



## LEGAL ISSUES OF SECURING A CLAIM IN CIVIL AND ECONOMIC CASES IN THE REPUBLIC OF UZBEKISTAN

Ibratova Feruza

Professor of Tashkent State Law University

Khushvaktov Shokhrukh

Yokubzhanov Umid

Students of Tashkent State Law University

### Abstract

The article discusses the concept of securing a claim, the procedure for applying security for a claim, measures to secure a claim, grounds for seizure of funds, and replacing one measure of securing a claim with another.

**Keywords:** securing a claim, seizure, protection of rights, suspension of the sale of property, court ruling.

### Introduction

Securing a claim is certain coercive measures applied by the court to the defendant and expressed in limiting his right to dispose of the material subject of the dispute. A set of measures that guarantee the implementation of a court decision in the event of satisfaction of claims. This institution protects the rights of the plaintiff in the event that the defendant acts in bad faith or when failure to take measures at all may lead to the impossibility of executing a judicial act.

The institution of securing a claim is aimed at protecting violated or disputed rights and legitimate interests of citizens and legal entities, which can only be implemented in the event of actual execution of a court decision. Securing a claim is allowed in any state of the case if failure to take measures to secure the claim may complicate or make it impossible to enforce the court decision.

Securing a claim is a procedurally determined activity of the court aimed at applying legal measures that guarantee the future execution of a court decision. We can say that provision is a kind of “protective” action that can be performed in any process and at any stage.

Depending on the subject of the dispute, claims are divided into claims for recognition, award, and transformation. Along with this, a group of claims is distinguished according to the nature of the interests being protected - personal claims, claims in





defense of public and state interests, claims in protection of the rights of other persons, class and indirect claims.

Measures to secure a claim are applied by the court of first instance upon the application of persons legally interested in the outcome of the case or on its own initiative, if failure to take them may complicate or make impossible the execution of the court decision. This formulation of the law allows us to draw a conclusion about the preventive and auxiliary nature of securing a claim in relation to enforcement proceedings. Considering that in most cases, an obstacle to the execution of a court decision (including decisions not related to the transfer of property) is the defendant's lack of property, the court, when considering a case when resolving a motion to secure a claim, must first of all analyze the financial situation of the defendant. The resolution of the issue of admitting security for a claim should not be influenced by such circumstances as the sufficiency or insufficiency of evidence presented by the plaintiff in support of the stated claims, since security for the claim is aimed at protecting the alleged violated right or legally protected interest of the plaintiff, regardless of whether it exists confirmed by a court decision or not. In this case, the legislator provides the defendant with remedies from the adverse consequences of the application of measures to secure the claim provided for in the Civil Procedural Code of the Republic of Uzbekistan and the Economic Procedural Code of the Republic of Uzbekistan.

The application of measures to secure a claim is not entirely connected with possible enforcement proceedings in the future. The use of security for a claim is also allowed in relation to claims for which enforcement proceedings are not initiated (for example, suspension of the sale of property in the event of a claim for release from seizure; suspension of collection under an executive document contested by the debtor in court). In this case, securing the claim is aimed at preventing the occurrence of negative consequences for the plaintiff until the dispute is resolved on the merits.

Measures to secure a claim may be taken by the court from the moment the proceedings are initiated until the court decision is made. When making a decision, the court may take measures to ensure the execution of a decision that is not subject to immediate execution, according to the rules established by Chapter 25 of the Civil Procedure Code of the Republic of Uzbekistan. In this case, the indication to allow enforcement of the decision is reflected in the operative part of the decision. The issue of securing a claim is resolved by the court hearing the case without notifying the defendant and other persons legally interested in the outcome of the case. An application for securing a claim is considered on the day of receipt, which facilitates the prompt resolution of this issue, and also prevents the defendant from committing actions aimed at concealing his property, reducing its value, and others.





In a ruling on the issue of securing a claim, the judge must indicate which measures to secure the claim are to be applied, as well as the grounds for applying or refusing to apply measures to secure the claim.

- 1) measures to secure a claim may be:
- 2) seizure of property, including funds belonging to the defendant and held by him or other persons;
- 3) prohibiting the defendant from performing certain actions;
- 4) prohibiting other persons from transferring property to the defendant or fulfilling other obligations in relation to him;
- 5) suspension of the sale of property in the event of a claim being filed to release it from seizure;
- 6) suspension of collection under a writ of execution contested by the debtor in court. The seizure of property consists of an inventory of property, a declaration of prohibition.

Dispose of it, and, if necessary, limit the right to use the property, seize it or transfer it for storage. Seizure of the defendant's funds located in banks and non-banking financial organizations is expressed in the suspension by these institutions and organizations of operations to write off and withdraw funds from the defendant's account within the amount specified in the court ruling. Seizure does not prevent transactions for crediting, depositing funds into the defendant's account, as well as disposing of funds in excess of the amount specified in the court ruling.

Actions in respect of which the court has the right to establish a ban on their commission may be of a different nature. These may be actions the legality of which is the subject of legal proceedings and which cause damage to the plaintiff. In this case, the prohibition to perform the contested actions prevents the occurrence of negative consequences for the plaintiff. The court may also establish a ban on the right to use the property that is the subject of the dispute, since the implementation of this right may lead to a decrease in the quality of the property, its destruction and other adverse consequences.

The prohibition against other persons transferring property to the defendant or fulfilling other obligations in relation to him is applied by the court in order to ensure the safety of property that, by law or agreement, must be transferred into the ownership of the defendant. If a claim for the release of property from seizure is accepted, the court is obliged to suspend the sale of this property and send a ruling to the body carrying out the sale. Challenging an executive document by a debtor in court is a mandatory basis for the court to suspend enforcement proceedings.



The decision to suspend collection is sent to the enforcement agency. The list of measures to secure a claim provided for in the Civil Procedural Code of the Republic of Uzbekistan and the Economic Procedural Code of the Republic of Uzbekistan is exhaustive. The court may simultaneously allow several measures to secure a claim so that the total amount of security does not exceed the price of the claim.

The court, allowing security for a claim, may require the plaintiff to provide security for possible losses for the defendant, which cannot be considered as a measure of security for a future claim, since security for a claim is possible only in relation to the brought claim. The Civil Procedure Code of the Republic of Uzbekistan and the Economic Procedural Code of the Republic of Uzbekistan do not regulate in detail the taking of measures to ensure possible losses for the defendant, therefore the court, allowing such security, must determine the mechanism for its implementation (amount of security, validity period and other issues).

Security for a claim may be changed or canceled by the court. It is permissible to replace one measure of securing a claim with another. The nature of the measures allowed by the court to secure the claim must correspond to the method chosen by the plaintiff to protect the violated right. In this regard, the plaintiff's introduction of changes to the content of the claim being considered by the court (for example, changing the subject of the claim) predetermines the right of interested parties to make an application to replace one measure of securing the claim with another.

The court has the right to cancel the security for the claim at any stage of the process before making a decision. When resolving the issue of canceling security for a claim, the court may take into account the evidence presented by the defendant indicating that there are no grounds for applying measures to secure the claim. The court must also assess the advisability of maintaining measures to secure the claim when issuing a ruling to suspend the proceedings, based on the specific circumstances of the case.

The court is obliged to cancel the measure of suppression of the claim if the defendant deposits the amount claimed by the plaintiff into the deposit account of the court. In case of refusal of the claim, as well as at the end of the trial without making a decision (termination of proceedings in the case, leaving the application without consideration), the court in its decision (ruling) may separately and not resolve the issue of canceling the chosen measures to secure the claim. In this case, the measures taken are maintained until the said court decisions enter into legal force. However, the court may, simultaneously with the adoption of a decision or after its adoption, make a ruling on the cancellation of measures to secure the claim. The defendant, after the decision in which the claim is rejected has entered into legal force, has the right to



demand from the plaintiff compensation for losses caused to him by measures to secure the claim, taken at the request of the plaintiff.

If the trial ends without a decision (termination of proceedings, leaving the claim without consideration), the defendant does not have the right to compensation for damages. A private complaint or a private protest may be filed against the court's ruling on issues of securing a claim.

If the determination to secure the claim was made without notifying the person who filed the complaint, the period for filing the complaint is calculated from the day when he became aware of it. Filing a private complaint or private protest against a ruling on securing a claim does not suspend the execution of this ruling. Filing a private complaint or private protest against a ruling to change or cancel the security for a claim, as well as to replace one measure of securing a claim with another, suspends the execution of this ruling.

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