

**COMPARATIVE STUDY OF "RESIDUAL JURISDICTION"
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

ROMANIA

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(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

a) As of 01.01.2007, Romania has become a member of the European Union, such situation entailing a direct and immediate enforcement of the Community Law adopted by the European Union institutions, in the sense that the Romanian natural and legal persons may invoke directly before the national courts the legal provisions stipulated by the community normative acts.

As regards the aspect under discussion, the Council Regulation (EC) no. 44/2001 of 22 December 2000 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, has initially been transposed into the domestic legislation by Law no. 187/2003 on jurisdiction, recognition and enforcement of judgments ruled in civil and commercial matters in the European Union member states. Subsequently, considering the legal nature of the regulation, namely a community act directly enforceable in all member states, a norm for its transposition into the domestic law being unnecessary (art. 249 of the Treaty establishing European Community), the Romanian national legislator has reconsidered the issue and by G.E.O. no. 119/2006 regarding certain measures necessary for the enforcement of community regulations as of the date of Romania's accession to European Union, has repealed law no. 187/2003.

b) As regards the residual competence (by relating to Regulation no. 44/2000), the legal provisions applicable in the matter as follows:

- in principle, the jurisdiction of the national courts is regulated by the Civil Procedure Code (CPC), Book I – Courts jurisdiction, Title I – Jurisdiction depending on the mater, Title II – Territorial jurisdiction, Title III – Special provisions, Title IV – Jurisdiction conflicts. Such legal provisions rule both national cases (the parties are Romanian natural/legal persons) and international cases (the parties are either both foreign natural/legal persons or solely one of them),
- supplementary, as regards the disputes (cases) that include elements of foreignness the law no. 105/1992 on the regulation of the private international law rapports, apart from the substantive law regulations, stipulates certain procedural provisions as well.

c) As regards the Bilateral or Multilateral Conventions/Treaties, concluded/ratified by Romania in the field at issue they are as follows:

- Convention of 12 November 2003 signed by Romania and the Republic of Macedonia on the legal assistance in civil matters;
- Convention of 17 November 1997 signed by Romania and Spain on jurisdiction, recognition and enforcement of judgments in civil and commercial matters;
- Convention of 20 May 1987 on the simplification of formalities in goods trade, enacted at Interlaken la 20 May 1987,
- Convention of 23 June 1980 signed by the Socialist Republic of Romania and the Republic of Cuba on the legal assistance in civil, family and criminal matters;
- Convention of 25 October 1980 on the facilitation of international access to justice;
- Convention of 28 June 1979 de on the legal assistance in civil, family and criminal matters signed by the Socialist Republic of Romania the Democratic and Popular Algerian Republic;
- Convention of 15 June 1978 signed by the Socialist Republic of Romania and the United Kingdom of Great Britain and North Ireland on legal assistance in civil and commercial matters;

- Convention of 3 October 1975 signed by the Socialist Republic of Romania and Belgian Kingdom on legal assistance in civil and commercial matters;
- Convention of 5 November 1974 signed by the Socialist Republic of Romania and French Republic on legal assistance in civil and commercial matters;
- Convention of 18 March 1970 on obtaining evidence abroad in civil and commercial matters, enacted at Haga on 18 March 1970;
- Convention of 18 March 1965 on the regulation of disputes related to investments between states and persons from other states;
- Convention of 15 November 1965 on notification and communication abroad of judiciary and extra-judiciary documents in civil and commercial matters.

d) As regards the national courts case law in enforcing the Regulation no. 44/2001, we shall state that, due to the short period that has elapsed from Romania's accession to the European Union, the national courts have not been able to crystallize a constant and consistent case law in the matter.

2. Specific Rules (or Not) for Transnational Disputes

In the Romanian law in force, there is not a categorization of jurisdiction rules into: (i) jurisdiction rule applicable to transnational disputes and (ii) jurisdiction rules applicable to national disputes, but as shown above, the legal provisions that rule the jurisdiction applicable to national disputes become incident in case of transnational disputes as well.

Exceptionally, law no. 105/1992 on the regulation of international relations of private law, stipulates special jurisdiction norms for the disputes with elements of foreignness. By relating to common law (CPC), such norms constitute an exception by being applicable solely in cases especially provided by the law. In the event that there are no special norms regarding the courts jurisdiction, either concerning a national or a transnational dispute, the provisions of the common law (CPC) become applicable.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

Pursuant to art. 4 (1) of Regulation no. 44/2000, in the event that the defendant is domiciled on the territory of a third state (not domiciled on the territory of a member state), the national courts jurisdiction shall be determined in accordance with the legal provisions of the respective member state.

The Romanian law in force does not include any legal provision enacted especially for the enforcement of such legal provisions, in the sense that in such case the provisions of common law (CPC) become applicable. Nevertheless, it shall be mentioned that, in case there are international Conventions applicable in the matter, such Conventions enforcement take precedence over the Romanian Constitution.

4. Influence of EU Law

As mentioned above, Regulation no. 44/2000, community normative act became enforceable in Romania as of 01.01.2007, reason for which the cases grounded on this normative act and referred to national courts for settlement have not been irrevocably settled yet. It takes time for the national courts to outline their case law in any sense in order to assimilate for enforcement both the Regulation no. 44/2000 and the European Court of Justice case law in the matter.

5. Impact of Other Sources of Law

In Romania, according to the provisions of the Constitution, the jurisdiction rules are set out by law, in the sense that the ordinary legislator is free to establish independently the jurisdiction rules. The independence of the ordinary legislator in establishing the jurisdiction rules is relative, in the sense that if from the constitutional point of view there are no criteria to be observed, as regards the public international law, in case there is a Convention/Treaty concluded/ratified in the field, the ordinary legislator shall abide by it.

Not lastly, it shall be stated that the private international law had established a number of disputes that are exclusively within the jurisdiction of national courts. Therefore, the following disputes are in the exclusive jurisdiction of the national courts: civil status documents drawn up in Romania and related to persons domiciled in Romania, Romanian citizens or foreigners without citizenship; adoption approval if the adoptee is domiciled in Romania and is Romanian citizen or foreigner without citizenship; the inheritance left by a person whose last domicile was in Romania; immovable property situated on the Romanian territory; the forced execution of an enforceable title on the Romanian territory.

6. Other Specific Features

The main feature of the jurisdiction in transnational disputes consists in the fact that pursuant to CPC (art. 5), the disputes to which a foreign person is part shall be settled by the national courts of the defendant's domicile (in case the defendant is domiciled/resides in Romania), and in the case that such person is domiciled abroad (does not have the residence in Romania), the dispute shall be settled by the courts of the plaintiff's domicile.

On the other hand, it shall be mentioned that both the common law (CPC) and law no. 105/1992 on the regulation of private international law establish certain disputes in the exclusive jurisdiction of Romanian courts.

7. Reform

Although at present, at the Ministry of Justice a Committee is being set up regarding the enactment of a new civil procedure Code, normative act designed to assimilate certain implications of the community law on the civil procedure, as regards the aspect under discussion, there are no proposals for the modification of the current regulatory framework.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

As shown above, (A.1.b), Romania has concluded/ratified a series of bilateral and multilateral Conventions with a substantial or less substantial impact on the matter at issue. The most of the Conventions signed/ratified by Romania encompass mainly provisions of substantive law and secondly and exceptionally provisions of procedural law (jurisdiction).

On the other hand, numerous such Conventions approach partially the object of Regulation no. 44/2000, in the sense that they regulate solely in part civil or commercial aspects. In this regard, the acts of public international law, with significant impact on the matter regulated by Regulation no. 44/2000 are mainly as follows:

- Convention of 12 November 2003 signed by Romania and the Republic of Macedonia on the legal assistance in civil matters;
- Convention of 17 November 1997 signed by Romania and Spain on jurisdiction, recognition and enforcement of judgments in civil and commercial matters;
- Convention of 15 June 1978 signed by the Socialist Republic of Romania and the United Kingdom of Great Britain and North Ireland on legal assistance in civil and commercial matters;
- Convention of 3 October 1975 signed by the Socialist Republic of Romania and Belgian Kingdom on legal assistance in civil and commercial matters;
- Convention of 5 November 1974 signed by the Socialist Republic of Romania and the French Republic on legal assistance in civil and commercial matters;
- Convention of 15 November 1965 on notification and communication abroad of judiciary and extra-judiciary documents in civil and commercial matters.

9. Practical Impact of international conventions with third states

Due to the fact that the aforementioned acts of public international law regulates sporadically and partially the matter under discussion, the influence of such normative acts on the courts case law in the matter is limited.

(C) Applicable National Rules Pursuant to Article 4 of the Brussels I Regulation

10. Structure

The Romanian law in force (CPC – art. 5) stipulates that the case is referred to the court of the defendant's domicile. In the event that the defendant is domiciled abroad, the case shall be referred to the court of the defendant's residence. In case the defendant does not even reside in Romania, the case shall be referred to the court of the plaintiff's domicile.

As it can be noticed, the legislator establishes the courts jurisdiction in relation with the defendant's/plaintiff's domicile, in principle, the defendant's/plaintiff's nationality being of no consequence as regards the jurisdiction. Exceptionally, the national legislator takes into account the defendant's/plaintiff's nationality when ruling, by the means of law no. 105/1992 on the regulation of private international law reports, the cases of exclusive jurisdiction of the national courts.

11. General Jurisdiction

The common law in the matter, by expressing the principle – *actor sequitur forum rei* -, establishes the courts jurisdiction mainly in relation with the defendant's domicile (for the natural persons), respectively the registered office, for the legal persons. In the event that the defendant, natural person is not domiciled in Romania or the known domicile, the competent court shall be that of the plaintiff's domicile.

In case the defendant is a legal person, the law establishes the court jurisdiction in relation with its registered office. On the other hand, it must be stated that there is a category of corporate actions in the exclusive jurisdiction of the court of the registered office (art. 15 CPC).

12. Specific Rules of Jurisdiction

a) Contract

As regards contracts, the common law (CPC – art. 10) stipulates an alternative jurisdiction for the courts. The right of electing the court for filing the statement of claim belongs to the plaintiff (art. 12 CPC). Therefore, as a rule, regarding the contracts, the plaintiff may choose between the court of the defendant's domicile and the court set out by the contract for the performance, even in part, of the obligation. Moreover, it shall be stated that the latter court may be referred solely for the requests regarding a contract performance, cancellation, resolution or termination.

As regards a transportation contract, in addition to the court of the defendant's domicile, the court of the place of departure or arrival of the means of transport is competent as well. The statement of claim related to lease contracts may be referred either to the court of the defendant's domicile or to the court of the area where the building is located.

b) Tort

Similarly to the actions based on a contract, as regards the tort liability, the legislator (art. 10 CPC) establishes the alternative jurisdiction of the courts. Therefore, the actions deriving from a tort may be referred either to the court of defendant's domicile or to the court of the place where the tort occurred.

c) Criminal Proceedings

Pursuant to art. 14 Criminal Procedure Code, the person injured by a criminal offence may exercise a civil action within the criminal proceedings, in such case the action being settled by the competent court for judging the criminal case, but by applying civil rules. The competent court for judging the criminal action may judge the civil action as well, provided that the injured/damaged person is a civil party to the criminal proceedings, fact which requires the observation of certain rules and terms. We shall mention that the civil action may be exercised *ex officio* by the prosecutor solely provided that the injured person lacks or has a limited exercise capacity.

In the circumstance that the injured person failed to become civil party to the criminal proceedings, such person may resort to the civil court requesting recovery for the material damage and for the emotional distress ensued from the criminal offence.

d) Secondary Establishment

In case the defendant, apart from the domicile, possesses a constant occupation or one or more agricultural, commercial or industrial establishments, the request may be referred to the court of such establishments or occupations as well, but solely for the requests having as object assets undertakings to be generated or enforced in the respective place (art. 6 CPC).

In the event that the defendant, a legal person, has a representative office, the statement of claim may be filed to the court of the representative office, but solely for undertakings to be enforced in such place or generated by acts concluded by the representative or by actions performed by it (art. 7 CPC).

e) Trust

The Romanian law in force does not recognize, from the legislative point of view such institution, which means there are no special provisions regarding courts jurisdiction in the matter.

f) Arrest and/or location of Property

Similarly to the aforementioned institution - Trust – the Romanian law in force does not recognize this institution either, which means that there are no special norms regarding jurisdiction. However, the Romanian law regulates the precautionary measures – distraint, court-ordered seizure and attachment of property– measures to be taken solely if there is a main proceeding with a specific object.

13. Protective Rules of Jurisdiction

a) Consumer Contracts

In principle, in this matter there are no special norms regarding the establishment of courts jurisdiction, therefore the provisions of the common law (CPC) become applicable. In other words, such provisions apply both when the plaintiff is the consumer (EU or non-EU resident) and when such capacity is held by the economic agent.

Exceptionally, in the matter of holding the producers liable for the defective, law no. 240/2004 on the producers' liability for defective products stipulates that the action of seeking redress for damages is in the jurisdiction of the court in the territory of which the damage occurred, the registered office is located, or as the case may be, the defendant's domicile is located. Due to the lack of case law in the matter, we consider that the legislator establishes a case of alternative jurisdiction for the plaintiff, in the sense that the latter may resort to any of the three courts enumerated by the law. On the other hand, it shall be stated that these provisions apply solely provided that plaintiff is the consumer. In the event that the plaintiff is the producer, the provisions of the common law (CPC) shall apply.

b) Individual Employment Contracts

Pursuant to the legal provisions (art. 284) of the Labor Code (Law no. 53/2003), the statements of claim having as object labor conflicts are in the jurisdiction of the court of the plaintiff's domicile/residence/registered office. We must emphasize that such provisions apply both when the plaintiff is the employee or the employer. In other words, such texts apply both to national and transnational disputes.

c) Insurance Contracts

As regards this matter, there are no special norms for establishing the courts jurisdiction, therefore the provisions of the common law (CPC) become incident, provisions regarding the courts jurisdiction in the matter of contracts. In the circumstance that the action filed is grounded on tort liability, the provisions of art. 10 of CPC shall apply, in the sense that the plaintiff has the option to choose between the court of the defendant's domicile and the court of the place where the tort occurred.

d) Distribution contracts

As regards this matter, are no special provisions for establishing the courts jurisdiction, therefore the provisions of the common law (CPC) shall apply.

14. Rules for the Consolidation of Claims

a) Co-defendant

Both the Romanian civil code of procedure and the Law no105/1992 regarding the private international relationships establish the principle of passive procedural co participation. As a consequence if the action is brought against several defendants, one of these being domiciled in Romania the Romanian court shall have jurisdiction.

According to the Romanian law the defendant shall be consider to be domiciled in Romania any time when the legal person has a branch, a subsidiary, an agency or a representation in Romania.

If among the defendants are also secondary defendants the jurisdiction shall be determined solely in connection with the principals defendants.

The case law decided that the plaintiff is not entitle to introduce in a litigation a fictive defendant in order to brought in front of the Romanian court a case that normally it is not in his jurisdiction.

b) Third party Proceedings

The article 17 of the Romanian code of civil procedure provides that the jurisdiction of the court shall be extended over any incidental or secondary claims.

Based on the above mentioned principle a defendant domiciled in a non-EU state can be sued before our courts as a third party in an action on a warranty or in any other third party proceeding, a legal prorogation of jurisdiction operating in those circumstances, unless there is a choice-of court clause conferring jurisdiction upon courts of another state.

c) Counter claim

In the article 17 of the Romanian procedural code it is provided that the jurisdiction of the court shall be extended over any incidental or secondary claims.

For the same reasons in article 119 of the Romanian procedural code it is provided that any time when the defendant has claims in connection with the main action he may submit a counter claim.

So a party domiciled in Romania sued by a party domiciled in a non-EU state before our courts can bring a counter claim against the former party.

d) Related claims

Art.163 of the Romanian code of civil procedure state the principle of connection between closely linked cases that are on going in front of different courts or different judges at the same time.

The article 156 of the Law no.105/1992 regarding the private international relationship constitutes an exemption from the rule of connection.

In the field of private international law the jurisdiction of a Romanian court may not be removed as a consequence of connection or *lis pendens* – related actions.

Article 153 of the Law no 105/1992 provide that the Romanian court shall have jurisdiction in any case bring by a Romanian citizen where the action was prior rejected by a foreign court for lack of jurisdiction.

e) Any Problems Pertaining to Lack of Harmonisation

Do to:

- the very short period of time elapse since the accession to the EU
- the limited case practice in the field of international relationships before the year 1990

There are no enough grounds to asses the impact of the lack of harmonization

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

a) *The rules listed in annex I*

Regarding this question, Romania adopted the law no. 105/1992 which describes in art. 148 – 157 the cases in that the national courts have jurisdiction.

" Art. 148 Romanian courts of law have jurisdiction, under the provisions to be further detailed, to settle the disputes arisen between a Romanian party and a foreign one or between foreign natural or legal persons only.

Art. 149 Romanian courts of law have jurisdiction if:

1. the defendant or one of the defendants has its domicile, residence or the business assets in Romania; if the domicile of the defendant based abroad is unknown, the claim shall be lodged with the court having jurisdiction over the plaintiff's domicile or residence in the country;
2. the registered offices of the defendant, a legal person, are located in Romania; for the purpose of this article, a foreign legal person is also deemed to have its headquarters in Romania if it has established in the country a subsidiary, branch, agency or representative office;
3. the plaintiff in the claim for dependency benefits has his/her domicile in Romania;
4. the venue where the obligation under an agreement has arisen or had to be performed, be it only partially, is in Romania;
5. the venue where a legal deed has occurred and has given birth to extra-contractual obligations and their effects is in Romania;
6. the railway or road station as well as the harbor or the airport for loading or unloading the passengers or cargoes transported is located in Romania;
7. the insured property or the venue where the risk has occurred is located in Romania;
8. the last domicile of the deceased or the property left after his/her death is located in Romania;
9. the real property the claim refers to is located in Romania.

Art. 150 In addition, Romanian courts of law have jurisdiction over:

1. lawsuits between persons domiciled abroad, in connection with marital related actions or facts recorded in Romania, if at least one of the parties is a Romanian citizen;
2. lawsuits regarding the protection of minors or of interdicted persons, Romanian citizens domiciled abroad;
3. declaration of the presumed demise of a Romanian citizen even if he/she is abroad at the date he/she is stated to be missing. Until certain interim decisions are made by the Romanian court, the interim actions taken by the foreign court shall remain in place;
4. lawsuits concerning the protection abroad of the intellectual property rights of a person domiciled in Romania, a Romanian citizen or a stateless foreigner, if the parties did not agree upon another jurisdiction;
5. lawsuits between foreigners if they have expressly agreed otherwise and the legal relationships relate to entitlements that may be available to them in connection with property or interests of the said persons in Romania;
6. lawsuits related to the collision („abordage”) of certain vessels or aircrafts as well as those regarding the aid to or rescue of certain persons or properties at sea or in a place or space subject to the sovereignty of no country, if:
 - a) the vessel or the aircraft holds the Romanian nationality;

- b) the destination or the first harbor or airport where the vessel or the aircraft anchors or lands is located on the Romanian territory;
- c) the vessel or the aircraft has been seized in Romania;
- d) the defendant has his/her domicile or residence in Romania;
- 7. bankruptcy or any other legal proceeding instituted in connection with the insolvency situations for a foreign commercial company headquartered in Romania;
- 8. any other lawsuits regulated under the law.

Art. 151 Romanian courts of law hold exclusive jurisdiction to settle lawsuits concerning international private law relationships in connection with:

- 1. marital status-related acts made in Romania and concerning persons domiciled in Romania, either Romanian citizens or stateless foreigners;
- 2. approval of adoption, if the person to be adopted is domiciled in Romania and is a Romanian citizen or a stateless foreigner;
- 3. wardship and administration regarding the protection of a person domiciled in Romania, a Romanian citizen or a stateless foreigner;
- 4. issuance of an interdict against a person domiciled in Romania;
- 5. termination, cancellation or nullity of marriage as well as other disputes between the spouses, save those regarding real properties located abroad, if, at the claimed date, both spouses are domiciled in Romania and one of them is a Romanian citizen or a stateless foreigner;
- 6. estate bequeathed by a person having had his/her last domicile in Romania;
- 7. real properties situated on the Romanian territory;
- 8. forced execution of a writ of execution (executory title) on the Romanian territory.

Art. 152 Upon request, Romanian courts of law may order distress-related actions under emergency situations in order to protect rights, interests or properties connected to their territory even if they lack the jurisdiction, under this article, to settle the claim on its merits in furtherance or in the course of which such actions are necessary.

Art. 153 If a foreign jurisdiction declines its competence to settle a claim filed by a Romanian citizen, it may be brought before the Romanian court mostly connected with the lawsuit at issue.

Art. 154 If the parties referred, on a contractual basis, the dispute between them or the disputes to be born out of the deed they have entered into, to the competence of a certain court, it shall be vested with jurisdiction except for the case where:

- 1. the court is foreign and the dispute falls under the exclusive competence of a Romanian court;
- 2. the court is Romanian and one of the parties claims that a foreign court holds exclusive competence in this respect.

Art. 155 If Romanian courts of law have jurisdiction, under this chapter, and it cannot be determined which one of them is entitled to settle the lawsuit, the claim shall be referred, in line with the rules of jurisdiction, to the Ordinary Court of the 1st District of Bucharest or the Bucharest Municipal Court.

Art. 156 The jurisdiction of Romanian courts of law as established under art. 148-152 is not ruled out by that the same lawsuit or a related one has been referred for settlement to a foreign court.

Art. 157 The court notified in this respect shall verify, ex officio, its jurisdiction to settle the lawsuit in relation to international private law relationships and, if neither the former, nor another Romanian court is determined to have jurisdiction, it shall dismiss the claim for the lack of jurisdiction of the Romanian courts. "

b) Practical use of the rules listed in Annex I

Those rules were applied mainly in family and matrimonial matters as in commercial and civil matters. Taking into consideration that Romania joined the European Union only two months ago the entire case law practice is based on the application of those rules.

c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

We are not aware of any such reported case.

16. Forum necessitatis

Under Romanian legal provisions there are no specific rules regarding the principle of *forum necessitates*.

The reasons of the principle of *forum necessitates*, namely the free access to justice, is well recognized and protected under the Romanian Constitution.

The actual form of the Law no105/1992 describes a quite large of cases when the Romanian courts have jurisdiction, mainly connected with the domicile of the defendant or of the plaintiff, with the object of the legal relationship, the place of birth of the obligation, the place of payment, etc.

Article 153 of the Law no 105/1992 provide that the Romanian court shall have jurisdiction in any case bring by a Romanian citizen where the action was prior rejected by a foreign court for lack of jurisdiction.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

According to the provision of article 151 of the Law no 105/1992 regarding the private international relationships the Romanian Courts have exclusive jurisdiction in the following situations:

- a. civil status documents drawn up in Romania and related to persons domiciled in Romania, Romanian citizens or foreigners without citizenship;
- b. adoption approval if the adoptee is domiciled in Romania and is Romanian citizen or foreigner without citizenship;
- c. trusteeship and administration if the guarder person is domiciled in Romania, is a Romanian citizen or foreigner without citizenship;
- d. claim regarding the interdiction of a person domiciled in Romania;
- e. matrimonial claims, including litigation between spouses, except those relating to immovable abroad Romania, provided that both spouses domiciled in Romania and one of them is a Romanian citizen or a foreigner without citizenship;

- f. the inheritance left by a person whose last domicile was in Romania;
- g. immovable property situated on the Romanian territory;
- h. the forced execution of an enforceable title on the Romanian territory

According to the provision of article 168 the recognition and enforcement of the judgment can be denied where the Romanian court has exclusive jurisdiction.

(E) Declining Jurisdiction

18. Forum Non Conveniens

According to the provision of article 157 of Law no105/1992 the Romanian court has no right to decline jurisdiction/ stay the proceeding. Whether the court find to not have jurisdiction will simply reject the claim and will not decline the competence.

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

(a) Non-EU Jurisdiction Agreements

The jurisdiction of a non-EU court may be designated by the parties through a choice of court agreement, unless there is a Romanian court having exclusive jurisdiction for that litigation.

As we said the Romanian court seized will reject the claim and will not decline the case to the foreign court.

(b) Parallel Proceedings in a non-EU court

Up to now the Romanian legislation recognize the declination only within the national system but not between courts belonging to different jurisdictions. Hence the *prior tempora* rule shall not apply in the international litigation.

(c) "Exclusive" Jurisdiction in a non-EU State

Where the Law no.105/1992 established the jurisdiction of the Romanian court, this court may not deny its jurisdiction for any reason.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

a) Non-EU Jurisdiction Agreements

The Romanian law makes no differences as regard to the nationality of the parties. According to the provision of Article 154 of the Law no 105/1992 the choice clause designating the court shall be valid unless:

- The court is foreign and the Romanian court has exclusive jurisdiction, or
- The court is Romanian and one of the parties makes obvious that a foreign court has exclusive jurisdiction

(b) Parallel Proceedings in a non-EU court

The *lis pendens* rule does not apply in Romania.

(c) "Exclusive" Jurisdiction in a non-EU State

The Romanian courts will decline jurisdiction where they lack no jurisdiction, apart from the existence of any foreign exclusive jurisdiction.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

We are not aware of any such reported cases.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

(a) Claims from EU Consumers against non-EU defendants

We are not aware of any such reported cases.

(b) Claims from EU Employees against non-EU Employers

We are not aware of any such reported cases.

(c) Claims from EU Plaintiffs in Community Regulated Matters

We are not aware of any such reported cases.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

We are not aware of any such reported cases.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

We are not aware of any such reported cases.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

Pursuant to the provisions of Law no.105/1992 the Romanian court has jurisdiction in matters of parental responsibility if the defendant, the plaintiff or the child is domiciled in Romania

SUPPLEMENTAL REPORT FOR:

ROMANIA

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26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

Romania concluded the following bilateral conventions with non-EU countries that include rules of jurisdiction in matters of parental responsibility

- Law no.3/2005 ratifying the Treaty from January 30, 2002 between Romania and Ukraine regarding the legal assistance and the legal relationships in civil cases
- Law no.177/1997 ratifying the Treaty from July 6, 1996 between Romania and Republic Moldavia regarding the legal assistance in civil and penal matters

Law Decree no 463/1960 ratifying the Treaty between Romania and Republic Albania regarding the legal assistance in civil, family and penal cases

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

As a general rule a foreign judgement can be denied recognition or enforcement on the basis provided by article 168 second point of the Law no.105/1992 when the judgment breaches the public order of the

international private law. The breach of the exclusive Romanian courts jurisdiction constitutes a ground for denial.

According to the provision of article 36 of Law no. 105/1992 parental responsibility shall be governed by the law governing the marriage.

According to the provisions of article 151 of Law no. 105/1992 the Romanian courts shall have exclusive jurisdiction for any claim regarding:

- The guardianship of a person domiciled in Romania, a Romanian citizen or a foreign without citizenship;
- The divorce proceedings when by the time of divorce both spouses are domiciled in Romania and one of them is a Romanian citizen or without any citizenship.

(H) Specific Country Questions

29. Jurisdiction in Divorce Proceedings Based on Citizenship

Can divorce proceedings be brought in your country on the basis of the citizenship of only one of the spouses? If yes, is it enough that the spouse was a citizen of your country at the time of marriage, or is it required that the spouse still be a citizen of your country at the time of divorce?

a) Divorce proceedings can be brought in Romania on the basis of the Romanian citizenship of only one of the spouses if:

- the domicile of the spouses is in Romania
- the spouses do not have a common domicile but their common residence is in Romania
- the spouses do not have a common domicile or a common residence but they maintain close relationships with Romania.

b) Paragraph 2 of article 20 from Law no 105/1992 provides that the national law or the law of domicile shall continue to be applicable if one of the spouses changes his citizenship or his domicile.

If the spouses have the common domicile in Romania, the Romanian law shall govern the divorce proceedings even if at the time of divorce none of the spouses is a Romanian citizenship, but subject to the conditions of domicile.

30. Jurisdiction in Divorce Proceedings Based on Other Grounds

Can divorce proceedings be brought in your country on the basis of one or several of the following grounds: (1) the last habitual residence of one spouse in your country; (2) the close connection with the forum State; (3) the forum necessitatis, i.e. the fact that divorce proceedings cannot be brought in any other court abroad?

- a) Divorce proceedings can be brought in Romania on the basis of the last habitual residence of one spouse if at least one spouse is a Romanian citizen, and the spouses do not have a common domicile or a common residence outside Romania;
- b) Whenever the spouses have different citizenships and no common domiciles or residences and the spouses have close connection with Romania the Romanian law shall govern the divorce proceedings;

According to the provisions of paragraph 2 of article 22 of Law no. 105/1992, if the applicable foreign law does not allow the divorce or allow it under very restrictive conditions, the Romanian law shall become applicable if one of spouses is a Romanian citizen by the time of divorce proceedings.

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