



**2. Deutsch-Englisches
Rechtsseminar
2nd German-English Law Seminar**

**Einstweiliger Rechtsschutz
Interim Measures**

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Einstweiliger Rechtsschutz Interim Measures

A) Zivilgerichte Civil Courts

Arrest
Writ of Attachment

Einstweilige Verfügung
Temporary Injunction

B) Verwaltungsgerichte Administrative Courts

Wiederherstellung/Anordnung
der aufschiebenden Wirkung
Application for suspensive effect

Einstweilige Anordnung
Provisional Order

Common Principles

- Very quick proceedings (decision often without hearing, sometimes already at the day of the application)
- Provisional decision, not binding for the main proceeding (but anticipated result has to be considered)
- Purpose: Securing (not satisfying) one's rights

A) Civil Courts

Writ of Attachment
Security for execution of money claim

Temporary injunction
Other claims

Attachment to preserve property

- Only applicable, if the execution of a money claim is threatened
- Example:
(Criminal) Debtor removes his property
- Seizure of objects, but (usually) no sale

Personal arrest

Body attachment as ultima ratio

Prevention from changes which endanger realisation of a right

Examples:

- Cease and desist order
- Seizure of object to secure a delivery claim

Preliminary adjudication of a controversy

Example:

- Provisional termination of a manager's authority

Exemption: Performance Order

- Only applicable, if there is no other way to avoid substantial damages
- Example:
Maintenance claim

Example: Cease and desist order (Competition Law)

A publishes defamatory statements about B's product on its website in order to promote its own competitive product

- 1) Cease and desist letter within a short time limit (only some days)
- 2) If A does not sign a cease and desist declaration with a penalty clause:

Application for a cease and desist order

- Claim must be substantiated by prima facie evidence (affidavit)
- Urgency: Realisation of a right is endangered, here: fair competition
Competition Law: Urgency assumed by law, can be refuted if applicant waits too long
(Some courts: Application within one month since knowledge about the facts)

Opponent can send a protective letter to the court

3) Possible Decisions:

- a) Order is granted: Must be served within one month
- b) Order is denied
- c) Hearing within short time

B) Administrative Courts

Application for suspensive effect

Applicable in cases of detrimental administrative acts

-Protest procedures have usually suspensive effects

-Unless ordered otherwise by

- Law (police acts, public dues)

- Public authority for specific reasons (example: Withdrawal of a driving licence)

Then: Application for suspensive effect of the protest procedure

-Public interest in immediate enforceability and private interests in suspension have to be considered

Provisional Ordner

Prevention from changes which endanger realization of a right

Example:

- Promotion procedure of officials

Preliminary adjudication

Examples:

- Provisional admission to University
- Provisional payment of state welfare

Thank you for your attention

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