

REVOCATION OF INTERIM MEASURES IN ARMENIAN ADMINISTRATIVE PROCEEDINGS: DISRUPTED PROCEDURAL BALANCE AND THE MEANS OF RESTORING IT

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Abstract. An interim measure (securing a claim) is a key institution safeguarding the right to effective judicial protection. At the same time, it must not be transformed into a punitive or coercive mechanism that undermines the procedural position of the party against whom it is ordered. It is, therefore, particularly important to determine which procedural instruments can prevent the unlawful imposition of an interim measure in administrative proceedings and, where such measure has already been granted, ensure its revocation, while preserving a fair procedural balance grounded in the principle of equality of arms.

Drawing on an analysis of relevant theoretical sources, legislation, and judicial practice, the article examines the development and legal nature of the institution of interim measures, identifies the conditions governing the lawfulness of its application, and considers the revocation of an interim measure as a procedural remedy for overcoming its unlawful imposition.

The authors put forward a number of scholarly and practical conclusions that may guide the further development of legislation and law-enforcement practice concerning the institution of interim measures, including its revocation.

Keywords - *preliminary measures of legal, inaudita altera parte, interim measures (securing a claim), errare humanum est, revocation of interim measures, principle of equality of arms, procedural balance, procedural law, principle of proportionality, legal deadlock.*

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I. Introduction

The right to effective judicial protection is a fundamental constitutional guarantee through which the principles of the rule of law and the primacy of human rights are given practical effect. It serves as a pivotal mechanism for safeguarding fundamental human rights and freedoms, ensuring not only their protection but also acting as an instrument to limit and balance public authority. Furthermore, this constitutional right is not characterized merely by formal access to justice – it also presupposes the effectiveness of the court as a state body vested with independent and impartial judicial power, the presence of which is indispensable for ensuring the full protection of an individual's rights.¹

In order to ensure the effectiveness of judicial protection, it is necessary that positive law provides for appropriate and adequate organizational and legal mechanisms commensurate with that right; otherwise, lacking any genuine possibility of implementation, the right will remain merely declaratory in nature.²

It follows that if the right to effective judicial protection serves as a guarantee for other fundamental rights and freedoms, then the existence of appropriate mechanisms is similarly necessary for the effectiveness of that right itself.

Among such mechanisms, preliminary measures of legal protection play a particularly important role. In administrative justice, these include the suspension of execution of a disputed administrative act, interim measure (securing a claim), the imposition of an attachment on the claimant's property in disputes involving public-law monetary claims³, and the suspension of the operation of a disputed normative legal act (or its disputed provision). Accordingly, in administrative proceedings these measures serve to protect not only the rights and legitimate interests of the claimant, but also those of the respondent, and, in certain cases, those of the public as well.⁴

Interim measure is a temporary judicial measure characterized by its unilateral nature. In other words, it is applied through a special procedural mechanism based on the principle of “without hearing the other party” (*inaudita altera parte*).⁵

¹ Decision of the Constitutional Court of November 11, 2025, No. SDO-1802

² Decision of the Constitutional Court of May 19, 2026, No. SDO-1828

³ Although, in Decision No. SDO-1725 of April 16, 2024, the Constitutional Court identified three types of preliminary legal protection measures, including the attachment of the claimant's property, which it treated as falling within the institution of interim measure, this measure in fact falls outside the logic of interim measure and is of an independent character.

⁴ Khachikyan, T., Bedevyan, H., Gharslyan, A., Markosyan, T., Khundkaryan, Ye., & Hovhannisyan, V., *Administrative Procedure of the Republic of Armenia*, Book I (Yerevan: Hayrapet Publishing House, 2022), p. 350.

⁵ Selkova A.A., *The Institution of Interim Measures in the Procedural Legislation of Russia and England: A Comparative Legal Aspect*, Ph.D. dissertation, Yekaterinburg, 2018, pp. 190-191

On the other hand, the nature of the addressee of an interim measure in administrative proceedings – namely, the fact that the addressee is a public authority – makes apparent not only that such a measure constitutes an interference with that body, but also that such interference touches upon the public interest, given that the activity of a public authority is directed toward the realization of the public interest.⁶

Furthermore, a decision on interim measure is not subject to immediate appeal, while the administration of justice, including the application of interim measure, is carried out by human beings, to whom error is inherent (*errare humanum est*).⁷ This problem is further accentuated by the fact that the conditions for applying interim measure are not clearly defined in procedural law.

Within this context, it becomes particularly important to determine what instruments can prevent and remedy instances of unlawful application of interim measures in administrative proceedings, thereby ensuring the procedural balance between the parties.

II. The General Characteristics of Interim Measures and the Conditions of Lawfulness of Its Application

In procedural law scholarship, interim measures have traditionally been regarded as procedural acts undertaken by the court to ensure the enforcement of the judgment ultimately rendered in the case.⁸

This indication was generally consistent with the procedural legislation previously in force. In particular, prior to the entry into force of the former Administrative Procedure Code⁹, proceedings arising from public law relations, including matters of interim measure, were governed solely by the former Civil Procedure Code¹⁰. Pursuant to Article 97(1) of the Civil Procedure Code, the court, upon the motion of a party to the case or on its own initiative, shall apply interim

⁶ E.g., Decision of the Court of Cassation of April 13, 2023, in administrative case No. VD/2355/05/20

⁷ Markosyan T.A., Proceedings for the Review of Judicial Acts Based on Newly Discovered Circumstances in Civil Procedure, Yerevan: YSU Press, 2013, p. 8.

⁸ E.g., Petrosyan R.G., Civil Procedure of the Republic of Armenia (ed. Doctor of Legal Sciences L.Z. Tadevosyan), Fourth Edition, Yerevan: "Voskan Yerevantsi" Publishing House, pp. 261–262; Civil Procedure / Abushenko D.B. et al.; ed. V.V. Yarkov, 7th ed., revised and supplemented, Moscow: Wolters Kluwer, 2009, p. 301; Vlasov A.A., Civil Procedure: A Textbook for Undergraduates, 4th ed., revised and supplemented, Moscow: Yurait Publishing, 2012, p. 278; Zhenetl S.Z., Nikiforov A.V., Civil Procedure: A Textbook, 3rd ed., Moscow: RIOR: INFRA-M, 2012, pp. 105-106.

⁹ Adopted November 28, 2007. Repealed January 7, 2014. RA Official Gazette 2007.12.19/64(588), Art. 1300.

¹⁰ Adopted June 17, 1998. Repealed April 9, 2018. RA Official Gazette 1998.09.09/20(53).

measures if failure to do so may render impossible or impede the enforcement of a judicial act.¹¹

In essence, this legal framework persisted even after the entry into force of the former Administrative Procedure Code, since Article 88 thereof provided that, in the course of the examination of cases before an administrative court, the application of an interim measure was to be carried out on the grounds and in the manner established by the Civil Procedure Code

In this regard, it is worth recalling the position of M.Yu. Starilov, who rightly observed that the judicial nature of preliminary protection measures in administrative proceedings is rooted in the theory and normative framework governing interim measures in civil procedure. Furthermore, according to the author, in the absence of corresponding norms in administrative procedure, the relevant provisions of civil and arbitration procedure may be applied.¹²

This leads to the conclusion that the institution of interim measures in civil procedure is of a foundational nature, by virtue of which the procedural theories, concepts, and approaches developed around it can be presumed applicable in administrative justice as well, insofar as they do not contradict the distinctive features inherent in administrative proceedings.

This approach has also been implicitly endorsed in judicial practice. That is to say, even under the new RA Administrative Procedure Code¹³, where the relations concerning an interim measure are regulated separately and no reference is made to the new RA Civil Procedure Code¹⁴, the Constitutional Court and the Court of Cassation nonetheless develop their analyses with regard to the positions expressed in relation to the institution of interim measures under civil procedure. Thus, for example, the Constitutional Court, in examining the question of the constitutionality of the relevant articles of the Administrative Procedure Code, relied, among other things, on the position recorded in Decision No. SDO-1561 of November 24, 2020, concerning the provisions on interim measures under the. Similarly, the Court of Cassation, in a number of administrative cases, has referred

¹¹ Since 2022, the possibility of deterioration of the condition of the property that is the subject matter of the dispute has also been provided for as a ground for interim measure.

¹² Starilov M.Yu., Preliminary Protection Measures in an Administrative Claim as a New Procedural-Legal Institution: From the Civil Process to the Administrative, *Journal of Administrative Justice*, 2017, No. 1, pp. 71, 73.

¹³ Adopted December 5, 2013. Entered into force January 7, 2014. RA Official Gazette 2013.12.28/73(1013).1, Art. 1186.1.

¹⁴ Adopted February 9, 2018. Entered into force April 9, 2018. RA Official Gazette 2018.03.05/16(1374), Art. 208.

to the approach formulated with respect to the institution of interim measures in its decision of November 27, 2015 in civil case No. EKD/1807/02/13.¹⁵

At the same time, it is important to note that the evolution of the domestic legal framework governing interim measures reflects a significant transformation and a substantive expansion of the institution. In particular, with the adoption of the Civil Procedure Code, the statutory grounds for granting interim measures were expanded to include situations where the failure to grant such measures could result in a change in the factual or legal status of the property forming the subject matter of the dispute or cause substantial harm to the person filing the motion.

Notably, these grounds were incorporated into the Administrative Procedure Code only in 2024¹⁶, following a considerable delay. This amendment made it possible to grant interim measures not only in actions seeking enforcement but also in respect of declaratory claims and adverse circumstances unrelated to the enforceability of a judicial act, while, on the other hand, eliminating the institutional incongruity between the Civil Procedure Code and the Administrative Procedure Code. Unlike its predecessor, the Administrative Procedure Code no longer referred to the provisions of the Civil Procedure Code; instead, it established its own regulatory framework, which, as noted above, corresponded to the grounds for granting interim measures contained in the version of the former Civil Procedure Code that was in force prior to 2002.

It is worth emphasizing that this expansion in the purpose of interim measure application is also reflected in the Constitutional Court's case law, which can be summarized as follows:

1. *“The significance of the institution of interim measures lies in the fact that, on the one hand, it constitutes one of the legislative guarantees for the protection of individual rights, safeguarding the claimant's legitimate interests in situations where the respondent may act in bad faith or where the failure to grant interim measures may render the enforcement of the future judicial act impossible, and, on the other hand, as a procedural act performed by a court pursuing the objective of ensuring guarantees for the enforcement of the judgment to be rendered in the case.*

Accordingly, the institution of interim measures is intended, through measures adopted in advance by the court, to protect the rights and legitimate interests of participants in the proceedings from potential adverse consequences and to secure

¹⁵ E.g., decisions of the Court of Cassation in administrative case No. VD/3731/05/20 of December 27, 2022; No. VD/10849/05/21 of March 7, 2023; No. VD/6321/05/23 of September 25, 2024; and No. VD/14113/05/25 of May 15, 2026

¹⁶ Adopted May 2, 2024. Entered into force May 30, 2024. Unified Website 2024.05.13-2024.05.26. Official publication date: May 20, 2024.

the genuine and full restoration of their infringed rights, thereby ensuring the effective exercise of the constitutional right to effective judicial protection”¹⁷;

2. *“Addressing the objectives pursued by the above-mentioned preliminary legal protection measures provided for by the Code, the Constitutional Court finds that these are: (1) ensuring the effective enforcement of a judicial act (including preventing the impossibility of enforcing a judicial act), and (2) **preventing the occurrence of irreversible consequences for the claimant**”¹⁸;*

3. *“[...] This institution constitutes a temporary procedural measure ordered by the court to ensure the conditions necessary for the effective enforcement of the judgment ultimately rendered in the proceedings and to **prevent potential infringements of the rights and legitimate interests of the participants in the proceedings**”.*¹⁹

Thus, it must be noted that the institution of interim measures has undergone a significant conceptual transformation. Whereas its original purpose was confined to preventing the impossibility or undue difficulty of enforcing a future judicial act, the institution now also serves to prevent adverse consequences unrelated to the enforceability of that act but capable of adversely affecting the rights and legitimate interests of the claimant. In this way, it ensures the effective attainment of the objective pursued through judicial protection.

However, this expanded purpose of the institution of interim measures does not, in itself, justify restrictions on the rights and legitimate interests of the opposing party or, in the context of administrative proceedings, on the public interest. Accordingly, the conditions that must be satisfied before a court may lawfully grant interim measures require separate consideration.

In legal scholarship, these conditions are conventionally divided into two categories. The first comprises the procedural requirements applicable to a motion for interim measures, such as the individuals entitled to submit the motion and the procedure governing its submission. The second encompasses the substantive conditions governing the granting of interim measures themselves.²⁰ While procedural legislation contains relatively detailed provisions regarding the first category, it is, with respect to the second, largely confined to prescribing the statutory grounds for granting interim measures together with only limited indications concerning the relevant conditions.

¹⁷ Decision of the Constitutional Court of November 24, 2020, No. SDO-1561.

¹⁸ Decision of the Constitutional Court of April 16, 2024, No. SDO-1725

¹⁹ Decision of the Constitutional Court of November 11, 2025, No. SDO-1802

²⁰ Starilov M.Yu., Preliminary Protection Measures in Administrative Proceedings in Courts of General Jurisdiction: Ph.D. dissertation: 12.00.14, Voronezh, 2020, pp. 131–132.

The issue outlined above has received considerable attention in the jurisprudence of both the Constitutional Court and the Court of Cassation. In its Decision No. SDO-1561 of 24 November 2020, the Constitutional Court held:

“Accordingly, the existence of such an institution is, in itself, lawful and justified, provided that adequate and sufficient grounds exist for restricting the rights and freedoms of the opposing party prior to the delivery of the judicial act.

In deciding whether to grant an application for interim measures, the court must satisfy itself, in light of the circumstances set out in the application, that the failure to grant such measures may render the enforcement of the future judicial act impossible or impede its proper enforcement should the claimant's claim ultimately be upheld”.²¹

The Court of Cassation, in turn, has made the following findings:

1. “[...] *interim measures may be granted only where adequate and sufficient grounds exist for restricting the rights and freedoms of the opposing party prior to the delivery of the judicial act. In such circumstances, the court is under an obligation to substantiate the existence of those grounds when granting an application for interim measures*”;²²

2. “[...] *the aforementioned grounds for granting interim measures derive directly from the function and purpose of the institution of interim measures and constitute the criterion for assessing whether the granting of such measures is necessary*”.²³

At first glance, these judicial positions may give the impression that the sole condition for granting interim measures is the establishment of one of the statutory grounds set out in Article 91(1) of the Administrative Procedure Code. Under that provision, an administrative court may grant interim measures where the failure to do so may: (a) render the enforcement of a future judicial act impossible; (b) impede its enforcement; (c) result in a change in the factual or legal status of the property forming the subject matter of the dispute; or (d) cause substantial harm to the person submitting the motion.

Nevertheless, a more comprehensive and systematic analysis of the relevant case law reveals that the lawfulness of granting interim measures is also contingent upon the following additional conditions as well:

1. **Prima facie justification of the claim:** in determining whether interim measures should be granted, the court must assess, depending on the nature of the claim, the prima facie justification of the amount claimed (in monetary claims), the

²¹ Decision of the Constitutional Court of November 24, 2020, No. SDO-1561

²² Decision of the Court of Cassation of June 29, 2022, in administrative case No. VD/6921/05/21

²³ Decision of the Court of Cassation of May 15, 2026, in administrative case No. VD/14113/05/25

prima facie necessity of performing or refraining from specific acts (in actions seeking mandatory or prohibitory measure), or the prima facie existence of rights in respect of the property concerned (where the requested measure involves the suspension of the realization of property or the attachment thereof).²⁴

2. **Adherence to the principle of proportionality**²⁵: in assessing whether the requested measures are justified, the court must conduct a proper proportionality assessment, since proportionality constitutes one of the essential elements of the requirement that an application for interim measures be well founded. The court's conclusions in this regard must likewise be reasoned, specific, and supported by the factual circumstances of the case.²⁶

Legal scholarship identifies a number of additional conditions for granting interim measures. However, these largely overlap with or fall within the conditions already discussed above.²⁷ The legal scholarship identifies additional conditions for granting an interim measure, though these, in one form or another, fall within the conditions already discussed above. One possible exception is the requirement of a nexus between the interim measure sought and the subject matter of the administrative claim, given that interim measure is, by its nature, accessory to the subject matter of the claim²⁸. On this basis, it is well-founded to maintain that a court should deny preliminary protection where no genuine and proper connection exists between the measure requested and the subject matter of the administrative claim.²⁹

Thus, the *conditio sine qua non* (condition without which it is not possible) conditions ensuring the lawfulness of the application of securing a claim (interim measure) are:

1. the prima facie justification of the claim;
2. the existence of any ground for interim measures;
3. the existence of a sufficient nexus between the requested interim measure and the subject matter of the administrative claim;
4. the observance of the principle of proportionality.

²⁴ Decision of the Constitutional Court of November 24, 2020, No. SDO-1561

²⁵ In 2026, the legislature supplemented Article 91 of the Administrative Procedure Code with a provision according to which applying an interim measure is permitted if it does not violate a public interest that, in the given situation, prevails over the interest of the person submitting the motion.

²⁶ Decision of the Court of Cassation of September 25, 2024, in administrative case No. VD/6321/05/23

²⁷ E.g., *Administrative Proceedings: A Textbook* / ed. S.V. Nikitin, Moscow, 2018, p. 96; *Yearbook of Public Law, 2015: Administrative Process*, Moscow: Infotropic Media, 2015, pp. 254-255.

²⁸ Selkova A.A., *The Institution of Interim Measures in the Procedural Legislation of Russia and England: A Comparative Legal Aspect*, Ph.D. dissertation, Yekaterinburg, 2018, pp. 31–34.

²⁹ Starilov M.Yu., "Preliminary Protection Measures in an Administrative Claim as a New Procedural-Legal Institution: From the Civil Process to the Administrative," *Journal of Administrative Justice*, 2017, No. 1, pp. 76–77.

III. Balancing the Interests of Procedural Participants within the Framework of the Institution of Interim Measures

The intensity of the impact that interim measures may have on the opposing party to the proceedings, as well as on the public interest, necessitates a reasonable balance between the interests of the procedural participants. Otherwise, interim measures may be transformed into a punitive or coercive mechanism, undermining the procedural standing of the individual against whom they have been imposed³⁰.

The aforementioned circumstance, in turn, presupposes the existence of effective procedural safeguards for the protection of the respondent's interests. These safeguards are grounded in the principle of equality before the law, guaranteed at both the constitutional and procedural levels, and the principle of "equality of arms" derived therefrom.

Naturally, the fulfilment of such a function may primarily be associated with the institution of appellate review of judicial acts, which is aimed at achieving the objectives of justice through the improvement of potential judicial errors³¹. Appellate review is not merely a mechanism for verifying the lawfulness of the granting or dismissal the claim brought before the court; it also serves as the principal means of ensuring that the lower court instance has complied with the fundamental components of the right to a fair trial.³²

Nevertheless, it should be noted that the legislature has not included decisions granting interim measures within the scope of interlocutory judicial acts subject to appeal. This approach is justified from the perspective of ensuring legal certainty within the legal order, guaranteeing proper and effective judicial protection, as well as safeguarding the ordinary course of proceedings.

At the same time, the Code provides for the possibility of filing a motion seeking the substitution, modification, or revocation of an interim measure. In relation to these procedural mechanisms, the Constitutional Court has expressed the following position:

1. "[...] both the motion to apply an interim measure and the motion to fully or partially

lift an interim measure may be submitted up until the conclusion of the trial of the case. In such circumstances, the court, under conditions of greater awareness, may revisit the question of the effectiveness of the applied (or to be applied) interim measure. This constitutes an important procedural guarantee in terms of balancing the rights and procedural opportunities of the parties to the case.

³⁰ Decision of the Constitutional Court of November 11, 2025, No. SDO-1802

³¹ Decision of the Constitutional Court of February 8, 2011, No. SDO-936

³² Decision of the Constitutional Court of July 18, 2012, No. SDO-1037

[...] As regards the applicant's position that, under the existing legal regulations concerning the application of interim measures, the restrictions on the rights of the other party are not protected against unsubstantiated claims, the Constitutional Court records that the legislation provides legal regulations both with respect to the possibility of applying by motion for the revocation of an interim measure and with respect to counter-security. Therefore, the individual against whom a decision granting an interim measure has been rendered may, where that measure is unsubstantiated, present their position and objection by requesting the revocation of the applied interim measure; and for the purpose of compensation for possible damages, may file a motion demanding security (counter-security) from the participant in the proceedings who submitted the motion for interim measures."³³

2. "[...] in the present case, although the legislature has not provided for the possibility of immediate appeal against a decision granting interim measures through appellate review, it has nevertheless provided for the possibility of submitting a motion to substitute one interim measure with another, to modify it, or to lift it. The provision of such legal mechanisms by the legislature constitutes an effective guarantee of the right of a participant in the proceedings to effective judicial protection. It is designed to ensure a reasonable balance between the absence of a legislative possibility of immediately appealing, through appellate review, a decision granting interim measures, and the availability to a participant in the proceedings of an adequate legal remedy. Otherwise, one party to the proceedings, having effective legal remedies at their disposal, would find itself in a more favourable position than the other party."³⁴

3. "[...] the legislator, for the purpose of ensuring procedural balance and the principle of procedural equality and adversarial proceedings among the participants in the case, has established a number of procedural mechanisms for protecting the interests of participants in the proceedings in relation to interim measures, including the legislative mechanisms of substituting one interim measure with another, modifying an interim measure, and revocation an interim measure."³⁵

Whereas, in the case of revocation of an interim measure, the essence of that measure is revealed by its very name, the situation is different with respect to the other measures. Thus, according to the Court of Cassation:

"The substitution of one interim measure with another presupposes the selection, in place of the initially applied measure, of another measure provided for by the Code. A participant in the proceedings submitting a motion for the

³³ Decision of the Constitutional Court of November 24, 2020, No. SDO-1561

³⁴ Decision of the Constitutional Court of April 16, 2024, No. SDO-1725

³⁵ Decision of the Constitutional Court of November 11, 2025, No. SDO-1802

application of this procedural measure must substantiate that there exists another interim measure which, by its effect, is more appropriate to the nature and essence of the claim submitted.

The modification of an interim measure may be characterized as the alteration of the scope, content and nature of the applied measure. As a rule, the modification of an interim measure is aimed at increasing the effectiveness of the measure previously applied.”³⁶

Accordingly, in the first case the court lifts the interim measure initially applied and applies another, new interim measure. In the case of modification of the interim measure - or, in other words, alteration of the form of the interim measure - the court removes a component of the initially applied interim measure, such as its scope, content or nature, and in fact applies the same interim measure with a different component, that is, with a different scope, content or nature.

On the basis of the foregoing, the following conclusions may be drawn:

1. In the context of interim measures, the legislature has vested other participants in the proceedings with a set of instruments for excluding and mitigating the unlawful impact of interim measures, that is, for restoring a disrupted procedural balance.

2. The substitution and modification of an interim measure may serve not only to restore the procedural balance disrupted by interim measures, but also to establish new guarantees in favor of the claimant. Accordingly, these measures may be used not only for “defensive” but also for “intrusive” purposes.

3. The revocation of an interim measure is predominantly directed at restoring a disrupted procedural balance; this does not, however, exclude its use by the claimant for other motives as a manifestation of the principle of party disposition.

IV. The Revocation of Interim Measures as a Means of Overcoming the Unlawful Application of Interim Measures

The absence of a possibility of immediate appeal, through appellate review, against a decision granting interim measures gives even greater importance to the conditions ensuring the lawfulness of their application. Nevertheless, this alone is not sufficient to overcome possible shortcomings. Situations are not excluded in which interim measures should not have been applied at all and, consequently, their continued maintenance violates not only the rights and legitimate interests of the participant in the proceedings against whom the measure is directed, but, as noted above, may also endanger the realization of public interests. The resolution of this

³⁶ Decision of the Court of Cassation of November 7, 2024, in administrative case No. VD/6321/05/23

problem appears possible through the revocation of interim measures, and it is therefore necessary to examine the applicability of that mechanism.

Thus, in establishing the procedural framework for interim measures, the Administrative Procedure Code has confined itself to describing the existence of those measures and the procedure for their application, leaving outside the scope of regulation the grounds for revocation of interim measures.

Having recorded that a decision granting interim measures is not appealable and that the legislation contains no statutory grounds for the revocation of an interim measure, the Court of Cassation has developed and reaffirmed in a number of cases the following positions:

“(…) the arguments presented in a motion for the revocation of an interim measure cannot be framed within the logic of challenging the substantiation and lawfulness of the decision granting the interim measure. In other words, the exercise of the right to seek the revocation of an interim measure must not be transformed into a disguised appeal against the decision granting interim measures, since the legislature has not provided for such a legal possibility. Accordingly, within the framework of examining a motion for the revocation of an interim measure, the substantiation and lawfulness of the decision granting the interim measure cannot become the subject of assessment.”³⁷

“(…) an interim measure may be lifted where:

- upon assessing the necessity of applying the interim measure in light of a new fact and/or evidence presented in the motion for the revocation of the interim measure and emerging after the decision granting the interim measure, the court concludes that the necessity of maintaining the applied interim measure has ceased to exist, that is, that there is no longer a likelihood that enforcement of the judicial act will become impossible or difficult; or

- upon assessing a fact and/or evidence which was not at the court’s disposal at the time of examining the motion for the application of the interim measure and which is relied upon in the motion for the revocation of the interim measure, the court concludes that, by virtue of that fact, the necessity of applying the interim measure was absent.”³⁸

In such circumstances, before turning to the analysis of the cited positions of the Court of Cassation, it is essential to recall the emphases in Decision No. SDO-1802 of 11 November 2025 of the Constitutional Court, which raised law-enforcement practice to a qualitatively new level:

³⁷ Decisions of the Court of Cassation in administrative case No. VD/3731/05/20 of December 27, 2022; No. VD/10849/05/21 of March 7, 2023; and No. VD/14113/05/25 of May 15, 2026.

³⁸ Decisions of the Court of Cassation in administrative case No. VD/3731/05/20 of December 27, 2022; No. VD/10849/05/21 of March 7, 2023; and No. VD/6321/05/23 of November 7, 2024

“(…) the fundamental component of the functioning of a rule-of-law state is not only the constitutional recognition and enshrinement of fundamental rights and freedoms, but also the establishment and implementation of a complete system of mechanisms aimed at their effective exercise and protection. This may be fully brought to life, on the one hand, by the legislature through the adoption of laws regulating fundamental rights and freedoms and establishing the organizational mechanisms and procedures necessary for their effective exercise, and, on the other hand, by the law-applying authority through the interpretation and application of those laws in harmony with constitutional-legal values and, accordingly, with the will of the legislature. Together, these two components form the constitution-based environment within which constitutional values are transferred into normative reality.

(…) the effectiveness of organizational mechanisms and procedures for the exercise of fundamental rights and freedoms is conditioned not only by the institutional structure of their enshrinement, but also by the quality of the interpretation given to them in law-enforcement practice and by the culture of their application.

(…) the constitutional-legal imperative enshrined in Article 75 of the Constitution may be fully realized also in terms of law-enforcement practice, provided that laws regulating fundamental rights and freedoms and establishing the organizational mechanisms and procedures necessary for their effective exercise are interpreted in a manner consistent with constitutional-legal ideas and values and in harmony with their spirit and letter. Moreover, the law-applying authority must create the integrative space in which the spirit and the letter of the law harmoniously balance one another, thereby guaranteeing legal foreseeability and axiological equilibrium.”

In light of the foregoing, it becomes evident that the definition by the Court of Cassation of such a limited range of grounds for the revocation of interim measures in administrative proceedings is problematic for a number of reasons.

First, administrative procedural legislation does not provide for any grounds for the revocation of interim measures. In such circumstances, it is unclear on what normative and/or legal-axiological basis this position has been developed. In this respect, the situation remains unchanged even if one considers, as the interpretative point of departure invoked by the Court of Cassation, the function and purpose of the institution of interim measures and the grounds for their application, since none of these does or can give rise to the above-cited positions concerning the grounds for the revocation of interim measures.

Second, the Court of Cassation has in no way addressed, and has not refuted by weighty arguments, the grounds for the revocation of interim measures in civil procedure, which have an originating and foundational significance for administrative proceedings. Moreover, the wording “are absent or have ceased to exist” contained in Article 134(2)(1) of the Civil Procedure Code - “the grounds provided by this Code for applying an interim measure are absent or have ceased to exist” - indicates the possibility of the revocation of interim measures in cases where they were unlawfully applied.

Third, the Court of Cassation's position that the substantiation and lawfulness of a decision granting an interim measure are not subject to judicial review in proceedings concerning the revocation of interim measures stands in direct contradiction to the Constitutional Court's conclusion that: “The individual against whom a decision granting an interim measure has been rendered may, where that measure is unsubstantiated, present their position and disagreement by requesting the revocation of the applied interim measure.”

Fourth, the restrictive interpretation adopted by the Court of Cassation regarding the grounds for the revocation of interim measures is incompatible with the constitutional principles underpinning that institution, which serves as a legal remedy for restoring procedural balance, safeguarding procedural equality, and guaranteeing the right to effective judicial protection. As a result, that interpretation effectively deprives the remedy of its practical significance.

Fifth, in the absence of a legislative possibility of immediate appeal, through appellate review, against a decision granting interim measures, and under the current interpretation by the Court of Cassation of the grounds for the revocation of interim measures, in cases of unlawful application of interim measures the procedural balance between the participants in administrative proceedings will remain disrupted for a prolonged period, taking into account the average duration of such proceedings. In addition, certain public interests will be blocked from materialization as a consequence of the interim measures, thereby creating a legal deadlock.

In such circumstances, it is undeniable that, from the perspectives of both constitutional axiology and procedural-law understanding, the grounds for the revocation of interim measures inevitably include cases of unlawful application of such measures. There is no normative or non-normative basis to the contrary. In these circumstances, the resolution of the situation lies precisely in the development of the law by the Court of Cassation, through a combination of constitution-oriented and procedural-law approaches to defining the scope of the

grounds for the revocation of interim measures, thereby restoring the disrupted procedural balance and ensuring the unhindered realization of public interests.

V. Conclusion

On the basis of the research conducted, the following main conclusions may be drawn:

1. The institution of interim measures has undergone significant changes, with its functional purpose now encompassing both the assurance of effective enforcement of the judicial act to be delivered and the prevention of any other irreversible consequences for the claimant.

2. The institution of securing the claim (interim measures) in civil procedure plays a foundational role. By virtue of this, procedural-law ideas, understandings and approaches concerning that institution are presumed to be applicable in administrative justice unless administrative procedural legislation expressly provides otherwise.

3. The condition *sine qua non* conditions ensuring the lawfulness of the application of interim measures are: (1) the *prima facie* substantiation of the claim; (2) the existence of at least one ground for applying interim measures; (3) the existence of an interconnection between the specific interim measure and the subject matter of the administrative claim; and (4) compliance with the principle of proportionality.

4. In the context of interim measures, the absence of a legislative possibility of immediate appeal against such a decision through appellate review has been “compensated” by the legislature through the provision to other participants in the proceedings of a set of instruments for excluding and mitigating the unlawful impact of interim measures, that is, for restoring the disrupted procedural balance.

5. The substitution and modification of an interim measure may serve not only to restore the procedural balance disrupted by interim measures, but also to establish new guarantees in favor of the claimant. Accordingly, these measures may be used not only for “defensive” but also for “offensive” purposes.

6. The revocation of an interim measure is predominantly directed at restoring a disrupted procedural balance; this does not, however, exclude its use by the claimant for other motives as a manifestation of the principle of party disposition.

7. The unconditional position of the Court of Cassation that, within the framework of examining a motion for the revocation of an interim measure, it is impossible to make the substantiation and lawfulness of the decision granting the interim measure the subject of assessment has no normative basis. It contradicts the constitutional-legal ideas and procedural-law approaches underlying the revocation

of interim measures as a legal remedy for ensuring procedural balance and equality, as well as an effective guarantee of the right to effective judicial protection.

8. It is urgent for the Court of Cassation, through the instrument of developing the law, to expand the scope of the grounds for the revocation of interim measures and to include within that scope cases of unlawful application of interim measures, thereby restoring the disrupted procedural balance and ensuring the unhindered realization of public interests.

Conflict of Interests

The authors declare no ethical issues or conflicts of interest in this research.

Ethical Standards

The authors affirm this research did not involve human subjects.

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