.

11 Maja Stanivuković PhD, Interim measures in Arbitration, p. 3, Anali PFB 2/2025.

12 Law on Enforcement and Security („Official Gazette of RS“ No. 106/2015, 106/2016-authentic interpreta tion, 113/2017 - authentic interpretation, 54/2019, 9/2020-authentic interpretation and 10/2023– other law), Article 448; Article 7.

13 Law on Enforcement and Security („Official Gazette of RS“ No. 106/2015, 106/2016 - authentic interpreta tion, 113/2017 - authentic interpretation, 54/2019, 9/2020 - authentic interpretation and 10/2023 – other law), Article 447-450

14 Maja Stanivuković PhD, Interim measures in Arbitration, p. 4, Anali PFB 2/2025.

Reference List:

- Law on Enforcement and Security („Official Gazette of RS“ No. 106/2015, 106/2016 - authentic interpretation, 113/2017 - authentic interpretation, 54/2019, 9/2020 - authentic interpretation and 10/2023 – other law).
- Maja Stanivuković PhD, Professor, University of Novi Sad Faculty of Law, Interim measures in Arbitration, Anali PFB 2/2025.
- Law on Arbitration, Republic of Serbia (“Sl. glasnik RS”, br. 46/2006).
- Rules of the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia (2017).
- UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006.
- Prof. dr Milena Petrović, Validity of arbitration agreement, Zbornik radova „Harmonizacija građanskog prava u regionu“ 2013.
- UNCITRAL Arbitration Rules (2021)
- Law on Enforcement and Security („Official Gazette of RS“ No. 106/2015, 106/2016 - authentic interpretation, 113/2017 - authentic interpretation, 54/2019, 9/2020 - authentic interpretation and 10/2023 – other law)

Authors

Dusan Zegarac

Senior Associate

E: dusan.zegarac@jpm.law

Petar Mrdja

Associate

E: petar.mrdja@jpm.law

JPM | PARTNERS
8a Vladimira Popovića,
Delta House
11070 Belgrade, Serbia
T:+ 381/11/207-6850
E: office@jpm.law

www.jpm.law