

Jurisdiction - Romania

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1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?

In Romania, in addition to ordinary courts, there are specialised sections or panels for dispute resolution with regard to certain matters.

Pursuant to the provisions of Law No 304/2004 on organisation of justice, the High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*) has 4 sections – Civil Section I, Civil Section II, Criminal Section, Administrative and Tax Litigation Section – the Nine-Judge Panel and the Joint Sections, each having their own jurisdiction. Courts of appeal, tribunals or, as appropriate, district courts have specialised sections or panels for civil cases, criminal cases, cases involving children and family matters, cases involving administrative and tax disputes, cases related to labour disputes and social insurance, companies, the Trade Register, insolvency, unfair competition, maritime and fluvial cases. Specialised tribunals may be set up to rule on the above matters, as appropriate.

2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?

The Code of Civil Procedure sets out the normal procedure for civil cases. Its provisions also apply to other matters, in so far as the laws governing them do not provide otherwise.

Articles 94 to 97 of the Code of Civil Procedure govern the jurisdiction related to subject matter for civil courts of law.

As *courts of first instance*, district courts hear the following cases involving applications that can (cannot) be measured in terms of money:

- applications which are, pursuant to the *Civil Code*, within the jurisdiction of the custody and family court;
- applications related to registration in civil status records;
- applications related to the administration of multi-storey buildings/apartments/spaces owned exclusively by different persons and the legal relationships established by homeowners' associations with other natural or legal persons;
- applications for eviction;
- applications related to shared walls and ditches, the distance between buildings and plantations, rights of way, encumbrances, other limitations affecting ownership rights;
- applications related to changes in boundaries and to marking boundaries;
- applications for the protection of possessions;
- applications related to affirmative or negative obligations that cannot be measured in terms of money;
- applications related to judicial partition, regardless of the value involved;
- other applications that can be measured in terms of money, up to and including RON 200 000, regardless of the parties' capacity;

District courts hear appeals against the decisions of the public authorities with jurisdiction and other bodies with jurisdiction. District courts also hear any other applications which are by law within their jurisdiction.

Tribunals hear:

- as courts of first instance, all the applications which are not by law within the jurisdiction of other courts;
- as courts of appeal, the appeals against judgments handed down by judges at first instance;
- as courts of review, the cases specifically provided for by the law;
- any other applications which are by law within their jurisdiction.

Courts of appeal hear:

- as courts of first instance, applications relating to administrative and tax disputes;
- as courts of appeal, appeals against judgments handed down by tribunals at first instance;
- as courts of review, the cases specifically provided for by the law;
- any other applications which are by law within their jurisdiction.

The High Court of Cassation and Justice hears:

- appeals against judgments of courts of appeal and other judgments, in the cases provided for by the law;
- reviews in the interest of the law;
- applications in relation to a prior ruling for clarifying certain legal matters;
- any other applications which are by law within its jurisdiction;

2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?

The Romanian civil judicial system distinguishes between lower and higher courts, with jurisdiction related to subject matter being established among different-ranking courts according to functional (type of duty) and procedural criteria (value, subject matter or nature of dispute).

The Code of Civil Procedure has brought changes in terms of jurisdiction and tribunals have become courts with full jurisdiction to hear the substance of cases at first instance. The jurisdiction of district courts includes hearing small and/or less complex claims, which are highly frequent in practice.

Courts of appeal have jurisdiction to mainly hear appeals, while the High Court of Cassation and Justice is the ordinary court of review which ensures the uniform interpretation and application of the law at national level.

2.2 Territorial jurisdiction (is the court of city/town A or of city/town B competent for my case?)

2.2.1 The basic rule of territorial jurisdiction

The rules on territorial jurisdiction of the Romanian civil judicial system are laid down in Article 107 and the following of the Code of Civil Procedure.

According to the general rule, the application is lodged with the court where the defendant has its domicile or its office.

2.2.2 Exceptions to the basic rule

There are specific rules on territorial jurisdiction, such as:

- if the defendant's domicile/office is not known, the application shall be lodged with the court where the defendant has its residence/representation office, and, if unknown, with the court where the claimant has its domicile/office/residence /representation office;
- the application against a legal person governed by private law may be also lodged with the court where one of its subsidiaries without legal personality is located;
- the application against an association, company or other entity without legal personality may be lodged with the court that has jurisdiction over the person who, as agreed by its members, has been entrusted with its management or administration; in the absence of such person, the application may be lodged with the court that has jurisdiction over any of the members of the entity in question;
- the applications against the State, central or local authorities and institutions and other legal persons governed by public law may be lodged with the court where the claimant has its domicile/office or with the court where the defendant has its office.

2.2.2.1 *When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?*

The Romanian Code of Civil Procedure provides for rules of alternative jurisdiction (Article 113 to 115). Thus, the following courts also have territorial jurisdiction:

- the court where the claimant has its domicile (applications for establishment of parentage);
- the court where the claimant-creditor has their domicile (maintenance obligation);
- the court where the contractual obligation is performed, as provided for by the agreement;
- the court where the property is located (leases, land registration/justification/correction);
- the court where the departure/arrival occurs (transport agreements);
- the court where the payment is made (bills of exchange, cheque, promissory note or other securities);
- the court where the consumer has their domicile (compensation for damages to consumers for agreements concluded with professionals);
- the court where the tort/delict has been committed or where the damage has occurred, for applications concerning obligations arising from such deed.

Where, outside their domicile, the defendant regularly carries out professional activities/ agricultural, commercial, industrial or similar activities, the application may be also lodged with the court where the activities are carried out in respect of pecuniary obligations arising or which are to be performed in that place.

In respect of insurance matters, the application for damages may also be lodged with the court where the insured has their domicile or office, where the insured assets are located or where the insured risk has occurred.

The choice of jurisdiction under an agreement is deemed to be null and void if carried out before the right to compensation has arisen, while, in respect of matters concerning the compulsory civil liability insurance, the injured third party may initiate direct proceedings also before the court where they has their domicile/office.

The court of law where the protected person has his/her domicile/residence rules on the territorial jurisdiction in respect of applications for the protection of natural persons, for which, pursuant to the Civil Code, the custody and family court has jurisdiction. In the case of applications for the authorisation, by the custody and family court, of the conclusion of legal acts (in relation to a property), the court where the property is located also has jurisdiction. In this case, the custody and family court that has handed down the judgment delivers a copy of the judgment to the custody and family court where the protected person has his /her domicile/residence.

The application for a divorce falls within the jurisdiction of the district court where the last joint home of the spouses is located. If the spouses do not have a joint home or if neither lives any longer in the place for which the district court has jurisdiction and

where the joint home is located, the district court that has jurisdiction is that where the defendant's home is located. If the defendant does not live in Romania and the Romanian courts have international jurisdiction, the court where the claimant's home is located has jurisdiction. If neither the claimant, nor the defendant live in Romania, the parties may agree to lodge the application for divorce with any district court in Romania. In the absence of such agreement, the application for divorce shall be lodged with Bucharest District Court of the 5th District (Article 914 of the Code of Civil Procedure).

Applications for the resolution of individual labour disputes shall be lodged with the tribunal where the claimant's domicile/place of work is located (Article 269 of Law No 53/2003 – Labour Code).

2.2.2.2 *When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?*

The rules that lay down exclusive territorial jurisdiction are provided for by Article 117 to 121 of the Code of Civil Procedure. Therefore:

- applications concerning real property rights shall be lodged only with the court where the property is located. If the property is located in the areas of jurisdiction of several courts, the application shall be lodged with the court where the defendant has their domicile/residence, if it is located in any of these areas of jurisdiction, or, if not, with any of the courts where the property is located. The provisions also apply to applications for the protection of possessions, applications for the marking of boundaries, applications concerning the restrictions of the right in immovable property and applications for judicial partition of a property, where the undivided co-ownership does not result from succession;
- in matters of inheritance, until the severance of undivided co-ownership, the court where the last domicile of the deceased was located has exclusive jurisdiction over applications concerning:
 - the validity or execution of testamentary dispositions;
 - inheritance, its charges and the charges related to the heirs' possible claims against one another;
 - the applications of legatees/creditors of the deceased against any of the heirs/the executor of the will;
- in respect of applications related to companies, until the completion of the liquidation/deregistration proceedings, the court where the company has its principal office has exclusive jurisdiction;
- the tribunal where the debtor has its office has exclusive jurisdiction over the applications related to insolvency/ creditors' arrangements;
- applications submitted by a professional against a consumer may be lodged only with the court where the consumer has their domicile.

2.2.2.3 *Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?*

The parties may agree in writing or, in respect of ongoing disputes, by means of a verbal statement before the court, that the cases related to assets and other rights they may have should be heard by other courts than those that would have territorial jurisdiction, unless they have exclusive jurisdiction. In disputes concerning the protection of consumers' rights and other cases provided for by the law, the parties may agree on the choice of jurisdiction only after the right to compensation has arisen, any agreement to the contrary being deemed null and void (Article 126 of the Code of Civil Procedure).

Ancillary, additional and incidental applications shall be lodged with the court that has jurisdiction over the principal application, even if they fall within the jurisdiction related to the subject matter or territorial jurisdiction of another court of law, except for applications concerning insolvency or creditors' arrangements. These provisions also apply where the jurisdiction over the principal application has been laid down by law in favour of a specialised section or panel. If the court has exclusive jurisdiction over one of the parties, this court shall have exclusive jurisdiction over all parties (Article 123 of the Code of Civil Procedure).

Moreover, pursuant to the provisions of Article 124 of the Code of Civil Procedure, the court that has jurisdiction to rule on the principal application shall also rule on the defences and exceptions, except for those that are preliminary matters and fall within the exclusive jurisdiction of another court, while procedural incidents shall be heard by the court before which they have been raised.

The issue of the general lack of jurisdiction of the courts of law may be raised by the parties or by the judge in any stage of the case. The issue of the lack of jurisdiction related to subject matter and the lack of territorial jurisdiction related to public policy must be raised at the first hearing to which the parties have been duly subpoenaed before the first court, while the lack of jurisdiction related to private order may be raised only by the defendant through the defence or, if the defence is not mandatory, at the latest at

the first hearing to which the parties have been duly subpoenaed before the first court. If the lack of jurisdiction is not related to public policy, the party that has lodged the application with a court that has no jurisdiction will not be able to request the declaration of the lack of jurisdiction (Article 130 of the New Code of Civil Procedure).

In civil disputes with cross-border implications, in matters concerning rights freely available to the parties under the Romanian law, if the parties have validly agreed that the Romanian courts of law have jurisdiction to rule on the current or possible disputes in relation to these rights, the Romanian courts shall be the only courts with jurisdiction to rule on these matters. Unless the law provides otherwise, the Romanian court before which the defendant is summoned shall have jurisdiction to rule on the application, if the defendant appears before the court and submits defences as to the substance of the case, without also raising an exception related to the lack of jurisdiction at the latest by the end of the stage of inquiry in the case before the first court. In the two above-mentioned cases, the Romanian court may dismiss the application where it is clear, from all the circumstances of the case, that the dispute has no significant link to Romania (Article 1066 of the New Code of Civil Procedure).

3 Where specialised courts have jurisdiction how can I find out which one I have to address?

See the answers to questions 1, 2, 2.1., 2.2., 2.2.2.1., 2.2.2.2.

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