

## ROMANIA

### LEGAL BASIS

1. **Has your State signed and/or ratified the *European Convention on State Immunity* (1972) and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004)? Do the authorities of your State consider the provisions on these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

Romania has not expressed its consent to become a party to the 1972 European Convention on State Immunity.

Romania has signed the UN Convention on Jurisdictional Immunities of States and Their Property on 15 September 2005 and has ratified it by Law no. 438/2006.

2. **Please provide information on:**

- a. **National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).**

Law no. 189/2003 on international judicial cooperation in civil and commercial cases and Government Emergency Ordinance no. 123/2007 concerning a set of measures aimed at strengthening judicial cooperation with EU Member States.

There are no explicit provisions concerning the service of process on a foreign state. According to the Guide concerning international judicial cooperation published by the Romanian Ministry of Justice, "a motion cannot be filed against a foreign State and measures of execution cannot be enforced against a foreign State. A foreign State can be a plaintiff."

- b. **Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.**

According to the Romanian Code of Civil Procedure (art. 154), the court reviews the lawfulness of the service of process by own motion, by operation of law.

### PROCEDURE

3. **Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.**

As mentioned above, there are no explicit relevant provisions in Romanian legislation. Similarly, the case law of domestic courts is insufficient to make a general assessment as to the procedural requirements applicable to service of process on a foreign State.

- a. **How are the terms "diplomatic channels" (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.**

Romania is of the view that, where a State is defendant before the courts of a foreign State, the service of process should be effected through the diplomatic mission of the state of forum, on the Ministry of Foreign Affairs of the Defendant State. This procedure has the following advantages:

- guarantees the inviolability of the diplomatic mission of the defendant State;
- allows for the request to be examined directly by its recipient (the MFA of the defendant State), especially under the aspects concerning the immunity of jurisdiction;
- offers a number of procedural guarantees: the request would normally be accompanied by a courtoisie translation in the language of the defendant State; the procedural deadlines would normally be longer, taking into consideration the extraneity element.

In the case of the service of process on foreign States following the request of a Romanian Court, Romanian MFA, through the Protocol Department, examines such requests based on the same principle. However, in case the interested foreign State has a different understanding and such an understanding is notified to Romania (for instance preference for the service of process on the foreign State's embassy in the State of forum), it shall be taken into account.

The scarce existing practice seems to indicate that, in certain cases, it was the embassy of the State concerned that was served. However, since the relevant case concerned the execution of a contract to which the Embassy itself was a party, it is hard to assess whether the notification was made with respect to the State or with the Embassy.

In one case, a Romanian Court requested the Ministry of Foreign Affairs of Romania, by virtue of international courtesy, to serve a complaint on the foreign State. The foreign State refused to accept the service and requested that it be done on its Embassy in Romania.

**b. How are the terms “if necessary” (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?**

Romania considers that, where the language of the interested State is different from the language of the State of forum, the communication of the procedural acts should be accompanied at least by a brief presentation of the Court request in the language of the interested State. The purpose is to allow the interested State to rapidly take note of the elements of the case in order to be able, ad minimum, to assess the issue of immunity.

**4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.**

In principle, Romania considers that adequate service of process should be effected through the diplomatic mission of the state of forum, on the Ministry of Foreign Affairs of Romania.