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How to bring a case to court

Румъния

1 Do I have to go to court or is there another alternative?

Any person who has a claim against another person must lodge an application with the court of law that has jurisdiction over the matter in question. The matter may be referred to the court only after a prior procedure has been completed, if the law expressly provides it. The proof of the completion of the prior procedure must be attached to the application.

A party to a dispute may also rely on alternative means of dispute resolution.

Mediation is optional before going to court. During legal proceedings, the judicial authorities are required to inform the parties of the option and advantages of mediation.

Mediation may occur in disputes relating to insurance, consumer protection, family law, professional liability cases, labour disputes and civil disputes with a value below RON 50 000, except for those in relation to which an enforceable court judgment has been delivered to initiate insolvency proceedings, actions relating to the commercial register and cases in which the parties opt for the procedures set out in Articles 1.014 - 1.025 or 1.026 - 1.033 of the Code of Civil Procedure (payment orders or small claims).

The parties to a dispute may also resort to arbitration, which is a private alternative jurisdiction. Persons with full capacity to act may agree to resolve disputes by arbitration, except for those relating to civil status, capacity of persons, succession proceedings, family relations and rights that cannot be decided by the parties.

2 Is there any time limit to bring a court action?

The right of pecuniary action is subject to time-barring, unless the law provides otherwise. In the cases specifically provided for by the law, other rights of action are also subject to the extinctive prescription, regardless of their subject matter (Article 2501 of the Civil Code).

The general limitation period is three years, pursuant to the provisions of Article 2517 of the Civil Code.

In accordance with Article 10(1) of Government Emergency Order No 39/2017 on actions for damages in respect of infringements of the provisions of competition law and amending and supplementing Law No 21/1996 on competition, by way of derogation from Article 2.517 of the Civil Code, the right to bring an action for damages is time-barred after 5 years.

The Civil Code lays down special prescription periods time-barring certain matters, such as:

the limitation period of ten years for real rights which have not been declared by law as indefeasible or not subject to another limitation period; compensation for the non-material/material damage suffered by a person as a result of torture or acts of barbarity or, as applicable, through violence or sexual assault against minors or persons who cannot defend themselves or express their will; compensation for damage to the environment;

the limitation period of two years for the right of action relying on a (re)insurance relation; the right of action relating to the payment of fees owed to intermediaries for services supplied under an intermediation agreement;

the limitation period of one year for the right of action relating to the refund of amounts collected from the sale of tickets for a performance that did not take place; caterers or hotel operators for the services they supply; professors, teachers, maestros and artists, for hourly, daily or monthly lessons; doctors, midwives, nurses and pharmacists for calls, procedures or medicine; retailers for the payment of merchandise sold and supplies delivered; craftsmen for the payment of their work; lawyers, against clients, for the payment of fees and expenses; notaries public and bailiffs, in respect of the payment of amounts they are entitled to; the right of action arising from an agreement for land, air or water transport of goods against the carrier.

3 Should I go to a court in this Member State?

The rules on international jurisdiction in disputes with cross-border implications are laid down in Book VII, International Civil Proceedings, of the *Code of Civil Procedure*. The provisions of this book, however, apply to proceedings with cross-border implications under private law, in so far as the international treaties to which Romania is a party, European Union law or special laws do not provide otherwise.

In matters concerning international jurisdiction, the Code of Civil Procedure lays down provisions relating to, among others: jurisdiction relying on the defendant's domicile or office, voluntary prorogation of jurisdiction in favour of the Romanian courts, agreements for choice of court, arbitration exception, forum of necessity, internal jurisdiction, *lis pendens* and related actions at international level, exclusive personal jurisdiction, exclusive jurisdiction over pecuniary actions or preferential jurisdiction of Romanian courts (Article 1066 and the following of the Code of Civil Procedure).

4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?

Territorial jurisdiction is regulated according to general criteria (defendant's domicile/ office), alternative criteria (parentage, maintenance, transport agreement, insurance agreement, bill of exchange/check/promissory note/security, consumers, civil liability under tort law) or exclusive criteria (properties, inheritance, companies, actions against consumers), laid down by Article 107 and the following of the New Code of Civil Procedure.

5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?

Court jurisdiction according to the subject matter of the case is laid down by Article 94 and the following of the New Code of Civil Procedure and depends on the nature of the case or amount at stake.

As courts of *first instance*, district courts hear applications which are, pursuant to the *Civil Code*, within the jurisdiction of the custody and family court; applications for registration in the 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, right 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.

Tribunals hear, as courts of *first instance*, all the applications which are not by law within the jurisdiction of other courts or 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 or any other applications which are by law within their jurisdiction.

6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?

Parties may bring a court action personally or through a representative, and such representation may be subject to the law, an agreement or judiciary. Natural persons who do not have the capacity to act will be represented by a legal representative. The parties may be represented by a representative of their choice, under the law, unless the law requires their appearance in person before the court of law.

At first instance and during appeals, natural persons may be represented by a lawyer or another proxy. If a person other than a lawyer acts as representative, the proxy can only make submissions as to procedural exceptions and the substance of the case through a lawyer, both in the stage of inquiry and during the presentation of arguments. With a view to drafting the application and setting out the grounds for appeal and to lodging and arguing the appeal, natural persons shall be assisted and represented, under the penalty of nullity, only by a lawyer.

Legal persons may be represented before courts of law under an agreement only by a legal advisor or lawyer. With a view to drafting the application and setting out the grounds for appeal and to lodging and arguing the appeal, legal persons shall be assisted and, as applicable, represented, under the penalty of nullity, only by a lawyer or legal advisor. The provisions mentioned above shall apply accordingly to associations, companies or other entities without legal personality.

7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?

The application is registered and attributed a specific date by applying the entry stamp. After registration, the application and accompanying documents, together with, where appropriate, evidence of how they have been forwarded to the court, are handed over to the President of the court or the person designated by the latter, who will take immediate steps to randomly establish a judicial panel, pursuant to law (Article 199 of the Code of Civil Procedure).

8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?

Pursuant to Article 12(5) of Law No 304/2004 on organisation of justice, applications and procedural documents shall only be drafted in Romanian. Applications shall only be made in writing. Article 194 of the New Code of Civil Procedure provides that the application, lodged personally or through a representative, received by post, courier, fax or scanned and sent by e-mail or as electronic document, shall be registered and attributed a specific date by applying the entry stamp.

Pursuant to Article 225 of the New Code of Civil Procedure, if any of the parties to be heard does not speak Romanian, the court shall resort to a legal translator. If the parties agree, the judge or clerk may act as translator. If the presence of a legal translator cannot be ensured, the translations made by trustworthy persons who speak the language in question may be used. If the person is mute, deaf or deaf mute or, for any other reason, cannot express himself or herself, communication shall be carried out in writing. If the person in question cannot read or write, an interpreter shall be used. The provisions regarding experts shall apply accordingly to translators and interpreters.

9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?

The Code of Civil Procedure does not foresee the use of any standardised forms for legal claims. The general rules on civil procedure lay down the content of some of the civil law claims (e.g. application, defence, counterclaim).

10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?

The legal costs are judicial stamp duties, lawyers', experts' and specialists' fees, amounts owed to witnesses in relation to travelling and amounts lost as a result of the need to appear before the court, travelling and accommodation costs, as well as any other costs needed for the proper conduct of the proceedings. The party claiming legal costs must prove the costs and their amount at the latest by the end of the discussions on the substance of the case. The losing party will have to pay the winning party's legal costs, at the request of the latter. If the application has been allowed in part, the judges shall establish the extent to which each party may be ordered to pay the legal costs. If necessary, judges may order the offset of legal costs. The defendant who has acknowledged the claims made by the claimant at the first hearing to which the parties have been duly subpoenaed cannot be ordered to pay the legal costs, except where, prior to the initiation of the proceedings, the claimant sent a formal notice to the defendant or the defendant was lawfully in default. If there are several claimants or defendants, they may be ordered to pay the legal costs equally, proportionally or jointly, depending on their status in the proceedings or the nature of the legal relationship among them.

11 Can I claim legal aid?

Legal aid may be obtained pursuant to the provisions of Emergency Order No 51/2008 on public legal aid in civil matters, approved with further amendments by Law No 193/2008, as further amended. The New Code of Civil Procedure (Article 90 and 91) includes general provisions on legal aid.

12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?

The application is registered and attributed a specific date by applying the entry stamp. After registration, the application and accompanying documents are handed over to the President of the court or the judge replacing the President, who will take immediate steps to randomly establish a panel.

The panel to which the case has been randomly assigned verifies whether the application meets the necessary requirements. Where the application does not meet the requirements, the claimant is notified in writing of the deficiencies in question. Within maximum ten days as of the receipt of the communication, the claimant must provide the additional information or make the changes ordered, under the penalty of annulment of the application. If the obligations related to supplying additional information or amending the application are not fulfilled within the provided term, the court orders the annulment of the application through a hearing report issued in chambers.

Once the judge has found that all the legal conditions have been met in respect of the application, he/she orders, by a decision, its communication to the defendant.

13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?

Detailed information on the case may be obtained from the archive office of the courts or from their websites, if available, at <https://portal.just.ro/>.

The court may rule on an application only if the parties have been subpoenaed or have appeared before the court personally or through a representative. The court will postpone ruling on the case and will order that a party should be subpoenaed whenever it finds that the absent party has not been subpoenaed in compliance with the requirements provided for by the law, under the penalty of nullity. Communication of subpoenas and all procedural documents shall be made ex officio.

Once the judge has found that all the legal conditions have been met in respect of the application, he/she orders, by a decision, its communication to the defendant, who is informed of the obligation to submit a defence, under penalty, within twenty-five days as of the communication of the application. The defence is communicated to the claimant, who must submit a reply to the defence within ten days as of communication and the defendant will acquaint itself with the reply to the defence by accessing the case file. Within three days as of the date of submission of the reply to the defence, the judge sets, by a decision, the first hearing, which will take place within maximum sixty days as of the date of the court decision, and orders that the parties should be subpoenaed. If the defendant has not submitted a defence within the legal term or the claimant has not supplied a reply to the defence within the legal term,

upon the expiry of the appropriate period, the judge sets, by a decision, the first hearing, which will take place within maximum sixty days as of the date of the decision, and orders that the parties should be subpoenaed. In urgent proceedings, the above periods may be shortened by the judge, depending on the circumstances of the case. If the defendant resides abroad, the judge will order a longer reasonable period, depending on the circumstances of the case. The party that has lodged the application and has acknowledged the hearing date and the party that has appeared at a hearing will not be subpoenaed throughout the proceedings before that court as it will be deemed that the party in question is aware of the subsequent hearing dates. These provisions also apply to the party on which a subpoena to a hearing has been served as it is deemed that, in this case, the party in question is also aware of the hearing dates following the one for which the subpoena has been served. The subpoena also mentions that, further to the serving of the subpoena, subject to a signature acknowledging receipt, the subpoenaed party is deemed to be also aware of the hearing dates following the one for which the subpoena has been served.

At the first hearing to which the parties have been duly subpoenaed, after hearing the parties, the judge must estimate the necessary inquiry period, taking into account the circumstances of the case, so that a ruling may be handed down within an optimal and predictable period.

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