

# Technium.

46/2023

2023  
A new decade for social changes

**Technium**  
**Social Sciences**

Powered by

**PLUS**  
**COMMUNICATION**



International  
Communication & PR



## Precautionary measures. Conditions, seizure report

**Bucur Ana Maria**

Independent researcher

**Abstract.** The recovery of property and damage generally caused by criminal offences plays an important role in the judicial economy because imposing effective and timely measures can achieve beneficial consequences both in terms of disrupting criminal activity, reducing the capacity to carry out new criminal activities, but also in terms of strengthening society's confidence, as a rule, on the fact that crime cannot escape control and is effectively eradicated. Lately, international cooperation at the level of competent bodies has been reflected not only in the adoption of conventions or directives in combating serious crimes such as money laundering, organized crime, terrorism or corruption, but also in the creation of mechanisms to allow the rapid transmission of information and the imposition as soon as possible of the necessary measures to block criminal benefits as soon as possible. Criminal law enforcement and criminal procedural authorities must pay particular attention to tracing, identifying and evaluating, seizing assets in order to take precautionary measures from the first moments of starting the investigation. Placing the activity of repairing damage and recovering the proceeds of crime on a secondary level and not on the same level as the activity of tracking down and catching the persons who committed the crime, inevitably leads to its failure because criminals are given the necessary time to seize their assets, after learning that their criminal activity has been discovered. Without the application of precautionary measures, any financial investigation shall be devoid of purpose unless a measure is taken to freeze the property concerned, to avoid any further disposal of property and diminution of the assets of the person who committed the offence causing damage.

**Keywords.** precautionary measures, seizure, code, judicial bodies, attachment

### 1. General notions of precautionary measures

The compensation for damage is based on the provisions of Article 1357 of the Civil Code, according to which the person who causes damage to another through a wrongful act, committed with guilt, has the obligation to compensate it, but also the provisions of Article 14 paragraphs 1 and 2 of the Code of Criminal Procedure, according to which the civil action has as its object the bringing to civil liability of the defendant as well as of the civilly liable party and can be joined to criminal proceedings in criminal proceedings, by constituting the injured party as a civil party. The purpose of civil action in criminal proceedings is limited to the recovery of damage caused to the party injured by the crime.

Precautionary measures are real procedural measures, consisting in the freezing of movable and immovable property of the accused, defendant or other civilly liable party, but also of the amounts owed to them by any title by a third person or even by the injured party, for the purpose of special confiscation, extended confiscation, reparation of the damage caused by the crime, and by guaranteeing enforcement of the penalty of the fine.

### **1.1. Precautionary attachment**

As a general definition, precautionary attachment is a precautionary measure by means of which movable and immovable property are placed in the custody of a delegate of justice in order to eliminate the possibility of evading the general pledge owed by the debtor to the creditor. Where the payment of sums of money is the subject matter of the substantive dispute and depends on the seizure of movable and immovable property of the defendant debtor in order to guarantee the claimant the possibility of recovering his claim, attachment is a precautionary measure.<sup>1</sup> Attachment may also be granted if the debtor's claim is not due or the debtor evades prosecution with a view to wasting or concealing his property.<sup>2</sup> There are also reputable authors who see the precautionary attachment procedure as contentious. According to the latter opinion, the application for precautionary attachment forms part of the process and is one of the ways of having recourse to the protection of the law, used before the same court that also verifies the substantive claim, a way of achieving the fulfilment of the disputed right in time. Regardless of the theoretical solution, it should be noted that in the case of an application there are elements distinguishing between ordinary non-contentious and contentious proceedings. In this way, the judge is not called upon to decide the case by recognising the right of claim.

From the point of view of the legal nature of the seizure, the question of the representation of an enforcement act was raised. Therefore, starting from the main purpose of attachment to freeze some assets of the defendant-debtor, so that at the conclusion of the trial the plaintiff-creditor can continue to pursue to his satisfaction, then the attachment does not differ in its nature and defined attachment effects. This procedure represents the true anticipated execution that the law authorizes under certain guarantees.

However, it can be noted that the essential element of enforcement acts, such as the enforceable title and the specific purpose of the seizure, namely the forced sale of seized property, is missing. For these reasons, its characterisation is much closer to the nature of precautionary attachment, representing a form of civil action ancillary to the main claim whose aim of the main action, through the applicant, is the judicial protection of the claimant law.

The doctrine holds that in order to instruct the precautionary attachment, conditions are required, such as an ongoing lawsuit aimed at fulfilling the claim and depositing bails in the amount established by law or the court, as the case may be, and last but not least a claim that has reached the due date.

#### **Existence and establishment of an amount receivable**

If the creditor has an outstanding claim, established in a written document and not enforceable, he may apply for attachment of the debtor's movable and immovable property. Due to the fact that the claim is due and the need to establish it in writing, there are derogations from this rule.<sup>3</sup> The precautionary attachment is based on a clear, payable and liquid claim and is binding in any prosecution and the realisation of the claim must be easily fulfilled without requiring a thorough investigation. For this reason, it was decided that the written document should be understood only as the document establishing the claim from which it would appear, without the intervention of other circumstances, the elements of the legal relationship concluded

---

<sup>1</sup> Fodor M., Civil procedural law, volume I, Universul Juridic, Bucharest, 2006; volume II, Universul Juridic, Bucharest, 2007

<sup>2</sup> Magureanu F., Civil Procedural Law, 10th edition, Universul Juridic, 2008

<sup>3</sup> Magureanu F., Civil Procedural Law, 10th edition, Universul Juridic, 2008

between the parties, in particular the existence of the debt and the debtor's obligation to pay it, but the quality of the claim to be liquid and clear is required only in enforcement proceedings. The condition of clarity of a claim consists in its existence from the act of claim itself or other documents issued by or recognised by the debtor.

If such a condition were imposed, the institution of attachment would be rendered meaningless, because if the creditor had such a claim he would certainly resort to the order for payment procedure, without triggering a substantive dispute involving a longer time frame and higher costs until settlement.

Generally, the claim is compulsorily established in writing, but this does not overlap with the notion of a clear claim as defined in the Code of Civil Procedure. Therefore, consideration was given to the requirement of a finding of claim in writing also if the claim was recognised by means of a judgment following adversarial debates, which were not final because an appeal had been lodged against it which is suspensive of enforcement. Where the creditor claims a claim which cannot be submitted in writing, attachment shall be the debtor of the claim claimed, and attachment shall apply only in the case of the lodging of security equal to half the amount claimed.

In order to act, the petitioner must invoke an outstanding claim. However, interest in obtaining precautionary measures is justified if the claim has not reached its due date but it is found that the debtor reduces the debtor's assurances to repay the debt. Basically, the debtor is deprived of any time limit, and the creditor can file a summons against the debtor. This solution is supported by Article 1025 of the Code of Civil Procedure, according to which the debtor can no longer claim the benefit of the insolvency term or when the guarantees given to his creditor have been reduced.

### **Existence of a process**

The creditor must prove that he has filed the action for the realization of the claim claimed against the debtor, if he requests the work of precautionary measures. He must also prove his involvement in the process in order to realise his claim and the recognition of the enforceable title required for the debtor's enforcement. Thus, it will be ensured that the measure of freezing the assets of the alleged debtor will not be extended, will limit the duration of the substantive process.

In specialized practice, it is considered that the application, having as object the issuance of the payment solution, is not suitable for allowing the formation of a precautionary attachment.

The solution mentioned in view of the fact that it is adopted by the majority of courts is questionable from the perspective of its legality and expediency.

At present, the solution must necessarily take into account the reasons for which the legislature regulated the system of precautionary measures. It may be noted that the need to protect the creditor's rights also arises when he chooses the order for payment procedure in order to obtain an enforceable title against the debtor.

Even if the procedure for processing the application for issuing an order for payment is carried out as a matter of urgency, the debtor dissatisfied with the solution may annul the order for payment, and only in case of its rejection, the order admitting the order may be vested with the enforcement formula, according to the provisions of the Code of Civil Procedure. It is noted that between the moment when the creditor decides to act in order to obtain the enforceable title and the moment when he could objectively commence enforcement against the debtor, there is

a sufficient length of time for a malicious debtor to attempt to dispose of movable or immovable property in order to create a state of insolvency that will make it impossible to enforce the claim.

It is not fair that, when choosing a simple procedure for realising the claim, the creditor does not have procedural means to preserve his right against the risks arising from the duration of the legal proceedings initiated. Another argument advocating the adoption of a more flexible solution to this issue is also constituted by the fact that the order for payment procedure, as a whole, does not exclude an investigation into the substance of the legal relations between the parties, and therefore initially. If the debtor on whom an order has been ordered pursuant to Government Ordinance no. 5/2001 brings an action for annulment, the court hearing such an application will analyse its substantive defences against the creditor's claims, which means that the second phase of the procedure can no longer be characterised as lacking any analysis of the substance of the legal relations between the parties. The attachment measure may also be obtained if a bill of exchange process is initiated by way of opposition to the order for payment, filed by the alleged bill of exchange debtor.

The bill of exchange is an enforceable title and can only be enforced once it has been enforceable, so that, in principle, the creditor is not in an interest in taking precautionary measures. A debtor ordered to pay under an enforceable bill of exchange may file an objection with the district court that invested the bill of exchange with an enforceable formula. The opposition will initiate a real bill of exchange process in which the court will consider the conditions of validity of the bill of exchange. During the trial, the court will be able to suspend the execution of the bill of exchange only if the opponent does not recognize the signature, entering in forgery, or does not recognize the power of attorney. In this situation, the creditor will be able to request and obtain a precautionary attachment.<sup>4</sup>

As stated in legal literature, the provision of Art. 62 para. Article 5 of Law no. 58/1934 applies only if the creditor has not carried out any enforcement act against the debtor or, failing that, the suspension of enforcement does not affect the enforcement measures initiated, namely the enforcement attachment, attachment and registration of the order in the land register. The creditor is protected in terms of freezing the debtor's movable or immovable property or for the entire duration of the stay of enforcement and the bill of exchange process

### **Lodging of a security deposit**

The seriousness of the creditor's claim is proved by bail, which generates the debtor against possible damages, with possible suffering by freezing his assets, proving the substantive action brought by the creditor to be well founded, or even more exercised in bad faith. The situation in which the claim invoked is established by written document and there is no ascertainment of the claim but is distinguished from the procedural code.<sup>5</sup>

### **Time when bail is lodged**

The filing of an application for precautionary attachment is the moment when it was decided to file the action: if the law requires security to accept the application for attachment or precautionary attachment, the precautionary measure without bail cannot be ordered. The security deposited must be indicated in the conclusion granting the application, so that bail

---

<sup>4</sup> Dobrican Gh., *Civil procedural law: general principles and institutions*, Continent XXI Publishing House, Bucharest, 2003

<sup>5</sup> Dobrican Gh., *Civil procedural law: general principles and institutions*, Continent XXI Publishing House, Bucharest, 2003

cannot be lodged after attachment or attachment has been ordered in the court hearing the challenge to enforcement, because an eligible precautionary measure is conditional on a bail in the amount required by law.<sup>6</sup>

'Attachment without due bail shall be void, which cannot be stopped by the lodging or subsequent completion of the security.' This is the direct variant in other terms. From the point of view of this opinion, expressed in older case-law and literature, handing over the deposit or completion of bail after the initiation of attachment or precautionary attachment would disregard the system prescribed by law as a security. An application for attachment or precautionary attachment must meet the conditions required by law at the time of initiation. All legal considerations expressed in court practice and literature at the time of bail are largely valid. Those requirements at the time the bail is lodged remain valid only if the bail is fixed by law in terms of its amount, representing half of the claimant amount.<sup>7</sup>

The court takes over the situation in which the amount of the bail or the need to deposit it in Article 592, paragraph 2 of the Code of Civil Procedure (also applicable in matters of attachment) provides that the enforceable termination by which the court grants attachment will also determine the amount of the bail and the period within which it is to be lodged. In conclusion, bail is not first set and then time is given for the court to rule on the application for attachment, but by termination by which the application of the precautionary measure is initiated in which the bail is also established.

Paragraph 4 of the same article provides that failure to lodge bail within the deadline set by the court provides for the automatic termination of the attachment. The condition of lodging the security provides for the abolition of the compulsory measure and is established by the irrevocable conclusion, given without summoning the parties.<sup>8</sup>

### **Procedure for the establishment of precautionary attachment and its enforcement**

Precautionary attachment is a measure ancillary to a substantive action, from which the determination of the competent court proceeds and, as a state according to the fundamental principle, follows the fate of the principal. In legal literature, it has been held that because the acceptance or rejection of attachment involves investigating the basic term of the substantive process, the only way to avoid finding, assessing and characterizing the facts and acts of the case is to hand over both applications to the same body, to the court competent on the main application.<sup>9</sup>

The law shall determine the jurisdiction to deal with the application for attachment by the court hearing the proceedings on the merits of the creditor's claims. If the application for precautionary attachment is made at the same time as the substantive proceedings are before a higher court following the appeal, it will still apply to the first instance, even if it has disinvested itself in adjudicating on the merits of the claims. The material jurisdiction may lie with the court or tribunal, depending on whether the claim invoked by the creditor petitioner is up to RON 500000 or higher if the claim invoked in the main application for settlement of the attachment application rests with the district court if the amount of the claim is up to RON 100000 and the

<sup>6</sup> Măgureanu F., Civil procedural law: general principles and institutions, Continent XXI Publishing House, Bucharest, 2003

<sup>7</sup> Măgureanu F., Civil Procedural Law, 10th edition, Universul Juridic, 2008

<sup>8</sup> Tăbărcă M., Buta Gh., Code of Civil Procedure commented and annotated with legislation, jurisprudence and doctrine, Universul Juridic, Bucharest, 2007

<sup>9</sup> Dobrican Gh., Civil procedural law: general principles and institutions, Continent XXI Publishing House, Bucharest, 2003

tribunal if this amount is exceeded. Regulation of the Code of Civil Procedure, based on which the attachment application is addressed to the court hearing the trial and contains an aspect capable of generating different solutions in the practice of the courts. Rules applicable to the adjudication of an application for attachment, concerning the lodging of an application for precautionary attachment:<sup>10</sup>

a) principally where the action on the merits of the matter is no longer pending before the court having jurisdiction to hear and determine it at first instance by reason of an appeal or appeal

b) incidentally if it is made while the main proceedings are pending at first instance

c) as an ancillary claim if it is brought together with the action on the merits.

### **Enforcement of precautionary attachment**

The conclusion by which the court orders the precautionary attachment is enforceable and it is not necessary to invest it with an enforceable formula. The appeal is not suspensive of enforcement but, according to the rules applicable under ordinary law, the court of appeal may order suspension of enforcement of the conclusion by which the attachment measure was granted.<sup>11</sup>

The conclusion of precautionary attachment is carried out by the bailiff in accordance with the rules applicable to enforcement. This implies that the bailiff must take into account all the rules on the inalienability of some property. Since precautionary attachment is merely a measure aimed at keeping assets in the debtor's estate which contribute to satisfying the claim claimed by the creditor, it must be applied to assets capable of enforcement and to the extent to which they can be enforced.<sup>12</sup> The principle applicable to precautionary attachment is that assets will be seized only to the extent that the claim is satisfied. Prior to the amendment of the Code of Civil Procedure by GEO 138/2000, the precautionary attachment applies to all movable property of the debtor. Even if it was burdensome for the debtor, who saw his entire wealth seized for a debt less than the estimated value of his assets, the previous system tended to protect the creditor because it envisaged the situation in which other creditors appeared during the enforcement proceedings and significantly reduced the possibilities of satisfying the claim of the diligent creditor who requested and obtained the imposition of the precautionary measure.<sup>13</sup>

The acute law preferred the solution of seizure of assets only to the extent of satisfying the claim of the applicant for the precautionary measure, leaving the diligent creditor unprotected for the hypothesis of the appearance of other creditors in the course of the forced prosecution procedure.

### **Effects of precautionary attachment**

Precautionary attachment is a measure to preserve the claim, removing the danger for the creditor that the debtor will dispose of assets that could be pursued after the enforcement title is obtained. Therefore, the main effect of precautionary attachment is the freezing of movable or immovable property seized. Throughout the seizure, the debtor has the obligation not to dispose of the assets because the alienation would be unenforceable against the creditor,

---

<sup>10</sup> Deleanu I., *Treatise on Civil Procedure*, fourth edition, Servo-Sat Publishing House, Arad, 2004

<sup>11</sup> Dobrican Gh., *Civil procedural law: general principles and institutions*, Continent XXI Publishing House, Bucharest, 2003

<sup>12</sup> Deleanu I., *Treatise on Civil Procedure*, fourth edition, Servo-Sat Publishing House, Arad, 2004

<sup>13</sup> Dobrican Gh., *Civil procedural law: general principles and institutions*, Continent XXI Publishing House, Bucharest, 2003

and if the debtor is also a custodian, he commits the crime of stealing the seized assets in competition or not with the one of breaking seals, depending on the type of seizure.<sup>14</sup>

In principle, attachment does not have the effect of depriving the debtor of the possibility of using the seized assets. This can only happen if the bailiff considers that there is a danger that the debtor will dispose of, substitute or damage the seized property and take the measure of sealing or even removing the property at the creditor's expense, in accordance with Section 419(2) and Section 420 of the Code of Civil Procedure.<sup>15</sup>

It can be noted that the effect of the precautionary attachment is much more energetic in the case of real estate because the mention made in the land book regarding the imposition of precautionary measures becomes opposable to any subsequent acquirer of that property, who cannot oppose a possible forced prosecution, initiated by the person who obtained the seizure, namely the debtor.<sup>16</sup>

In the case of movable property, the effectiveness of attachment stems from the debtor's fear of being charged with the crime of absconding and breaking seals, if necessary.

### **Termination of precautionary attachment**

In principle, precautionary attachment lasts for the entire duration of the substantive process. If the main claim on the basis of which a precautionary measure was granted has been annulled, rejected or awarded for the invocable decision, or if the claimant has waived its proceedings, the debtor may request that the measure be lifted by the court which was due to it and the termination of the dispute must necessarily be total and effective.

The appellant's protection shall continue throughout the appeal proceedings. The seizure may be lifted both before the application on the merits is rejected, pursuant to Section 594 of the Code of Civil Procedure.<sup>17</sup>

If the debtor has provided sufficient security, at his request, the court will lift the precautionary attachment. The application is settled in the Chamber of the Emergency Council, but summons the parties in a short time, by a conclusion subject to appeal within 5 days from the pronouncement. The appeal will be heard urgently and in particular. The court may order the lifting of the precautionary measure by the same conclusion in which the statement of the guarantor or that of the debtor who offered an asset for guarantee was noted. The creditor's appeal against the conclusion ordering the lifting of the attachment despite sufficient security shall not be suspensive of enforcement. The measure of precautionary attachment may also be terminated if the conditions of Article 592 of the Code of Civil Procedure are complied with, because failure to lodge bail within the time limit set by the court entails the automatic abolition of the attachment. The situation of non-lodging of bail is established in court by irrevocable conclusion, but without summoning the parts.

---

<sup>14</sup> Deleanu I., *Treatise on Civil Procedure*, fourth edition, Servo-Sat Publishing House, Arad, 2004

<sup>15</sup> Tăbărcă M., Buta Gh., *Code of Civil Procedure commented and annotated with legislation, jurisprudence and doctrine*, Universul Juridic, Bucharest, 2007

<sup>16</sup> Magureanu F., *Civil Procedural Law*, 10th edition, Universul Juridic, 2008

<sup>17</sup> Tăbărcă M., Buta Gh., *Code of Civil Procedure commented and annotated with legislation, jurisprudence and doctrine*, Universul Juridic, Bucharest, 2007

## **1.2 Judicial attachment**

Judicial attachment consists of the freezing of disputed assets and is entrusted to administration and safekeeping, during the trial, usually to a third person. Articles 598 to 601 of the Code of Civil Procedure regulate the institution of judicial attachment.<sup>18</sup>

The court having jurisdiction to hear the main claim may, only at the request of the party concerned, allow the attachment of assets, only if this measure is considered necessary to preserve the right, whenever there is a lawsuit over property or over the administration of property, common property.<sup>19</sup>

The institution of judicial attachment and precautionary attachment differ in purpose and procedure. The purpose of judicial attachment is to preserve the property as the object of litigation between the parties, while the purpose of precautionary attachment is to freeze the debtor's assets, this time which is not the object of judgment.

From a procedural point of view, an application for judicial attachment can only be dealt with by summoning the parties.

### **Conditions for judicial attachment**

In order for judicial attachment to be granted, the following conditions must be met:

- a) the existence of an aspect regarding the possession of the property forming the object of judgment or its property
- b) finding a measure necessary by the court in order to preserve that right
- c) the plaintiff must lodge a bail

### **Existence of a substantive process and characteristics of the substantive dispute**

In order to be able to institute judicial attachment, it is necessary to have a lawsuit regarding the ownership of another main right in rem or the possession of common property, from which it follows that the measure of judicial attachment concerns movable or immovable property in connection with which a lawsuit is pending.

The judge is entitled to an assessment of the necessity of a seizure measure and may reject the application if it is not necessary.

### **Lodging of a security deposit**

The lodging of security results in judicial attachment. Bail is the amount of money offered by the person requesting seizure, which guarantees that the person seized will not suffer moral damage and ensures that the application is not made in bad faith or for unjustified reasons. The bail shall be recorded in the name of the defendant by depositing specified sums of money at the disposal of the judicial body or by lodging a collateral, movable or immovable, at the limit of a specified amount of money, in favour of the same judicial body. The amount of the bail is at least 1000 lei and is determined in relation to the seriousness of the accusation brought against the defendant, the material situation and the legal obligations he has. Last but not least, law, interest, legal capacity and standing are general conditions for taking the seizure measure

### **Rules applicable to the trial of an application for judicial attachment**

Any party to the dispute may apply for judicial attachment. The application will be heard

---

<sup>18</sup> Tăbărcă M., Buta Gh., Code of Civil Procedure commented and annotated with legislation, jurisprudence and doctrine, Universul Juridic, Bucharest, 2007

<sup>19</sup> Magureanu F., Civil Procedural Law, 10th edition, Universul Juridic, 2008

by a single judge and attachment will be instituted only when it is considered that there are good reasons for taking such a serious decision for the defendant.

Such a situation may arise where one of the persons in dispute damages an asset or deprives the other of the reward due on account of the community property.

### **Enforcement of the conclusion ordering judicial attachment**

If the court orders the plaintiff to pay bail and sets a time limit for doing so, the conclusion will be made on the date of lodging the bail.

The application for seizure is settled by the competent court, and after its conclusion it will be registered with the Land Registry. As an exception, attachment may also be granted on assets over which there is no trial, namely assets offered by the debtor in exchange for his release or movable property representing the creditor's security if he fears that the debtor will waste or consume the wealth.

The settlement of the application is contentious because it is done only by summoning the parties. If the court considers that the application is well founded for genuine reasons, by conclusion it will appoint a sequestration administrator who will take care of the seized assets, but only with the consent of the parties, and if they reach a common agreement, the administrator will be appointed by the judge. The depositary, as the sequestered administrator is also called, has the obligation to take care of the assets for safekeeping as his own property. He can also deal with the preparation of documents, but last but not least with the collection of income in respect of the seized property.

If a person other than the holder has acted as depositary, he or she will be remunerated with the amount determined by the court.

The decision regarding the approval of the assets of the sequestration administrator is taken by the president of the court with the purpose of preserving the patrimony, who also has the possibility to judge the application for judicial attachment, only in cases of maximum necessity and urgency.

It is noted that the appointment of the depositary is provisional and ends irrevocably, without summoning the parties, and is temporary in nature until the application for judicial attachment is resolved.

## **2. Restitution of things and return of the previous situation**

### **2.1 Termination of judicial attachment**

Once the decision on the merits has been determined to be final, the judicial attachment ends and the preserved property will be handed over to the winning party. If the receiver took part in the proceedings and won it, he or she will continue to retain the property or proceeds received during the trial.

If the property has been destroyed or the person to whom it was entrusted has died, the measure of judicial attachment may cease, and if the depositary is unable to administer the property or bad faith is suspected on his part following the on-the-spot expertise, it may be replaced.

The application for a change of attachment administrator shall be subject to the rules applicable when the attachment was instituted.

A request for replacement of the administrator due to reasons subsequent to his appointment shall not constitute an appeal against the termination of the appointment.

Where the closure has been effected by the court of appeal after modification of the judgment rejecting the attachment application, jurisdiction to replace the depositary shall also

lie with the competent court and the application for attachment of an independent nature shall be heard at first instance.

Judicial attachment may not end with bail being offered by the party against whom it was ordered. The right granted to the party concerned to remove the seizure of property by providing security is recognised only in the material of the precautionary attachment.

The parties who contributed to the appointment process may agree on the lifting of judicial attachment by submitting an application to the court, followed by summoning the parties and taking note of their agreement. If the attachment is terminated or the depositary is replaced, the acts performed by the depositary appointed by the competent court shall continue to have effect.

### **2.2 Seizure report**

The seizing body shall draw up a report of all acts carried out in accordance with the law, describing in detail the seized assets, indicating their value. The objections of the suspect or accused person or civilly liable party and other interested persons shall also be recorded. The minutes state that the persons involved have been notified that movable or immovable property may be realised with or without the consent of the owner, if the legal conditions are met. A copy of the report shall be handed over to the person on whose property the seizure was applied, and in its absence, it shall be handed over to the family or administrator. A copy shall be forwarded to the judicial body which ordered the taking of precautionary measures within 24 hours of its conclusion. In the case of immovable property seized, the public prosecutor, the judge of the preliminary chamber or the court which ordered the attachment shall ask the competent body for a mortgage notation of the seized property, attaching a copy of the order or conclusion ordering the attachment and a copy of the attachment report.<sup>20</sup>

### **3. Garnishment**

As a general definition, attachment is the precautionary measure by means of which valuable securities, sums of money or other traceable assets that are owed to the debtor by a third person for the purpose of being returned are seized.

It can be said that it is one of the simplest forms of realization of receivables, which is why in the practice of specularity it is common.

Attachment usually has three subjects of law and three legal reports. The creditor who is called the garnishing creditor, the debtor called the garnished debtor and the garnished third party.

As mentioned above, three legal relationships are founded, namely the debt relationship between creditor and debtor, another relationship of the same nature between debtor and third party and, last but not least, a procedural relationship between creditor and third party that can be transformed, depending on the case, into a debt relationship. At the orders of the executing body or of the judicial body that ordered the attachment, the receipts shall be recorded within 5 days of the due date, after which they shall be handed over to the judge, prosecutor or court within twenty-four hours of recording.<sup>21</sup>

---

<sup>20</sup> Anane Ivan, *Elements of computerized evidence of the person*, Pro Universitaria Publishing House, Bucharest, 2015

<sup>21</sup> Anane I., *Elements of Criminal Procedure Law*, Pro Universitaria Publishing House, Bucharest, 2015

### **The importance of garnishment**

Attachment is of particular importance because it facilitates the tracking of key elements of a natural person's patrimony such as salary, remuneration for the exercise of trades, income from work, pension or copyright.

Regarding legal entities, the realization of receivables is fulfilled much faster due to the obligations they hold regarding the monetary assets to be deposited in a banking institution, and the payment of expenses will be made only by bank transfer.

Attachment is precautionary in nature and allows non-enforceable creditors to apply for attachment when the action is brought.

When the creditor obtains an enforceable title, the garnished amounts will be paid.

The difference between the precautionary measures presented in this paper refers to the fact that attachment is applied when there are movable or immovable things in the debtor's possession, and attachment is applied when the value is in the hands of the third party.

### **Subjects of attachment**

In order to be considered, the three subjects must necessarily participate in the garnishment process<sup>22</sup>:

- Garnishing creditor
- Garnished debtor
- Third part garnished

Before attachment can be established, there must be legal relations between the three parties between the creditor and the debtor, but also between the debtor and the third party.

In the specialized literature, a 4-subject attachment was claimed in which the creditor requested the attachment of amounts owed by a debtor of the pursued debtor.

### **Object of attachment**

Securities, sums of money or other property owed to a debtor by a third party may be subject to attachment.

There are several categories of property that may be subject to attachment, as follows:

➤ Intangible movable property represented by an action characterised by the value incorporated in the security which is assimilated to movable property or by shares or obligations conferring on the shareholder a claim on possible dividends which may form the subject of precautionary or enforceable attachment

- Current account
- Credit opening
- Possible rights
- Attachment in bills of exchange
- Values put in a safe house
- Lodging of bail for the purpose of obtaining a precautionary measure or

suspension of judicial enforcement.

---

<sup>22</sup> Ciobanu V.M., .Boroi Gh., Civil procedural law. Selective course. Grid tests, 3rd edition, All Beck Publishing House, Bucharest, 2005

## **Conditions under which the measure of precautionary attachment may be taken**

### **1. Existence of a process**

In the case of a creditor without an enforceable title, attachment may be requested only where it is proved that he has brought an action for recognition of his claim against the debtor. This rule follows from a combined reading of Articles 591 and 597(2) of the Code of Civil Procedure because the relative provisions apply accordingly to precautionary attachment. The attachment application will be accompanied by proof of the existence of the pending lawsuit.

### **2. Obligation to lodge a security<sup>23</sup>**

The applicant for the precautionary attachment measure must have an outstanding claim against the garnished debtor in order for it to be granted. In order to be successful, the application for attachment must be made by the creditor of the garnished debtor.

### **3. Existence of a claim by the garnished debtor against the garnished third part**

When granting a precautionary attachment, the court must take into account the condition that there is a claim by the debtor against the garnished third party.

## **Procedure for dealing with the application for precautionary attachment. Competent court.**

In restoring the problem of the competent court, the application for precautionary attachment is ordered, from the reality in which the application on the merits of the case is provided for in the provisions of Article 17 of the Code of Civil Procedure. The court of domicile or seat of the garnished debtor are the two courts with territorial jurisdiction. The district court is the only court competent in the material of enforcement in terms of material jurisdiction.<sup>24</sup>

## **Procedure for resolving the application for precautionary attachment**

According to the procedure provided by the Code of Civil Procedure for precautionary attachment, the application for precautionary attachment is settled. In this case, the procedure provided for is non-contentious and may be supplemented by provisions of Articles 331 to 339 of the Code of Civil Procedure.<sup>25</sup>

Without summoning the parties, the court will hear the emergency application in council chamber, which is considered to be a surprise measure. Twenty-four hours is the maximum period within which delivery may be postponed and the closing drafting no more than forty-eight hours after delivery, the rules for drafting and delivering the order apply. The court's decision will be made by means of an enforceable conclusion. By terminating the attachment, the court orders the garnished third party not to pay the amount owed to the creditor or the court will also rule on the amount of the security and the period within which it must be deposited.<sup>26</sup>

## **Appeals**

The appeal of the appeal is 5 days from service and can be filed only against the conclusion of the settlement of the application, and the appeal will be heard as a matter of urgency by summoning the garnished third party and the parties.

---

<sup>23</sup> Oprina E., *Forced execution in civil proceedings*, Universul Juridic, Bucharest, 2007

<sup>24</sup> Mau accesptată de către deagureanu F., *Civil Procedural Law*, 10th edition, Universul Juridic, 2008

<sup>25</sup> Tăbărcă M., Buta Gh., *Code of Civil Procedure commented and annotated with legislation, jurisprudence and doctrine*, Universul Juridic, Bucharest, 2007

<sup>26</sup> Zilberstein S., Ciobanu V.M., *Forced Execution Treaty*, Lumina Lex Publishing House, Bucharest, 2001

### **Effects of the establishment of garnishment**

According to the attachment set by the bailiff, the garnished third party will be prohibited from making payments into the hands of the debtor.

The valid payment cannot be opposed to the garnishing creditor, the latter having the possibility of ordering the garnished third party to compensate him within the limits of the damage suffered. Article 1099 of the Civil Code results in the solution, namely the payment made by the debtor to the creditor or following an attachment or opposition, is invalid for the creditor, who may, by virtue of their right, force him to pay it again.

### **Freezing of sums due to the garnished debtor**

The amount owed to the creditor does not have to be paid by garnishment of the garnished third party. Therefore, the claim seized by the insurer cannot be extinguished by means of compensation. The garnished third party cannot oppose the garnishing creditor after the attachment was established, i.e. at a time when the garnished third party was already unable to make the payment viably. In prejudice to the right acquired by another person, compensation does not occur, according to Article 1152 of the Civil Code.

### **Discharge of debt**

The discharge of debt which the debtor may make in respect of the garnished third party shall be prohibited for the same reasons as for which compensation or payment is not accepted. The garnished debtor cannot grant the garnished third party a period of payment, which is equivalent to partial discharge of the debt despite the attachment initiated by the insurer who has the right to consent to a reduction of the debt if the reduction is prior to attachment.

### **Assignment of claim**

The attachment has as effect the indispensable claim attached, the assignment made only after the attachment cannot be enforced against the creditor who has already established the attachment. If the assignment is prior but has been modified or accepted by the debtor, in this case, the solution is applicable.<sup>27</sup>

### **Payment made by the garnished third party between two attachments**

Payment made by a third party garnished pursuant to an initial attachment, after payment the seizure of the claim creates effects such as the example of a situation where a total payment is made which cannot be enforced against the first creditor who initiated the attachment and, as another example, where a partial payment is made, the attachment established after payment may be valid in respect of the unpaid remainder of the total claim.

### **Limits of freezing**

The unavailability of the total amount is one of the serious situations if the debt to the creditor would be much lower. The application of total unavailability would be the application of attachment, where assets are retained only to the extent that the claim is fulfilled.

### **Rights of the garnished debtor during precautionary attachment**

Attachment may not limit the garnished debtor when he manages his property. The debtor is not prevented from incurring new debts when, by the effect of setting up the attachment, either precautionary or enforceable.

### **Enforcement of insurance garnishment**

It is the court that orders precautionary attachment by means of an enforceable conclusion. In order to be enforceable, it is not mandatory to invest with an enforceable formula

---

<sup>27</sup> Fodor M. , Civil procedural law, volume. I, Universul Juridic, Bucharest, 2006, volume II, Universul Juridic, Bucharest, 2007

because Article 374 paragraph 1 of the Code of Civil Procedure exempts from the condition of vesting with an enforceable formula.<sup>28</sup>

The question is whether, in the event of enforcement of precautionary attachment measures, the creditor is obliged to use the services of a bailiff. In order to be effective, the attachment must be carried out with the help of the bailiff, there is a possibility that in the time elapsing between the date of service of the cessation by which the attachment measure was handed over and the date of transmission by the bailiff to the address of initiation of attachment of the garnished third party and to make payment by the garnished debtor.

#### **Termination of the precautionary attachment measure and completion of the substantive process**

The attachment will end with the annulment, obsolescence and rejection by means of the irrevocable decision of the main application, where it was granted or if the person who made it has waived its judgment. In these situations, the debtor may ask the court to lift the measure, and the court will rule on the application by irrevocable termination given without summoning the parties.<sup>29</sup>

#### **Provision of sufficient guarantees**

If the debtor gives sufficient security, the attachment measure ceases. However, the debtor will apply to the court that ordered the attachment. The application shall be settled in the council chamber, as a matter of urgency, summoning the parties.

#### **Failure to post bail fixed by the court**

The measure of attachment ends when the creditor has omitted to deposit the security in the amount and terms fixed by the court, by ceasing to order the measure.

#### **Deprecation**

The precautionary measure is actually the measure of attachment, and not an act of execution that does not cease by obsolescence. There is an opinion that within six months of initiating the right to apply for enforcement to the creditor, it does not communicate certified copies of the enforcement order to the garnished third party in order to fulfil its obligations.

#### **References**

- [1] Anane Ivan, Elements of computerized evidence of the person, Pro Universitaria Publishing House, Bucharest, 2015;
- [2] Anane Ivan, Elements of criminal procedural law, Pro Universitaria Publishing House, Bucharest, 2015;
- [3] Anane Ivan, Investigation of criminal investigation bodies, Pro Universitaria Publishing House, Bucharest, 2014;
- [4] Anane Ivan, Management of criminal prosecution bodies, Pro Universitaria Publishing House, Bucharest, 2014;
- [5] Boroi G., Civil procedural law. Course notes, vo lumele I și II, Romfield Publishing House, Bucharest, 1993;
- [6] Buzescu Gheorghe, Elements of Public Order, Pro Universitaria Publishing House, Bucharest, 2016;
- [7] Buzescu Gheorghe, Particularities of contravention law, Sitech Publishing House, Craiova 2017;

---

<sup>28</sup> Oprina E., Forced execution in civil proceedings, Universul Juridic, Bucharest, 2007

<sup>29</sup> Magureanu F., Civil Procedural Law, 10th edition, Universul Juridic, 2008

- [8] Buzescu Gheorghe, Place and role of the civil servant in the state apparatus, Sitech Publishing House, Craiova, 2017;
- [9] Buzescu Gheorghe, Police Law - University Course, Sitech Publishing House, Craiova, 2019;
- [10] Boroi G., "*The civil procedure code commented and annotated*", volumul I, Editura "All Beck", Bucuresti, 2001;
- [11] Deleanu I., *Civil procedural treaty*, ediția a IV-a, Editura Servo-Sat, Arad, 2004;
- [12] Dobrican Gh., *Civil procedural law*, Editura Continent XXI, București, 2003;
- [13] Deleanu I., *Civil procedural treaty*, volumele 1 și 2, Editura All-Beck, București, 2005;
- [14] Fodor M., *Drept procesual civil*, volumul I, Editura Universul juridic, București, 2006, volumul II, Editura Universul Juridic, București, 2007;
- [15] [Magureanu F.](#), *Civil procedural lawl*, ediția 10, editura Universul Juridic, 2006;
- [16] Tăbârcă M., Buta Gh., *Civil procedural code commented and annotated with legislation jurisprudence and doctrine*, Editura Universul Juridic, București, 2007;
- [17] Tăbârcă M., *Civil procedural law*, volumele I și II, Editura Universul Juridic, București, 2005;
- [18] Zilberstein S., Ciobanu V.M., *Forced Execution Treaty*, Editura Lumina Lex, București, 2001;
- [19] Oprina E., *Enforced execution in civil process*, Editura Universul Juridic, București, 2007;
- [20] Ciobanu V.M., Boroi G., *Civil procedural law. Selective course*. ediția a 3-a, Editura All Beck, București, 2005;
- [21] Ciobanu V.M., *Theoretical and practical treatise on civil procedure*, volumul I, Editura Național, București, 1996, volumul II, Editura Național, București, 1997;
- [22] Ciobanu V.M., *Theoretical and practical treatise on civil procedure*, Ediția a I I -a , Editura "Na ț i o na l", 1998 ( worlds I si I I );
- [23] Romanian Constitution;
- [24] Criminal Code;
- [25] Code of Criminal Procedure;
- [26] Code of Civil Procedure.