# **Special Types of Proceedings**

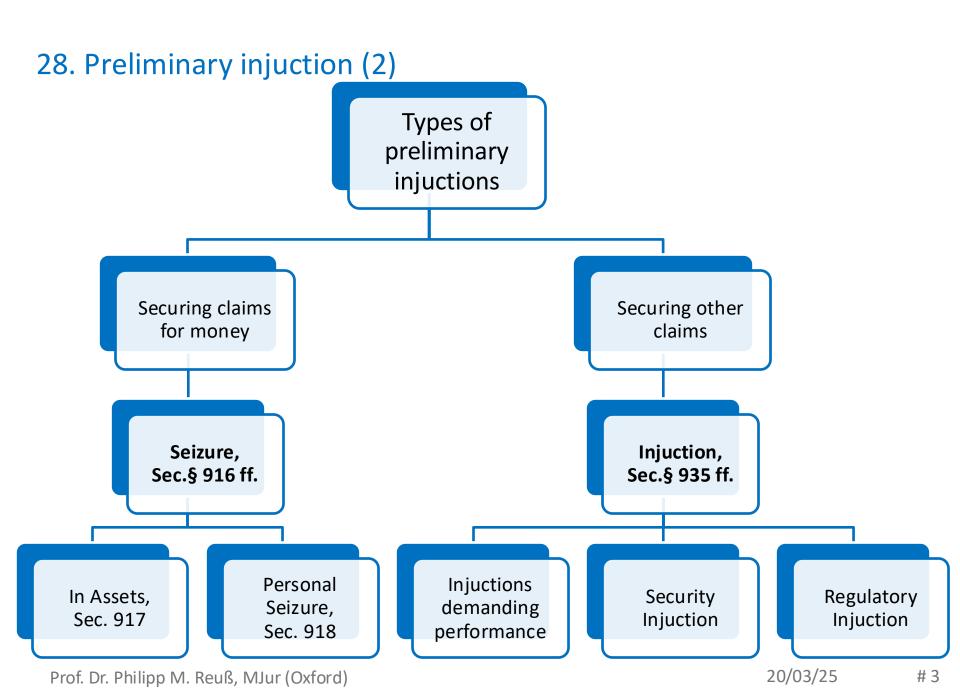
## 28. Preliminary injuction (1)

### Purposes of preliminary injuction

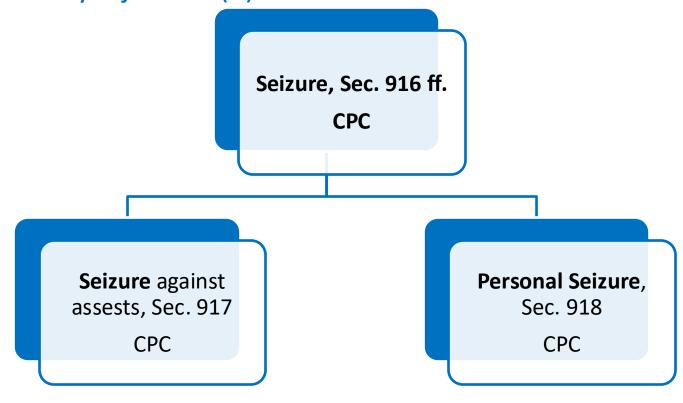
- Proceedings in Courts often take months
  - Risk for the creditor to lose money
- Preliminary injunctions to secure the claim
  - > Sec. 916 ff. CPC
  - Special procedure

### Characteristics of Preliminary Injuctions

- Preliminary assessment of facts and legal merits
- Objective:
  - Securing the creditor
  - not finally deciding the case
- Distinct from the main trial: no final decision on the merits
- Two-tear test
  - Is there a sound claim for preliminary relief? ("Anordnungsanspruch")
  - ➤ Is there a sound ground for preliminary relief? ("Anordnungsgrund")

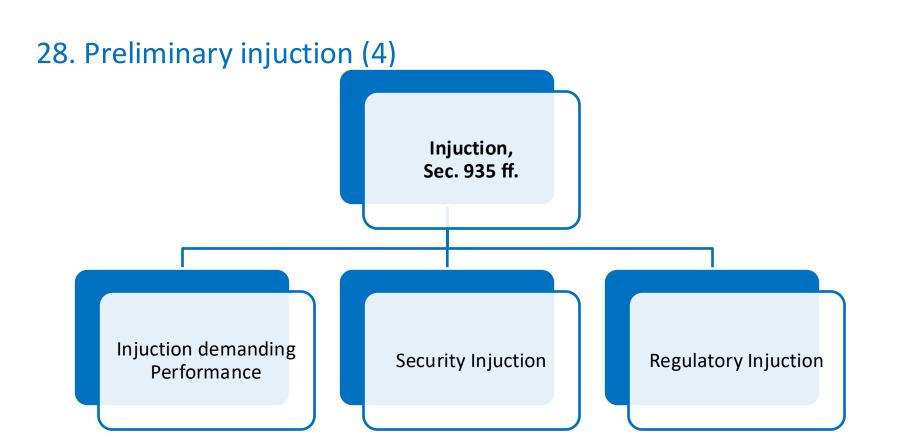


# 28. Preliminary injuction (3)



- Seizure of moveable property
- Registration of a securtiy mortgage in immovable property

 Arresting the debtor to secure the claim



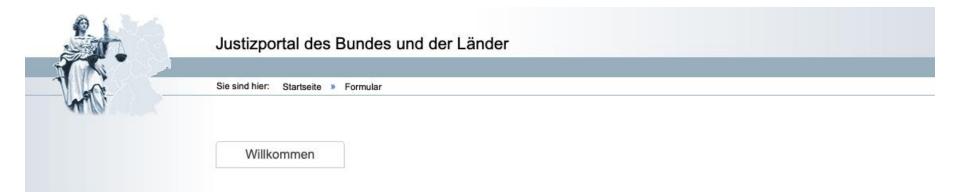
- Security through immediate relief
- High requirenments due to debtor's risk
- E.g in maintenance orders

- At Judges Discretion
- E.g. prohibitions on sale an disposition to secure claims for surrender of delivery
- Provisional security of a legal relationship
- Orders in ongoing obligations (e.g. heirs, partners in a company) such as provisional removal from management authortiy

## 28. Preliminary injuction (5)

- Legal Requirements for a seizure, Sec. 916 ff. CPC
  - 1. Claim to Seizure, Sec. 916 CPC ("Arrestanspruch")
    - > = Claim under substantive law is directed to the payment of money or might transform into such claim
  - 2. Ground for seizure, Sec. 917, 918 CPC ("Arrestgrund")
    - > = concern that without a seizure bein issued, the enforcement of the later final judgment would be frustrated or significantly more difficult (Sec. 920 Para 2 CPC)
- The same requirements apply to injunctions, Sec. 935 CPC
  - 1. Claim for the injunction ("Verfügungsanspruch")
  - 2. Ground for the injunction ("Verfügungsgrund")
  - Threshold and prerequisites differ according to type of injunction: security, regulatory and performance
- Central Register concerning a Protective Brief, Sec. 945a CPC
  - Introduced: since January 1st 2016 at the Higher Regional Court in Frankfurt a.M..
  - Mandatory since January 1st 2017, for lawyers, authorites and companies withing to submit a protective brief
  - Purpose: Avoidance of surprising decisions in the event of interim injunctions.
  - Costs: fee of 83 euros per submission, automatic deletion after 6 months.

## 28. Preliminary injuction (6)



#### Willkommen beim Online-Formular des zentralen elektronischen Schutzschriftenregisters (ZSSR)

Über diese Webseite können Sie durch Ausfüllen eines Formulars auf vollständig elektronischem Wege Schutzschriften beim ZSSR einreichen, die sodann bundesweit als bei allen ordentlichen Gerichten der Länder (§ 945a Abs. 2 S. 1 ZPO) und allen Arbeitsgerichten der Länder (§§ 62 Abs. 2 S. 3, 85 Abs. 2 S. 3 ArbGG) eingereicht gelten. Gleichzeitig bietet Ihnen das Online-Formular auch die Möglichkeit, von Ihnen zuvor eingereichte Schutzschriften wieder zurückzunehmen.

#### Wichtige Hinweise / Handbücher / Internetseite des Betreibers

Die konkreten Rahmenbedingungen der Einreichung von Schutzschriften zum ZSSR und weitere Informationen zum Register erhalten Sie auf der Internetseite des Betreibers <a href="https://schutzschriftenregister.hessen.de">https://schutzschriftenregister.hessen.de</a>. Eine detaillierte Anleitung zur Verwendung dieses Online-Formulars erhalten Sie <a href="https://schutzschriftenregister.hessen.de">hier</a>. Diesem Handbuch können Sie ebenfalls die technischen Voraussetzungen zur Nutzung des Online-Formulars entnehmen. Informationen bezüglich unterstützter Kartenlesegeräte und Signaturkarten entnehmen Sie bitte den <a href="technischen Hinweisen">technischen Hinweisen</a>.

#### Gebührenpflicht der Einreichung

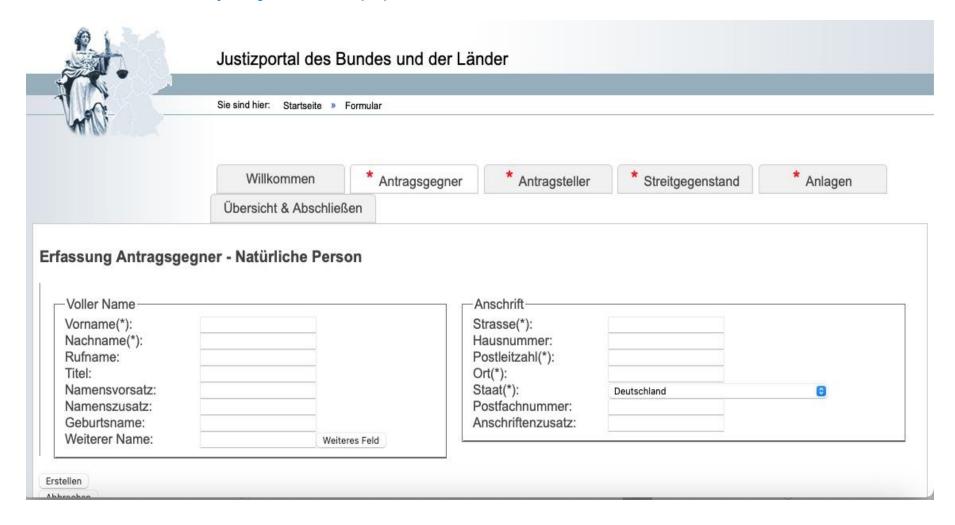
Für die Einreichung einer Schutzschrift zum ZSSR entsteht eine Gebühr in Höhe von 83,- Euro (§ 1 Nr. 5a Justizverwaltungskostengesetz; Nr. 1160 KV). Die Gebühr für die Einstellung einer Schutzschrift schuldet derjenige, der die Schutzschrift eingereicht hat (§ 15a Justizverwaltungskostengesetz).

#### Support

Bitte wenden Sie sich bei möglichen Störungen des Verfahrens "Zentrales Schutzschriftenregister" oder bei sonstigen Fragen an den IT-Service-Desk der Hessischen Zentrale für Datenverarbeitung (HZD):

(+49) 611 / 340-3333

# 28. Preliminary injuction (7)



## 28. Preliminary injuction (8)

- Video hearings in preliminary trials possible, Sec. 128a CPC applies
  - Principally: Pursuant to Sec. 922 para. 1 sentence 1 CPC, preliminary relief can be granted without an oral hearing
    - often necessary to prevent the frustration of claims
  - Flexible Schedule: Video hearings make it possible to schedule oral hearings more quickly by eliminating travel times and reducing room capacity demand.
  - Strengthening of the right to a fair hearing: parties receive an early opportunity to comment through video hearing
  - Efficient conduct of proceeding: disputes can be discussed orally at an early stage and misunderstandings can be clarified quickly

### 29. National and European Payment Order (1)

### Purpose of the payment order:

- Simplified judicial procedure for the enforcement of monetary claims
- Avoidance of costly court proceedings
- Reduce workload for the courts through quick and cost-effective decisions
- Protection of the debtor against unjustified claims through the right of objection

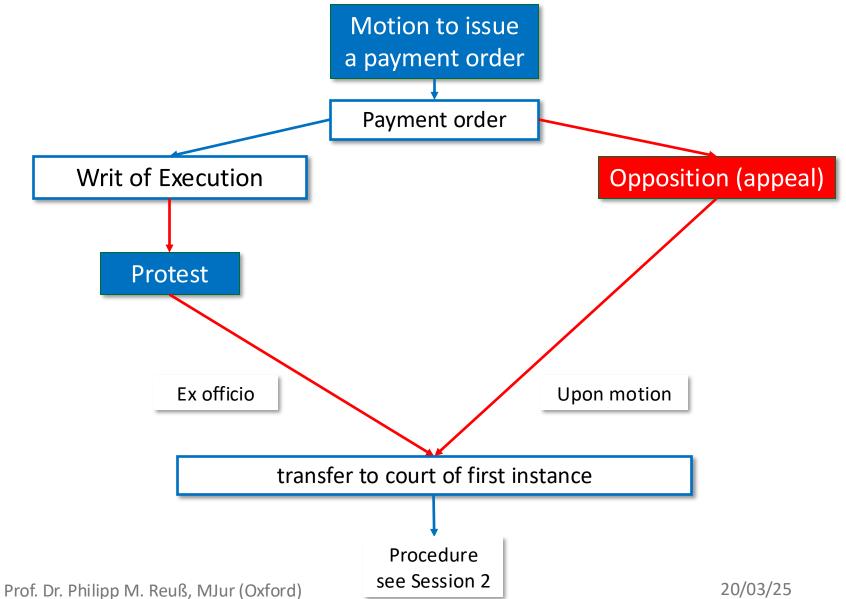
### Advantages of the payment order:

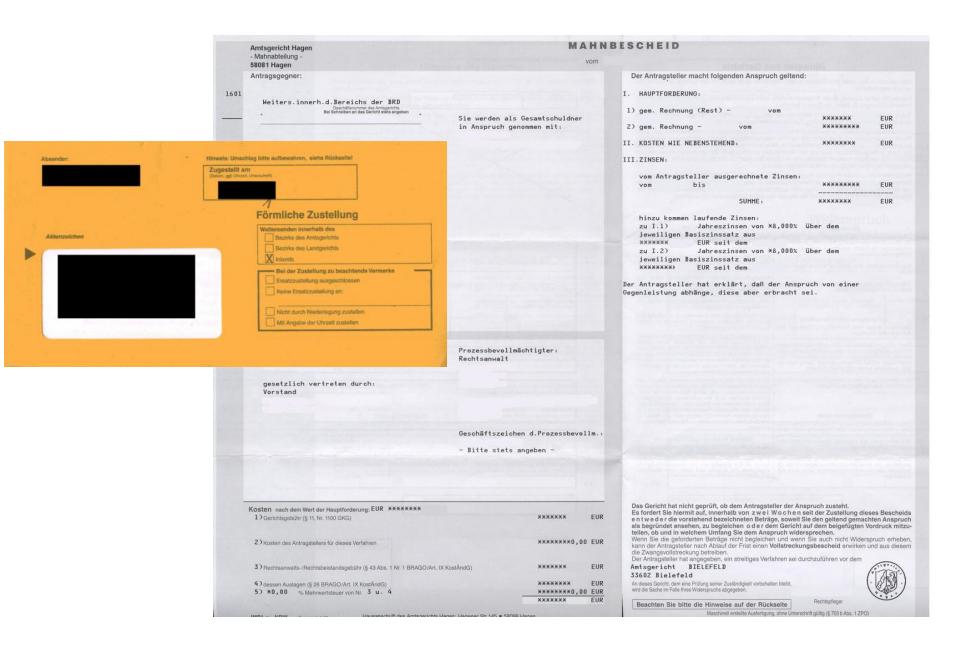
- More cost effective and faster relief than regular court proceeding
- No attorney required
- Simplified enforcement process through issuance of an enforcement order

### Electronic payment order:

- First introduced on October 1st 1982
- Mandatory for lawyers since December 1st 2008 (Sec. 702 Para 2 S. 2 CPC)
- Automated and limited review of the motion (conclusiveness of argument is generally <u>not</u> reviewed) and registration of filing

# 29. National and European Payment Order (2)





### 29. National and European Payment Order (4)

- Similar Procedure considering <u>Regulation (EC) No 1896/2006 of the European</u>
   <u>Parliament and of the Council of 12 December 2006 creating a European order</u>

  <u>for payment procedure</u>
- No writ of execution necessary as European Payment Order is enforceable
- Opposition against the payment order leads to transfer to ordinary court proceeding

# 13

# **Summary**

- Preliminary Injunction
- National and European Payment Order