

Which law will apply? - Romania

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1 Sources of the rules in force

1.1 National rules

The national sources of private international law in Romania include: the Constitution; Title VII of the Civil Code and the Code of Civil Procedure; various special acts that relate to private international law on foreign nationals; companies; Trade Register; citizenship.

1.2 Multilateral international conventions

The Conventions of the Hague Conference on Private International Law on civil procedure; abolishing the requirement to legalise documents; service of documents; obtaining evidence; facilitating access to justice; civil aspects of international child abduction; child protection; adoption; choice of court, and maintenance obligations.

Council of Europe Conventions on commercial arbitration; recognition and enforcement of judgments in matters of custody of children; information on foreign law; adoption; legal status of children born out of marriage, and citizenship.

United Nations Conventions on matters of women's and children's rights; recovery of child support abroad; arbitration; immunity; transport; intellectual property; non-contractual liability; civil liability for pollution damage; boarding; limitation periods, and contract of sale.

1.3 Principal bilateral conventions

Treaties on legal assistance in civil cases have been concluded by Romania with Albania, Algeria, Austria, Belgium, Bulgaria, China, Czech Republic, Cuba, Egypt, France, Greece, Hungary, Italy, Macedonia, Morocco, Moldova, Mongolia, Poland, Russia, Serbia, Slovakia, Slovenia, South Korea, Spain, Syria, Tunisia, Turkey, Ukraine, and the United Kingdom.

2 Implementation of conflict of law rules

The application of foreign law to a legal relationship with an international element may be invoked both of its own motion by a court and by the party concerned.

A court may, based on its active role, raise of its own motion and have the parties debate the application of a foreign law where the Romanian conflict rule makes reference to it. Moreover, any interested party may invoke foreign law in a court, under the principle of availability.

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

Foreign law comprises the provisions of substantive law (including conflict rules), unless the parties opted for the applicable foreign law; cases of foreign law applicable to the form of legal acts and contractual obligations, and other special cases provided for in international conventions to which Romania is a party, by the European Union law or by law.

Where foreign law refers back to Romanian law or the law of another state, Romanian law applies, unless otherwise expressly provided for.

See Articles 2559 and 2560 of the Civil Code.

2.2 Renvoi

Foreign law comprises the provisions of substantive law (including conflict rules), unless the parties opted for the applicable foreign law; cases of foreign law applicable to the form of legal acts and contractual obligations, and other special cases provided for in international conventions to which Romania is a party, by the European Union law or by law.

Where foreign law refers back to Romanian law or the law of another state, Romanian law applies, unless otherwise expressly provided for.

See Articles 2559 and 2560 of the Civil Code.

2.3 Change of connecting factor

Cases where old law always applies even if the connecting factor changes include: law of the last citizenship (decision finding presumed death, absence or disappearance); law which, on the birth date of the child, governs the effects of marriage of the child's parents (filiation of the child inside marriage); the national law of the child from the date of his/her birth (filiation of the child outside marriage).

Cases where the old law takes precedence over the new law, even if the connecting factor changes include: the law of the state where the property was shipped (property to be shipped); the law of residence/registered office of the debtor of the characteristic performance upon the conclusion of the contract (establishing the closest links that a contract would present).

Cases in which either the new law or the old law may apply if the connecting factor changes include: the law of the place in which the movable property is located at the time of the occurrence of the legal fact that generated or extinguished the right (constitution, transmission or termination of real rights); the applicable law at the time and place where the forms of advertising are carried out (movable property previously displaced or to be later moved to another country); the law of the state where the property is located at the start of the period of possession or where it was moved (adverse possession).

Cases where the more favourable law applies where the connecting factor changes include: in case of changing nationality in relation to reaching the age of majority; in case child's filiation outside marriage (who has two citizenships upon birth).

2.4 Exceptions to the normal application of conflict rules

Foreign law does not apply if it contravenes public policy under Romanian private international law (for example, if it leads to a result which is incompatible with the fundamental principles of Romanian or European Union law and with fundamental human rights) or if that foreign law has become enforceable by committing a fraud to the Romanian law. If foreign law is not applied, the Romanian law applies.

Exceptionally, the enforcement of a law as determined according to national rules on private international law may be not be applied where the legal relationship has a very distant connection with this law. In that case, the law that has the closest links to the legal relationship applies.

The mandatory provisions under Romanian law for regulating a legal relationship with an international element shall have priority. Mandatory provisions under the law of another state may also be directly applied to regulate a legal relationship with an international element, where the legal relationship shows close links to the law of that state, and the legitimate interests of the parties so require.

See Articles 2564 and 2566 of the Civil Code.

2.5 Proof of foreign law

The content of foreign law shall be determined by the court through attestations obtained from the state bodies that prescribed it, by means of an expert opinion or by another appropriate manner. A party invoking a foreign law may be required to prove its contents.

See Article 2562 of the Civil Code; Article 30 of Law No 189/2003 on international judicial assistance in civil matters, the European Convention on Information on Foreign Law, London 1968, and the bilateral treaties concluded with the states referred to in point 1.3.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

The substance of a legal act is established by the law chosen by the parties or by its author. The parties may choose the law applicable to all or only a part of a legal act.

In the absence of choice, the law of the state to which the legal document is most closely related (the state where the debtor of the characteristic performance or the author of the act has, on the date of the conclusion of the act, the normal place of residence or registered office) and, where this law cannot be identified, the law of the place where the legal act was concluded applies.

The formal requirements of a legal act are determined by the law which governs its substance. The act is deemed valid if it meets the conditions set by one of the following laws: the law of the place where it was drawn up; the citizenship law or the law of the habitual place of residence of the person who has agreed to it, or the applicable law according to the private international law of the authority examining the validity of the legal act.

The law applicable to contractual obligations is determined according to the regulations of European Union law, and in matters not falling within their scope, the domestic provisions on the law applicable to the legal act in question, unless otherwise provided by international conventions or by special provisions.

See Articles 2640 to 2646 of the Civil Code.

3.2 Non-contractual obligations

The law applicable to non-contractual obligations is determined according to the regulations of European Union law, and in matters not falling within their scope, the law that regulates the substance of the previous legal relationship between the parties, unless otherwise provided by international conventions or by special provisions.

Remedy claims based on a violation of privacy and rights relating to personality are governed, at the choice of the injured person, by the law of the state: of the habitual place of residence of the injured person; in which the detrimental result was produced, or in which the author of the prejudice has its habitual place of residence or registered office.

The right of reply against violations relating to personality is subject to the law of the state where the publication was issued or the programme was broadcast.

See Articles 2641 and 2642 of the Civil Code.

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

An individual's name is governed by his/her national law. Setting the name of the child at birth is governed, by choice, either by the law of the state whose common nationality is shared by both parents and the child, or the law of the state where child was born and has lived since birth.

The individual's place of residence is subject to national law.

The marital status and capacity of individuals are governed by their national law. Special incapacities relating to a particular legal relationship are subject to the law applicable to that legal relationship. The commencement and termination of personality shall be determined by the national law of each individual.

Provision of care to an individual with full legal capacity is subject to the law of the state where he/she has its habitual place of residence at the date of guardianship establishment or at the date when other protection measure is taken.

See Articles 2570, 2572 to 2576 and 2578 to 2579 of the Civil Code.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Child filiation within marriage is established according to the law which, at the date of birth, governs the general effects of his/her parents' marriage. Where the parents' marriage terminated or was dissolved before the birth of the child, the law that at the date of termination or dissolution governed its effects shall apply. This also applies to denying the paternity of a child born within marriage, as well as to the acquisition of a name by the child.

Child filiation out of marriage is determined according to the child's national law since birth date, which applies to the recognition of filiation and its effects and to challenging recognition of filiation. Where the child has more than one nationality other than Romanian, the law of citizenship which is most favourable to him/her applies.

See Articles 2603 to 2606 of the Civil Code.

3.4.2 Adoption

The substantive conditions required to complete adoption are determined by the national law of the adopter and of the child to be adopted. These must also meet conditions that are mandatory for both regimes, as established by each of the two national laws. The substantive conditions required of spouses who jointly adopt or if one spouse adopts the child of the other are those established by the law that governs the general effects of marriage.

The effects of adoption, the relations between the adopter and the adoptee and the dissolution of adoption are governed by the national law of the adopter, and if both spouses are the adopters, the law governing the general effects of marriage.

The form of the adoption is subject to the law of the state in which territory it is concluded.

See Articles 2607 to 2610 of the Civil Code.

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

3.5.1 Marriage

The substantive requirements required for concluding marriage are determined by the national law of each of the future spouses at the time of the marriage ceremony.

The form of marriage conclusion is subject to the law of the state where it is celebrated.

The law governing the legal requirements for marriage conclusion also apply to invalidity of marriage and to the effects of such invalidity.

The general effects of marriage are subject to the law on common habitual residence of spouses and, in absentia, to the law on common citizenship of spouses. In the absence of common nationality, the law of the state where the marriage was celebrated applies.

See Articles 2585 to 2589 of the Civil Code.

3.5.2 Unmarried/Cohabiting couples and partnerships

3.5.3 Divorce and judicial separation

Romania applies Rome III Regulation.

According to national law, spouses may choose by mutual agreement one of the following laws applicable to divorce: the law of the state where the spouses have their common habitual residence on the date of the agreement on the applicable law chosen; the law of the state where the spouses had their last common habitual residence if at least one of them still lives there at the time the agreement on the applicable law chosen; the law of the state either spouse is a national of; the law of the state where the spouses have lived for at least 3 years, or Romanian law.

The agreement on choosing the law applicable to divorce may be concluded or modified no later than the date of referral to the authority responsible to rule the divorce. However, the court may take note of the spouses' agreement no later than the first trial hearing to which the parties were duly summoned.

If spouses do not make a choice of law, the law applicable to divorce is: the law of the state where the spouses have their common habitual residence on the date of filing for divorce; in the absence of a common habitual residence, the law of the state of the spouses' last common habitual residence if at least one spouse has his/her habitual residence in the territory of that state on the date of filing for divorce; failing that, the law of common citizenship of the spouses at the time of filing for divorce; in the absence of common citizenship of the spouses, the law of the last common citizenship of the spouses where at least one of them retained that citizenship on the date of filing for divorce, and Romanian law, in all other cases.

The law governing divorce duly applies to legal separation also.

See Articles 2597 to 2602 of the Civil Code.

3.5.4 Maintenance obligations

The Law applicable to maintenance obligation shall be determined as per regulations of European Union law (Article 2612 of the Civil Code).

3.6 Matrimonial property regimes

The law applicable to matrimonial regime is the law chosen by spouses (the habitual residence of one spouse on the date of choosing; the law on citizenship of either spouse on the date of choosing, or the law of the first common habitual residence after the celebration of marriage). It governs the measures of publicity and enforceability against third parties and, alternatively with law of the place of conclusion, the formalities required for the conclusion of the matrimonial convention.

Agreement on choosing the law applicable to matrimonial property regime may be concluded either before the celebration of the marriage, or at the time of concluding marriage or during marriage.

The formal conditions are those provided for either by the law chosen to govern the matrimonial regime or by the law of the place where the agreement was concluded. If the spouses have not chosen a law applicable to their matrimonial regime, it is subject to the law applicable to the general effects of marriage.

See Articles 2590 to 2596 of the Civil Code.

3.7 Wills and successions

Romania applies Regulation (EU) No 650/2012.

In national law, the law of the state where the deceased had his/her habitual residence at the time of death governs inheritance.

An individual may choose as the law applicable to the inheritance law of the state whose nationality he/she has. If applicable law is chosen, this governs the existence and validity of consent expressed by the statement of choice of the applicable law.

The preparation, amendment or revocation of the will shall be considered valid if the act meets the formal requirements applicable, either on the date when it was prepared, amended or revoked, or on the death of the testator, according to: the national law of the testator; the law of the habitual place of residence; the law of the place where the document was prepared, amended, or revoked; the law of the place of the real estate, or the law of the court or body that fulfils the procedure of transmitting the inherited assets.

Where, under the law applicable to inheritance succession is vacant, property located/situated in Romania's territory is taken over by the Romanian state as per Romanian law on the award of vacant succession property.

See Articles 2633 to 2636 of the Civil Code.

3.8 Real property

The law of the place where the property is located/situated (*lex rei sitae*) regulates matters such as: possession, ownership and other real rights on property, including collateral; (upon commencement of the period of ownership) adverse possession; (when the legal fact which generated, modified or extinguished that right occurred) the creation, transmission or termination of real rights over a property that changed its location; (on the conclusion of the movable property mortgage contract) the conditions of validity, advertising and effects of movable property mortgage; forms of advertising and those establishing rights relating to immovable property, and (at the time of theft/export or at the time of claim) claims of stolen or illegally exported property.

Property in transit is subject to the law of the state from which it was dispatched.

The establishment, transmission or termination of real rights over a means of transport are subject to: the law of the flag the vessel is flying or the law of the state of registration of the aircraft; the law applicable to the organisational status of the transport company for rail and road vehicles of its heritage.

The issuance of shares or bonds, in registered or bearer form, is subject to the law applicable to the organisational status of the issuing legal person.

The establishment, content and expiry of copyright for a work of intellectual creation shall be subject to the law of the State where it was for the first time made public.

The establishment, content and expiry of industrial property rights shall be subject to law of the state where the deposit or registration was performed or where the application for deposit or registration was lodged.

See Articles 2613 to 2632 of the Civil Code.

3.9 Insolvency

Provisions on applicable law may be found in Law No 85/2014 on insolvency and insolvency prevention proceedings, facilitating the application of Regulation (EC) No 1346/2000.

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