ROMANIA

Global litigation guide

About

Welcome to The Global Litigation Guide (the **"Guide"**) which has been prepared by DLA Piper's civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper's guide to Legal Professional Privilege and (coming soon) DLA Piper's guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit www.dlapiper.com.

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Romania

Last modified 27 October 2023

Overview of court system

The Romanian legal system follows a civil law system. The courts of law are organized hierarchically as follows:

- Courts of first instance (covering the geographic spread of the relevant cities in the country);
- Tribunals (42 tribunals - one in each county plus Bucharest);
- The Courts of Appeal (15 courts); and
- The High Court of Justice (the highest court in the judicial system).

There is also a Constitutional Court to settle conflicts between public authorities and generally safeguard the Romanian Constitution. The Constitutional Court is not considered part of the judiciary, but rather as a separate and distinct public authority.

Trials are only conducted in Romanian. In the case of a foreign party, the presence of an interpreter is mandatory. The lower courts are bound by the decisions of higher courts.

Limitation

The general limitation period in Romania for pecuniary civil claims is three years, but there are several exceptions, depending on the nature of the rights in question. Limitation periods usually start running from the moment when the claim is due and payable.

In certain situations, different limitation periods will apply. For example:

- for property claims, the limitation period is ten years; and
- for insurance and reinsurance claims, the limitation period is two years.

Procedural steps and timing

Civil litigation begins when the plaintiff files the statement of claim at court. Legal representation is not mandatory, either in the courts of first instance or on appeal.

Generally, the jurisdiction of the courts is determined by the domicile of the defendant, although there are other relevant criteria for certain types of disputes.

The proceedings are usually divided into three main phases:

1. the written phase;
2. the evidence and discovery phase; and
3. the final pleadings phase.

THE WRITTEN PHASE

During the written phase, the plaintiff's statement of claim is randomly assigned to a judge for a prima facie examination. If the judge finds the statement to be lacking any essential formal elements (such as the full names and addresses of the parties, or the signature, etc.), the court will notify the plaintiff who will have ten days to amend the statement of claim. Should the plaintiff fail to do so, the claim will be dismissed. The purpose of this procedure is to prevent incomplete claims from being brought before the courts. The annulment decision does not have a *res judicata* effect - a new statement of claim can be brought forward, if the limitation period has not expired.

If the judge is satisfied that the statement of claim meets all the necessary formal requirements, the defendant will be served with the statement of claim by the court. The defendant is then required to submit its statement of defense and (if applicable) a counterclaim within 25 days. This deadline cannot be extended, even in complex cases. However, in urgent cases, the court may shorten the time limit for the statement of defense. The claimant may file an answer to the statement of defence within ten days of the latter being filed at court and served on the defendant.

After the written pleadings have been exchanged, the judge sets the date for the first hearing, the recommended time for which is 60 days from this date. However, depending on the workload of the court and/or the urgency of the matter, the first hearing may be set outside of the recommended period.

THE EVIDENCE AND DISCOVERY PHASE

At the evidence and discovery phase, the judge decides which of the pieces of evidence proposed by the parties is relevant and pertinent to the dispute and proceeds to its management. The judge may, *ex officio*, order the parties to the dispute, third parties or other public authorities and institutions to submit any other evidence that the court deems necessary, even if these parties do not agree with the court's assessment.

THE FINAL PLEADINGS PHASE

Once the evidence and discovery phase is complete, the parties orally present the final pleadings at the hearing on the merits of the case. Written notes may be submitted and exchanged between the parties during trial and notes may also be filed at the court before a judgment is rendered.

The judge may give judgment at the end of the final session or he may reserve judgment to a later date. The detailed reasons for the judgment will be drafted and served on the parties later (it is recommended that the detailed judgment be served within 30 days from the date of the decision but, in practice, this delay is not always observed).

Timeframes for each phase of the proceedings vary considerably depending on several factors, including the complexity of the case, the evidence to be produced, the workload of the court, the conduct of the parties etc. Typically, the written phase takes between 6 and 12 weeks. Upon completion of the written phase, a first hearing is listed to take place within two to six months. One can expect it to take a further 6 to 12 months for judgment to be given by the court of first instance depending on the complexity of the evidence which will be administered. In total, the estimated timeframe between the service of the claim and the first instance judgment for simple civil law claims is between 12 and 18 months.

Disclosure and discovery

Evidence is primarily presented by the parties in their written submissions (the claimant in the statement of claim and the defendant in the statement of defense). Of the evidence presented, the judge may accept only that which he deems admissible and necessary for the dispute. The role of the court is inquisitorial (i.e. the court is actively involved in the investigation of the facts of the case), and the judge may therefore order the parties to produce any evidence which he or she deems necessary, regardless of whether or not the parties consent to such disclosure.

The parties must each produce all evidence in support of their claim. If important documents are not disclosed by the opposing party, or they are held by a third party, the court may (on its own initiative or at the request of a party) order the respective party to disclose them. If the parties refuse to disclose such documents, or if it is proved that they have concealed such documents, the court may consider the affirmations of the interested parties concerning such documents as being proved. If the evidence has a special legal regime (state secrets, trade and business secrets, professional secrets etc.), then it can be submitted in a confidential form for the other party and be fully disclosed only to the judge.

After the judge approves the evidence presented by the parties in their written submissions, the parties may agree to conduct a separate

evidence production process whereby each party presents the evidence that it considers necessary to determine the litigation. The court supervises the process by resolving any objections, incidents or additional requests that arise raised during the production of evidence. This procedure is a faster alternative to produce evidence, although, in practice, it is rarely used.

Default judgment

Failure by a party to respond to a claim by a party does not prevent the judge from awarding judgment. The absence of the defendant is not considered an admission of the claim by that defendant. The claimant still needs to prove its case. Regardless of the defendant's lack of response, the judge is required to consider the merits of the claim before granting the judgment.

If both parties fail to take action in the proceedings but neither of them requests default judgment, the proceedings will be suspended. Default judgments are identical to any other judgments and are subject to the ordinary and extraordinary means of appeal.

Appeals

There are two types of challenges that can be brought against a court decision: ordinary and extraordinary.

As a rule, the interested party can appeal the first court's decision within 30 days of the decision. Submitting the appeal will suspend the enforcement of such decision. The appeal allows the judges to fully reconsider the case, both on the merits and on the facts.

The appeal will be judged by the superior court. In particular:

- judgments of a Court first instance can be appealed to the Tribunal with territorial jurisdiction;
- judgments of the Tribunals can be appealed to the Court of Appeal with territorial jurisdiction;
- judgments of the Court of Appeal can be appealed to the High Court of Justice.

In certain cases, the parties may also seek the following extraordinary appeals:

- a second appeal (recourse), generally admissible in all types of cases, except those expressly prohibited by the law (such as labour law, inheritance and asset division) and it can only be filed for alleged breaches of legal principles or procedural rules expressly determined by the law;
- revision of the decision is only permissible when expressly provided by law, such as when the material object of the judgment no longer exists or when the judge, witness or expert of the case have been criminally convicted for criminal acts in relation to that specific case; or
- annulment of the decision, which can only be sought in cases of certain serious procedural breaches.

The second appeal will be determined by a higher court than the court that rendered the original decision. The court that issued the decision being reviewed or annulled will determine any revisions or cancellations. These extraordinary remedies may be exercised simultaneously (i.e. they are not mutually exclusive).

Usually, it takes about six to nine months from filing the appeal to the appeal's decision.

Interim relief proceedings

Interim relief can be granted in order to preserve the claimant's rights, or to prevent irreparable damage to the claimant, until a final decision on the case is provided. For instance, by means of interim relief, the court will determine the children's situation until a final decision on the divorce of the parents is reached or will suspend the effect of an administrative act until the court will rule on the validity of such act.

As a general rule, interim measures are granted only when the proceedings on the merits of the claim have already been initiated (i.e. there is an ongoing case) or, in cases expressly provided by the law, prior to the initiation of the proceedings.

Legal representation by an attorney is not mandatory in interim relief proceedings. A claim for interim measures must meet the same formal requirements as any other claim in court. However, it is not subject to an extensive written phase of the litigation, as the procedure needs to be resolved urgently. The court's decision does not stand as *res judicata* on the substantive claim, so it does not affect the merits

of the dispute between the parties.

To obtain the interim relief, the claimant must show that the initial analysis of the claim is in their favor and that there is urgency for the protective measures to be taken.

An interim relief decision can be obtained typically in two to eight weeks, with appeals lasting a further two to four weeks. A decision granting or rejecting an interim relief application is only subject to appeal within five days of the decision. An appeal does not suspend the effects of an interim measure.

Prejudgment attachments and freezing orders

In order to prevent the defendant from trying to dispose of his assets prior to a final judgment, Romanian courts can grant several types of provisional measures. These provisional measures and the interim relief referred to above are both special proceedings and share some commonalities, such as their temporary nature. However, under Romanian law, distinct procedures are required for (i) provisional measures ordered to prevent the defendant from trying to dispose of his assets prior to a final judgment; and (ii) interim relief ordered to preserve the claimant's rights, or to prevent irreparable damage to the claimant, until a final decision on the case is granted.

Among the provisional measures that Romanian courts can grant, the freezing of immovable assets and the freezing of bank accounts are the most important. In general, the same court that has jurisdiction over the substantive claim is the one that can grant provisional measures.

Although each measure has individual admissibility conditions, there are several features common to them all:

- the judge has discretion in granting the temporary measure, taking into account:
  - the risks associated with delay; and
  - the initial analysis of the claimant's case;
- in most cases, the law requires the claimant to provide a security deposit, which can vary in amount, up to 20% of the claim or, in exceptional cases, up to 50% of the claim;
- the interested party must provide proof that the claim was filed before the filing of the provisional measures request. Accordingly, these provisional measures cannot be requested pre-action; and
- the measures granted by the court are usually for a limited time period, until a final decision is rendered on the merits of the case.

The claimant may request the seizure of any movable or immovable assets belonging to the defendant (with limited exceptions such as personal or domestic use assets which are necessary for the daily living of the defendant or his family, letters, photos, etc.) or the freezing of bank accounts. It is not necessary for the claimant to identify in their request either the assets or the bank accounts.

The procedure is resolved initially without summoning the parties. Any appeals must be filed within five days of the decision, and it is mandatory for the court to summon the parties for the hearing of the appeal. Claimants can be held liable for damage caused to the defendant by the seizure should the court subsequently find that the attachment should not have been granted.

Costs

The costs of litigation in Romania include court fees (approximately ranging between 1% and 10% of the value of the claim), fees related to obtaining evidence (e.g. expert reports) and lawyers' fees. As a general rule, court fees are paid by the claimant, fees related to the production of evidence are paid by the party that proposed the evidence, and both parties pay their respective lawyers' fees.

In some cases, the court may order the losing party to cover the opposing party's litigation costs. If the position of one of the parties is fully accepted, the court can only reduce the amount payable by the losing party for the successful party's lawyers' fees when they are considered disproportionate to the complexity and the value of the case.

Class actions

Romanian law does not provide for a specific procedure for class actions. However, multi-claimant litigation is possible in certain cases, where the object of the claim is a common right, or the claimants' rights have a common cause or a close connection. Moreover, certain

bodies such as trade unions or consumer associations have the right to stand as claimant on behalf of multiple individuals in specific cases.

If a court is faces multiple claimants, the judge may direct them to select a common representative. If the claimants are unable to choose a representative, the court may appoint one on their behalf.

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