

**Monograph Review**

**Provisional Measures as the Precondition of Delivering the  
Enforceable Decision**

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The monograph refers to such an important institution of civil procedural law as procedural measures. On its hand the enforceability of a court decision depends on that institution.

The presented paper addresses to one of the most important and problematic issues of civil procedural law. In the Georgian scientific literature, there is no monograph research on the given topic. The relevance of the topic is also due to the fact that the effectiveness of the justice system is a fundamental prerequisite for strengthening the legal order and ensuring legal security.

The methodological basis of research is general scientific and special methods. In particular: methods of comparison, analysis, synthesis, analogy, induction and deduction. In the research of the Institute of Provisional Measures, the author resorts to the methods of historical and normative research, logical analysis. The comparison legal research method is actively used in the paper. The work has a rich foreign - language bibliography. The author's research area also includes works in Georgian, legislation of other states and judicial practice. The abundance of sources used and the scientific good faith of the research are undoubtedly positive for the work.

Procedural measures includes the institutions of perpetuation of evidence, procedural securities and provisional measures. The author has characterized each issue with the proper depth.

No matter how fast the justice is, no matter how fair and legal the court decision is, the goals and objectives of justice remain unrealized unless the decision is enforced. The European Court of Human Rights in its single decision emphasizes the importance of enforcing a final court decision, explaining that the right to bring an action before a court is not a theoretical right and does not only provide recognition of the right through a final decision, but also contains a legitimate expectation that the decision will be enforced.

The style of the text and the forms of expression of judgements, allow the quoted and the author's own opinions, as well as the made conclusions as a result of the analysis to be perceived. The scientific novelty of the paper is the fact that for the first time in the Georgian legal literature, a complex study of the issues of these relations took place.

The purpose of the paper is to analyze the main issues established by the legislation and court decisions of different countries regarding to procedural measures. The decisions of the Georgian courts are evaluated in relation to the practice of foreign courts, the European Court of Human Rights and the European Court of Justice. As a result of the analysis of international and

Georgian practice, recommendations are presented to eliminate the problems associated with the existence of this institution and its inconsistent practice. The monograph reviews important decisions of the Constitutional Court of Georgia related to the use of a measure to secure a claim. All this greatly increases its practical purpose. The monograph discusses the important decisions of the Constitutional Court of Georgia related to the provisional measures. All of this increases its practical purpose.

The main text of the monograph consists of the introduction, eleven chapters and the conclusion.

The introduction provides a discussion on the relevance and goals of the issue, on the methodological basis of the study and the structure of the paper.

The first and the second chapters of the monograph present the essence of procedural measures in relation to the principles of civil justice. The principles of civil proceedings are also discussed in accordance with the Transnational Civil Procedure Law and the European Convention on Human Rights. Based on the above, the monograph is interesting, not only for those interested in procedural measures, but also in the monograph the principles of procedural law are presented in detailed manners, which increases the value and importance of the work.

The third chapter of the paper is dedicated to one of the types of procedural measures - the perpetuation of evidence. The latter is discussed using the example of Georgian legislation, as well as the civil procedural law of the former Soviet Union countries and the United States of America, in terms of the specifics of pre-litigation and post-litigation motions, additional/repeated perpetuation of evidence, and the perpetuation of evidence in arbitration disputes.

The fourth chapter presents the procedural security in terms of the procedure for filing and reviewing the motion, the specifics of the distribution of the burden of proof, and procedural deadlines.

Seven chapters (fifth - eleventh chapters) are dedicated to the Institute of provisional measures. The legal essence of provisional measures, the peculiarities of the application before and after the filing the claim are presented in separate chapters - Chapter Five, Chapter Six. The author also examines the institute of provisional measures in the view of constitutional rights. The latter is discussed not only in the frame of Georgian constitutional law, but also of Spain and Germany. The prerequisites for submitting an application are presented using the method of comparative research with the procedural law of the same countries. The issue of the adequacy of the right limited by the provisional measure to the amount of the claim is devoted to a separate subsection in the work. The specifics of the measures to secure the claim in Spanish civil procedural law are discussed in the context of such measures as the seizure of assets, the management of the debtor's property - Chapter Seven. The same chapter studies the approach of German procedural law to the institution of seizure, the "Mareva Injunctions" well-known for the English law.

The author has titled the eighth chapter of the work as "Clarifications of the Court of Justice of the European Union on the recognition and enforcement of the provisional measure". Here we review December 12, 2012 Regulation No. 1215/2012 of the European Parliament and the Council on the recognition and enforcement of civil and commercial court judgments, and

the issues of enforcement of the judgment on provisional measures adopted by the courts of the EU Member States in another EU Member State. The ninth chapter of the monograph presents individual examples of the use of provisional measures by the European Court of Human Rights and generalizes the practice.

Chapter 10<sup>th</sup> of the paper discusses the provisional measures listed in the civil procedure law of Georgia and the ability of the judge to apply provisional measures taking into account the circumstances of the case, that is not provided in Article 198 of the Civil Procedure Code. The importance and complexity of this issue are increasing with the development of the country's economy. The importance and complexity of this issue is increasing with the development of the country's economics. In the paper, we find possible ways to resolve the issue.

The last (eleventh) chapter of the paper is dedicated to the provisional measures granted to the claim which is raised in the court/arbitration dispute in a foreign state. This issue needs special attention, as the number of cases increases when the plaintiffs in the dispute in another state ask to use the measures to secure a claim on the assets of the defendant.

The final part of the paper (XI "Final Provisions and Recommendations") outlines the provisions that were formulated by the author of the monograph as a result of the study.

The monograph „Procedural Measures as the Precondition of Delivering the Enforceable Decision” is useful for scholarly and practicing lawyers, as well as for students of the Faculty of Law and for broad range of people interested in procedural measures.

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