GLOBAL PRACTICE GUIDES

Definitive global law guides offering comparative analysis from top-ranked lawyers

# Litigation

**Romania**
**Cosmin Vasile and Alina Tugearu**
**Zamfirescu Racoţi Vasile & Partners**

practiceguides.chambers.com

2021

# ROMANIA

## Law and Practice

***Contributed by:***
*Cosmin Vasile and Alina Tugearu*
***Zamfirescu Racoţi Vasile & Partners*** ***see p.16***

## Contents

**1. General** p.4
- 1.1 General Characteristics of the Legal System p.4
- 1.2 Court System p.4
- 1.3 Court Filings and Proceedings p.4
- 1.4 Legal Representation in Court p.4

**2. Litigation Funding** p.4
- 2.1 Third-Party Litigation Funding p.4
- 2.2 Third-Party Funding: Lawsuits p.4
- 2.3 Third-Party Funding for Plaintiff and Defendant p.4
- 2.4 Minimum and Maximum Amounts of Third-Party Funding p.4
- 2.5 Types of Costs Considered under Third-Party Funding p.4
- 2.6 Contingency Fees p.4
- 2.7 Time Limit for Obtaining Third-Party Funding p.5

**3. Initiating a Lawsuit** p.5
- 3.1 Rules on Pre-action Conduct p.5
- 3.2 Statutes of Limitations p.5
- 3.3 Jurisdictional Requirements for a Defendant p.5
- 3.4 Initial Complaint p.5
- 3.5 Rules of Service p.5
- 3.6 Failure to Respond p.6
- 3.7 Representative or Collective Actions p.6
- 3.8 Requirements for Cost Estimate p.6

**4. Pre-trial Proceedings** p.6
- 4.1 Interim Applications/Motions p.6
- 4.2 Early Judgment Applications p.6
- 4.3 Dispositive Motions p.6
- 4.4 Requirements for Interested Parties to Join a Lawsuit p.6
- 4.5 Applications for Security for Defendant's Costs p.7
- 4.6 Costs of Interim Applications/Motions p.7
- 4.7 Application/Motion Timeframe p.7

**5. Discovery** p.7
- 5.1 Discovery and Civil Cases p.7
- 5.2 Discovery and Third Parties p.7
- 5.3 Discovery in This Jurisdiction p.7
- 5.4 Alternatives to Discovery Mechanisms p.8
- 5.5 Legal Privilege p.8
- 5.6 Rules Disallowing Disclosure of a Document p.8

**6. Injunctive Relief** p.8
- 6.1 Circumstances of Injunctive Relief p.8
- 6.2 Arrangements for Obtaining Urgent Injunctive Relief p.8
- 6.3 Availability of Injunctive Relief on an Ex Parte Basis p.9
- 6.4 Liability for Damages for the Applicant p.9
- 6.5 Respondent's Worldwide Assets and Injunctive Relief p.9
- 6.6 Third Parties and Injunctive Relief p.9
- 6.7 Consequences of a Respondent's Non-compliance p.9

**7. Trials and Hearings** p.9
- 7.1 Trial Proceedings p.9
- 7.2 Case Management Hearings p.9
- 7.3 Jury Trials in Civil Cases p.10
- 7.4 Rules That Govern Admission of Evidence p.10
- 7.5 Expert Testimony p.10
- 7.6 Extent to Which Hearings are Open to the Public p.10
- 7.7 Level of Intervention by a Judge p.10
- 7.8 General Timeframes for Proceedings p.10

**8. Settlement** p.11
- 8.1 Court Approval p.11
- 8.2 Settlement of Lawsuits and Confidentiality p.11
- 8.3 Enforcement of Settlement Agreements p.11
- 8.4 Setting Aside Settlement Agreements p.11

9. Damages and Judgment p.11
9.1 Awards Available to the Successful Litigant p.11
9.2 Rules Regarding Damages p.11
9.3 Pre and Post-Judgment Interest p.11
9.4 Enforcement Mechanisms of a Domestic Judgment p.11
9.5 Enforcement of a Judgment from a Foreign Country p.11

10. Appeal p.12
10.1 Levels of Appeal or Review to a Litigation p.12
10.2 Rules Concerning Appeals of Judgments p.12
10.3 Procedure for Taking an Appeal p.12
10.4 Issues Considered by the Appeal Court at an Appeal p.13
10.5 Court-Imposed Conditions on Granting an Appeal p.13
10.6 Powers of the Appellate Court after an Appeal Hearing p.13

11. Costs p.13
11.1 Responsibility for Paying the Costs of Litigation p.13
11.2 Factors Considered When Awarding Costs p.13
11.3 Interest Awarded on Costs p.13

12. Alternative Dispute Resolution p.13
12.1 Views of Alternative Dispute Resolution within the Country p.13
12.2 ADR within the Legal System p.14
12.3 ADR Institutions p.14

13. Arbitration p.14
13.1 Laws Regarding the Conduct of Arbitration p.14
13.2 Subject Matters Not Referred to Arbitration p.15
13.3 Circumstances to Challenge an Arbitral Award p.15
13.4 Procedure for Enforcing Domestic and Foreign Arbitration p.15

14. Recent Developments p.15
14.1 Proposals for Dispute Resolution Reform p.15
14.2 Impact of COVID-19 p.15

***Contributed by:*** *Cosmin Vasile and Alina Tugearu,* ***Zamfirescu Racoți Vasile & Partners***

# 1. General

### 1.1 General Characteristics of the Legal System

Romania's legal system is based on civil law and follows an inquisitorial model in which the court is actively involved in investigating the case, able to address questions to the parties, decide upon the necessity of particular evidence, invoke procedural incidents, etc. The court is also responsible for leading the hearings.

The proceedings include a written phase followed by an oral phase.

### 1.2 Court System

The Romanian court system comprises the following subdivisions:

- the first courts (located in the main towns);
- the Tribunals (located in every county);
- the Court of Appeal (corresponding to larger regions); and
- the High Court of Cassation and Justice (the highest jurisdiction in Romania).

Depending on its nature or size, a claim may be settled, in the first instance, by any of these courts, except for the High Court of Cassation and Justice, which is solely an appellate court (with some exceptions in special matters). Most of the courts have different divisions corresponding to general subject matter categories (eg, civil, administrative, and criminal).

Specialised courts, as well as specialised sections within the courts, exist in matters such as labour law, administrative and fiscal law, and insolvency.

### 1.3 Court Filings and Proceedings

As a rule, court hearings are held in public sessions. In particular cases, the law provides that some types of claims are to be settled only in the presence of the parties. In addition, following a well-grounded request from a party, the court itself may instruct that hearings are to be held in the presence of the parties alone.

Court documents are only available to the parties in the trial and their representatives. Under specific conditions provided by law, members of the press or third parties, proving they bear an interest in relation to the file, may study court documents.

### 1.4 Legal Representation in Court

There are no particular requirements for legal representatives appearing before Romanian courts. They have rights of audience before any type of court.

The members of a foreign Bar may provide legal counsel on Romanian law after undertaking an exam on the Romanian law and language, organised by the National Association of Romanian Bars. A foreign lawyer practising law in Romania has the obligation to register with the special table of each local Bar Association. However, a foreign lawyer does not have rights of audience before Romanian courts, except for international arbitration courts.

# 2. Litigation Funding

### 2.1 Third-Party Litigation Funding

Litigation funding by a third party is not officially provided for within the Civil Procedure Code. Although permitted, third-party funding is not frequently used in Romania. Third-party funding will be governed by the agreement concluded between the funder and the beneficiary.

### 2.2 Third-Party Funding: Lawsuits

There are no limitations to the types of lawsuits available for third-party funding, unless the third party purchases the rights stemming from the claim and becomes a party in the trial, in which case certain interdictions related to the profession of the third party and the object of the claim might apply. For example, judges, prosecutors and other judicial participants in a civil trial may not acquire the litigious rights that fall under the jurisdiction of the court in which they exercise their profession.

### 2.3 Third-Party Funding for Plaintiff and Defendant

Third-party funding is available to both the plaintiff and defendant.

### 2.4 Minimum and Maximum Amounts of Third-Party Funding

Third-party funding generates private law effects between the third party and the beneficiary, the limits of the amounts funded being subject to the agreement between the third party and the beneficiary, there being no law provision regulating these limits.

### 2.5 Types of Costs Considered under Third-Party Funding

The costs funded will be established in the agreement between the third party and the beneficiary and vary depending on the object matter, the value of the matter, etc. Usually, a third-party funder will cover costs such as the stamp fee and lawyers' fees.

### 2.6 Contingency Fees

The legal provisions regulating the relationship between lawyers and clients forbid a pactum de quota litis. However, the parties to the legal assistance contract are free to set any combination

of fixed or hourly fees and success fees, the latter being due only if a certain result is reached.

### 2.7 Time Limit for Obtaining Third-Party Funding

The legal provisions do not impose any time limits by when a party to the litigation should obtain third-party funding.

## 3. Initiating a Lawsuit

### 3.1 Rules on Pre-action Conduct

In particular cases expressly established by the law, preliminary procedures are compulsory. These procedures may consist in conciliation (for example in administrative disputes) and inquiries at the notary public (for example in inheritance disputes), and proof of fulfilment of these procedures will have to be attached to the action submitted to court. The potential defendant is not bound to respond to an invitation to conciliation, hence there are no penalties for failing to comply. In such a case, the mere invitation to conciliation will be proof of the fulfilment of the pre-trial conciliation procedure requirements.

In addition, contracting parties may agree that preliminary procedures are to be followed in advance of any litigation.

### 3.2 Statutes of Limitations

The purpose of the statute of limitations is to protect the material right of action. As a rule, claims having a pecuniary object are subject to the statute of limitations. The time limits for bringing civil claims differ according to the nature of the claim and the subjective right at the base of the claim. Generally, these limits range from six months to ten years, the general term being three years. Time limits are treated as a substantive law matter.

The statute of limitations does not operate ex officio, instead, the objection of limitation can only be invoked, within the applicable terms (which differ according to the category of the right), before the first court, at the first court hearing at the latest. During the course of the limitation period, several judicial or factual events may cause the suspension or the interruption of the limitation period.

### 3.3 Jurisdictional Requirements for a Defendant

A claim may be initiated against a person who has capacity to stand trial (ie, both the capacity to have rights and the capacity to exercise those rights). The capacity to have rights is fulfilled, in the case of a natural person, if that person is alive; and, in the case of a legal person, if the company is duly registered with the trade registry. As far as the capacity to exercise rights is concerned, a natural person has full capacity to exercise their rights when turning 18 years old. A natural person aged between 14 and 18 needs to be assisted in a trial and a natural person aged less than 14 needs to be represented in court by their legal guardian.

The only difference between courts, in terms of jurisdictional requirements, relates to the complexity and value of the claim (different subject matters and values trigger the jurisdiction of different courts) or certain qualities of the parties (for example, a claim against a central public authority/institution is settled by a different court than a claim against a local public authority/institution).

### 3.4 Initial Complaint

The initial complaint shall comprise the following elements:

- The identity of the parties.
- The name of the plaintiff's representative and proof of its powers of representation.
- The claim and its value.
- The factual and legal grounds of the claim.
- The evidence supporting the claim.
- The signature of the plaintiff's representative.

As a rule, the claim may be amended up until the first court hearing. After this moment, amendments are only permitted with the other party's consent.

### 3.5 Rules of Service

After verifying the fulfilment of the formal conditions of the claim, the judge organises the communication of the claim to the defendant as service of the claim is the responsibility of the court. The communication of the claim is accompanied by a note obliging the defendant to submit a statement of defence.

As a rule, any communication of procedural documents is fulfilled by the court's procedural agents or other employees. If this is not possible, the communication is made by email, fax or other means of communication that provide the possibility for a receipt of confirmation to be issued.

When the claimant is not able to provide the defendant's address, the communication is made by publication at the court's headquarters, on the court's website and at the defendant's last known domicile.

The deemed date of service is the date when the confirmation of receipt is signed by the receiver.

#### Service outside Romania

Outside the country, the communication of documents may also be made by mail with confirmation of receipt and declared

content. The service of judicial documents between EU member states is regulated by Regulation No 1393/2007.

### 3.6 Failure to Respond

The failure of the defendant to respond to a lawsuit does not hinder the development of the case, which continues with the judge scheduling the first hearing. The defendant may still appear at the first hearing, but the arguments that they can invoke might be limited because, if the statement of defence is not submitted in time, the defendant may be unable to propose further evidence in its defence or invoke objections regarding the claim (except for objections of public order). Even if the defendant does not appear at the hearings, the proceedings will continue in its absence, as long as the claimant is present or has requested that the court settle the case, even in its absence. Otherwise, the proceedings will be suspended.

The defendant's silence does not mean that the court will invariably rule in favour of the claimant.

### 3.7 Representative or Collective Actions

The concept of class actions is not regulated in Romania. However, several litigants may address the court with a collective claim if their rights stem from the same cause or if there is a close connection between their claims. These elements (same cause, connection) must be justified in front of the court. In addition, class actions may be filed by organisations representing the interests of their members; for example, a trade union can represent its members in a claim with respect to labour rights.

### 3.8 Requirements for Cost Estimate

The legal assistance agreement concluded between the lawyer and the client at the outset of the dispute shall comprise the fees to which the lawyer is entitled. However, if the fee agreed is computed on hourly rates, there are no legal and/or statutory requirements to provide the client with an estimate of the cost of litigation. In practice, however, lawyers usually provide clients with such a cost estimate.

## 4. Pre-trial Proceedings

### 4.1 Interim Applications/Motions

The parties may apply for interim measures before the hearing of a claim and, in particular cases and under strict conditions, even before the trial. As an interim remedy, the interested party may apply for freezing measures on goods, provisional measures or conservatory measures regarding evidence. Under Romanian law, there are no interim applications on case management issues.

### 4.2 Early Judgment Applications

Romanian civil procedure does not provide for the possibility to apply for an early judgment of the issues in dispute, apart from the interim measures mentioned in **4.1 Interim Applications/Motions** (freezing injunctions, provisional measures, conservatory measures regarding evidence) and the possibility to issue partial decisions on the issues in dispute, with respect to which the defendant has admitted the claimant's allegations.

Sometimes, provisional measures may be ordered by a court even before trial, under the condition that the claim is filed within a certain deadline from the moment the provisional measures were granted. For example, provisional measures related to intellectual property rights may be ordered even before a claim on the merits of the case is filed. However, such provisional measures will cease to exist if the claim on the merits is not filed within 30 days after the provisional measures are awarded.

The other party's case cannot be struck-out before trial, but it can be struck out before the substantive hearing of the claim if a plea/objection to this effect is admitted, be it for procedural reasons (eg, lack of payment of stamp fees, lack of representation powers of the representative filing the claim, or exceeding the deadline to file a claim) or substantive reasons (eg, a statutes of limitation plea).

### 4.3 Dispositive Motions

Dispositive motions are not available in the Romanian jurisdiction.

### 4.4 Requirements for Interested Parties to Join a Lawsuit

There are several possibilities for a third party to join ongoing civil proceedings, either voluntarily or compulsorily.

A third party bearing an interest can voluntarily join an ongoing procedure, either to support one of the parties' positions (accessory joinder claim), or to settle its own right in connection to the ongoing procedure (main joinder claim).

Another situation in which a third party can join an ongoing procedure is a forced joinder, by means of which any party, including someone who has filed a main joinder claim, can request the participation in the proceedings of a third party which can claim the same rights as the claimant.

A party in an ongoing procedure may also file a forced guarantee joinder against a third party that may be held liable through a separate claim, with regard to the main claim.

When a defendant holding an asset for another, or exercising a right in the name of another, is sued in connection with an in rem right, the defendant may indicate the person on whose behalf it is holding the asset or exercising the right by means of a joinder claim against a third party.

There are also several cases in which the court may order a joinder, even in the absence of the parties' consent.

### 4.5 Applications for Security for Defendant's Costs

Applications for an order that the claimant pay a sum of money as security for the defendant's costs are not regulated under Romanian law.

### 4.6 Costs of Interim Applications/Motions

There are no provisions governing the manner in which the court will order the parties to cover the costs of litigation in interim applications/motions. Given the time frame of such applications, namely before the hearing of the claim or even before the trial, the court will not order costs for such applications when deciding on the interim applications themselves, but will take into account such costs when ordering all the costs accrued at the end of the trial.

### 4.7 Application/Motion Timeframe

Under the general rules of civil procedure, following the registration of the action or claim, a preliminary written procedure takes place solely between the court and the claimant during which the court makes sure that the claim complies with all the mandatory conditions regarding its contents and that the claimant has filed all the necessary documents that need to be attached to the claim. Only after the moment when the claim fulfils all formal conditions does the court proceed to communicate the claim to the defendant, accompanied by a note obliging the defendant to submit a statement of defence within (a general term of) 25 days from the communication of the claim. The statement of defence will thereafter immediately be communicated to the claimant, accompanied by a note obliging them to submit an answer to the statement of defence within 10 days from the communication of the statement of defence. Within three days of the submission of the answer to the statement of defence, the judge establishes the first court hearing, which will be no later than 60 days from this date.

#### Urgent Applications

In urgent matters and applications for interim measures, the preliminary written procedure between the court and the claimant, aimed at ensuring the claim fulfils all formal conditions, might not take place. The terms for filing the written submissions may be reduced in urgent matters and the terms for setting the hearings may also be reduced by the judge, according to the circumstances of each matter. Sometimes, for example in an application for provisional orders, filing a statement of defence is not mandatory. In other cases, the judge may issue a ruling on a freezing injunction or on a provisional measures application without communicating the claim to the defendant and without hearing the parties, based only on the application and the evidence submitted by the plaintiff.

Generally, the civil procedure rules provide for the urgent settlement of urgent matters.

## 5. Discovery

### 5.1 Discovery and Civil Cases

In the Romanian jurisdiction, discovery covers only the production of documents, not the taking of witness testimony.

The Romanian civil procedure rules provide for a specific process which enables the court to order the production of documents from the parties if certain conditions are met. The court administers the discovery of documents. Thus, when a party claims that the opposing party holds a document relating to the dispute, the court may order its discovery.

There are no mechanisms by way of which the scope and/or costs of the discovery process can be curbed.

### 5.2 Discovery and Third Parties

If one of the parties indicates that a document, useful for the settlement of the dispute, is held by a third party, the court may summon the third party, ordering it to disclose the mentioned document. Failure to comply with the court's order may lead to an order for the payment of a fine. However, public authorities and public institutions may decline to disclose a document when it relates to national safety, public safety or diplomatic relations.

### 5.3 Discovery in This Jurisdiction

When a party claims that the opposing party holds a document relating to the dispute, the court may order its discovery. The request for discovery cannot be rejected if the document is a joint document of the parties, if the opposing party itself has referred to the document in the proceedings or if, according to the law, it is obliged to submit it.

As a rule, if the court orders disclosure of a document, the parties must obey. However, the court will not order disclosure of a document that:

- contains strictly personal information regarding a person's dignity or private life;

- breaches a legal confidentiality obligation; and/or
- leads to a criminal investigation of the party, its spouse or a third degree relative.

The court alone checks if one of the cases mentioned above is applicable, after studying the respective document. Refusal to submit ordered documents may be interpreted in some cases as an acknowledgement of the contents of those documents.

### 5.4 Alternatives to Discovery Mechanisms

In Romanian civil trials, as a rule, all evidence is managed by and through the court. It is the court, at the parties' request, that allows for different types of evidence to be submitted. All exchanges of written evidence between the parties will be done only after the commencement of the trial.

Witness statements are given orally before the judge. Each of the parties has the right to address questions to the witness. The answers to these questions and the statement are written down by the court clerk and signed by the witness. The document thus drafted is attached to the file as a witness statement.

On the other hand, experts give primarily written evidence, in the form of an expert report that is submitted to the file. However, if the judge requires additional information, the expert may be called before the court for an oral statement of clarification.

The rule is that all evidence is presented directly in front of the judge and not by intermediary means. As an exception, after being admitted by the court, the administering of evidence might be conducted between lawyers or legal counsel if both parties agree to do so. However, in practice, this procedure is hardly ever used.

### 5.5 Legal Privilege

Attorney-client communications and information received by an attorney fall under the attorney's obligation of confidentiality. The extent of the obligation may vary depending on the agreement of the parties, but a general obligation of confidentiality is applicable to all attorneys, regardless of whether they are external or in-house counsel.

### 5.6 Rules Disallowing Disclosure of a Document

Apart from the rules mentioned in **5.3 Discovery in This Jurisdiction**, there are no other rules allowing a party not to disclose a document.

## 6. Injunctive Relief

### 6.1 Circumstances of Injunctive Relief

There are multiple forms of injunctive relief which a party can obtain.

On the one hand, a freezing injunction may be placed in relation to the debtor's assets, in particular conditions, upon the creditor's request, when there is a risk that the debtor may alienate their assets during the trial. This measure freezes the assets of the debtor and prevents him or her from selling them, taking them abroad, etc. The levy may be lifted if the debtor provides a sufficient guarantee that the debt will be paid.

On the other hand, certain provisional orders may also be ordered by the court:

- in urgent cases related to family relations, neighbouring and property relations, or commercial relations;
- when, at first sight, the plaintiff seems to be entitled to the right claimed in the substantive hearing;
- in order to preserve a right that might be damaged by delay;
- in order to prevent imminent damage which might not be otherwise recovered; or
- in order to set aside the obstacles which might be encountered in the enforcement proceedings.

Injunctions to prevent parallel proceedings in another jurisdiction are not recognised under Romanian law.

### 6.2 Arrangements for Obtaining Urgent Injunctive Relief

Applications for injunctive relief are considered urgent matters under the Romanian civil procedure rules, which provide for an urgent settlement of such cases.

Therefore, the preliminary written procedure between the court and the claimant, aimed at ensuring the claim fulfils all formal conditions, theoretically no longer takes place (there is case law where judges still follow this procedure, but under shortened terms). Where the ruling is issued after hearing both parties, the defendant is summoned according to the rules of summoning in urgent matters (ie, the service no longer needs to observe the rule that a summons must be served at least five days before the hearing, the judge having the option to reduce the term for setting the hearing and servicing the summons depending on the circumstances of the case). Another provision, meant to ensure the urgent settlement of such matters, states that in such cases the court will not admit evidence whose administering will take a long time.

For example, the civil procedure rules provide that in extremely urgent matters, a provisional order may be obtained on the same day on which it was applied for, the court issuing a ruling based on the request for a provisional order and the evidence submitted, without hearing any of the parties.

In practice, obtaining an injunctive relief may take between a few days and a few months.

### 6.3 Availability of Injunctive Relief on an Ex Parte Basis

In certain cases, the civil procedure rules provide that a freezing injunction or an order for provisional measures (depending on the circumstances of the case) may be granted without hearing the parties, the court ruling based only on the application and evidence submitted by the plaintiff.

### 6.4 Liability for Damages for the Applicant

In most of the cases where injunctive relief is requested, the plaintiff is obliged (by the applicable legal provisions or following the judge's decision to this end) to post a bail prior to the application being admitted. The bail acts as a form of security, intended to cover potential damages incurred by the defendant as a result of the injunctive relief, if the defendant discharges the plaintiff's claims following the substantive hearings. When the defendant discharges the plaintiff's claims following the substantive hearings, the injunctive relief ceases to apply and the punitive damages which might be obtained by the defendant are not limited to the amount of the bail.

The rules apply regardless of whether the parties were heard before the relief was granted.

### 6.5 Respondent's Worldwide Assets and Injunctive Relief

As a rule, injunctive relief is granted only in relation to the assets of the respondent located in Romania, as Romanian courts are not competent to settle claims related to assets which are located in foreign countries.

### 6.6 Third Parties and Injunctive Relief

Injunctive relief cannot be obtained against third parties, apart from a freezing injunction which might be placed on the defendant's assets when they are held by a third party.

### 6.7 Consequences of a Respondent's Non-compliance

Disobeying a court decision or order, aside from the criminal consequences which might materialise in being condemned for the criminal offence of contempt of court, gives the creditor the right to request the application of enforcement procedures.

Injunctive relief is enforced with the assistance of an enforcement officer (bailiff) under the general rules of enforcement, following the request of the creditor, if the debtor does not willingly obey the dispositions of the court.

In addition, the plaintiff may also claim from the respondent, any damages incurred due to the latter's failure to comply with the terms of an injunction.

## 7. Trials and Hearings

### 7.1 Trial Proceedings

The trial is conducted by the judge and its development is governed by several principles, among which are:

- the equality of the parties;
- the adversarial nature of the proceedings;
- the parties' right to a fair trial; and
- the legality of the proceedings.

The written submission phase is followed by the oral phase, comprised of judicial inquiry and debates. During the judicial inquiry, the court settles all preliminary matters, such as competence, payment of the stamp fee, admissibility of the claim, etc. Subsequently, the parties submit to the court's attention the proposed evidence, which is then administered according to the court's ruling.

The judicial inquiry is followed by the debates.

### 7.2 Case Management Hearings

In the case of shorter hearings, the defendant is summoned according to the rules of summoning in urgent matters, namely the service no longer needs to observe the rule that a summons must be served at least five days before the hearing. Another provision regarding the manner in which short hearings are conducted is that, in certain cases (eg, an application for provisional measures), the court will not admit evidence whose administering takes a long time.

In terms of case management, at the first hearing when parties are legally summoned, after asking the parties, the judge will estimate the duration of the case, based on the relevant circumstances, so that the case can be settled in a reasonable and predictable term. This estimate is not binding, the judge being able to reconsider the duration, based on thorough grounds and after hearing the parties.

Another case management measure is that, after admitting the production of an expert report, the court might set a hearing in

order to hear the expert regarding the estimated duration for producing that report.

### 7.3 Jury Trials in Civil Cases

The Romanian civil procedure rules do not provide for the participation of a jury.

### 7.4 Rules That Govern Admission of Evidence

The admissible pieces of evidence provided by Romanian law are:

- written documents;
- witness statements;
- cross examination of the parties;
- expert reports; and
- on-location inspection by the court.

Each party in a trial is responsible for submitting evidence in favour of their claims or as a defence to the opposing party's claims. As a rule, the plaintiff presents their proposal regarding the evidence in their claim, while the defendant indicates it in their statement of defence, under the sanction that they may be unable to propose further evidence. As an exception, additional pieces of evidence may be submitted during the trial if there is a need for such submission resulting from the debates, or the interested party was unable to propose it within the legal term due to justified reasons.

In order for a piece of evidence to be admissible, the following elements must be proven by the party requesting the evidence, regardless of its type. The evidence must be:

- legal (in accordance with material and procedural law);
- plausible (realistic, in accordance with the laws of nature);
- pertinent (in connection with the object of the trial); and
- conclusive (regarding elements that may lead to a solution of the trial) for the litigation.

### 7.5 Expert Testimony

Expert testimony is a common type of evidence in civil trials, administered either following a party's request or the court's order. An expert report is usually presented in a written form, but it is also possible for the court to hear the appointed expert during the court hearing and record their statement.

Experts are appointed by the court. An appointed expert must be an impartial professional. The court may grant to each party the assistance of a counsel expert, who will owe his or her duties to the party and who will guard that party's interests.

In complex cases, the court may appoint an expert committee consisting of three experts.

### 7.6 Extent to Which Hearings are Open to the Public

As a rule, court hearings are held in public sessions. In particular cases, the law provides that some types of claims are to be settled only in the presence of the parties. In addition, following a well-grounded request from a party, the court itself may instruct that hearings are only held in the presence of the parties.

### 7.7 Level of Intervention by a Judge

The judge has an inquisitorial role, being actively involved in investigating the case, able to address questions to the parties, decide upon the necessity of particular additional evidence, invoke procedural incidents, etc. The judge is also responsible for leading the hearings.

Usually, the court will settle, during the hearing, issues such as jurisdiction, admission of evidence and procedural incidents. Sometimes, however, if the discussed issue is the subject of strong debate between the parties, the judge may postpone issuing a solution until in chambers.

In practice, as a rule, judges issue the solution in their chambers and not in public session. The judge might postpone the issuance of the solution several times.

### 7.8 General Timeframes for Proceedings

Under the general rules of civil procedure, civil proceedings start with an extended exchange of written submissions prior to the setting of the first court hearing, a novelty introduced by the New Civil Procedure Code. After the registration of the claim, the court ensures that all the procedural requirements of the claim are met. If this is not the case, the claimant is given a ten-day term to comply with the law.

Only after the claim has fulfilled all formal conditions, does the court proceed to communicate the claim to the defendant, who is granted a term of 25 days to submit their statement of defence. The statement of defence is then communicated to the claimant, who, within ten days following its receipt, may submit an answer.

The written submission phase is followed by the oral phase, comprised of judicial inquiry and debates. Thus, within three days of the submission of the answer to the statement of defence, the judge establishes the first court hearing, which will be no later than 60 days from this date.

During the judicial inquiry, the court settles all preliminary matters, such as jurisdiction, payment of the stamp fee, admissibility of the claim, etc. Subsequently, the parties submit to the court's attention the proposed evidence, which is then administered according to the court's ruling.

The judicial inquiry is followed by the debates, during which each party states its case, and also considers the evidence that has previously been administered. At the end of the oral debates, the court may instruct the parties to submit written briefs, or the parties may do so in the absence of the court's instruction.

The next phase of civil proceedings is the issuance of the judgment, which may be succeeded by the legal means of appeal or by the enforcement procedure.

The duration of the trial is largely dependent on the complexity of the case, the means of evidence to be administered and the preliminary aspects invoked by the parties. As such, a trial in the first tier of jurisdiction may last from a matter of months to several years.

## 8. Settlement

### 8.1 Court Approval

When settling a lawsuit, if the parties wish the court to approve their settlement, they need to request the court to issue a ruling acknowledging that settlement. The settlement must be concluded in written form and will form the solution part of the ruling.

### 8.2 Settlement of Lawsuits and Confidentiality

The settlement of a lawsuit may remain confidential if the parties agree not to present the settlement agreement to the judge, and request that the judge close the case by acknowledging a waiver of the claim or of the right claimed instead.

### 8.3 Enforcement of Settlement Agreements

If the settlement is acknowledged in an authenticated agreement or in a court ruling, the party in default may be obliged to fulfil its obligations deriving from the settlement with the assistance of an enforcement officer (bailiff).

If the settlement takes the form of a written agreement, not authenticated, the damaged party needs to file a claim against the other party to the settlement agreement in order to have the court ascertain the breach of the obligations within the settlement agreement and compel the latter to cover the damages incurred; after obtaining this court decision it may enforce it through an enforcement officer.

### 8.4 Setting Aside Settlement Agreements

On the one hand, a party to a settlement agreement may request the annulment of that agreement for breach of any of the conditions for the legal conclusion of an agreement (consent, capacity, object, cause, form, etc).

On the other hand, if a party challenges the ruling acknowledging the settlement agreement only on procedural grounds, it must do so by means of a second appeal which will be settled by the superior court.

## 9. Damages and Judgment

### 9.1 Awards Available to the Successful Litigant

According to the parties' claims, the court may grant compensatory or punitive damages, legal or contractual interest, as well as judicial expenses.

### 9.2 Rules Regarding Damages

Punitive damages are available in the case of observance of the debtor's fault. There are no provisions limiting the maximum amount of damages which may be awarded to a party.

Interest is payable upon request, and its amount is either previously established by the parties or, in the absence of an agreement, the legal interest rate applies.

### 9.3 Pre and Post-Judgment Interest

A successful party may collect interest starting from the moment the other party was summoned to comply with its obligations, if such a summons is requested by law, or starting from the moment the other party failed to comply with its (generally contractual) obligations, if summoning the other party is not requested by law (subject to the statute of limitations). A successful party may collect interest until the obligation is fulfilled by the other party, the court being able to order the amount of interest accrued until the complaint was filed, the further amounts which will accrue until the obligations is going to be performed being calculated by the enforcement officer (bailiff).

The statute of limitation which applies to the accrued interest is three years.

### 9.4 Enforcement Mechanisms of a Domestic Judgment

Any final, or otherwise enforceable, court decision or order can be enforced with the assistance of an enforcement officer and under the court's supervision, following the request of the creditor, if the debtor does not willingly obey the dispositions of the court. Enforcement procedures may consist of the capitalisation of movables and immovables, or the garnishment of bank accounts.

### 9.5 Enforcement of a Judgment from a Foreign Country

A judgment from a foreign country that is not willingly complied with by the losing party might be enforced on Roma-

nian territory, following a successful request by the interested party that the enforcement be approved by the Tribunal in whose jurisdiction the enforcement is going to take place. The approval of the enforcement is admitted under the same conditions imposed for the recognition of a judgment from a foreign country (detailed below), with the additional condition that the judgment intended to be enforced is enforceable according to the law of the issuing country.

A foreign judgment is either duly recognised or prone to undergo a recognition procedure, according to the nature of the litigation. Thus, a foreign judgment is duly recognised:

- when it relates to the personal status of the citizens of the state in which it was issued;
- if it has previously been recognised in the citizenship state of each party;
- if it was issued according to the applicable law, according to Romanian international private law;
- if it is not contrary to Romanian public order; and
- if the right to defence was respected.

In cases other than those stated above, foreign judgments are recognised following a judicial procedure, provided that:

- the judgment is final according to the law of the issuing state;
- the issuing court had competence to settle the trial; and
- there are reciprocity agreements regarding the effects of foreign judgments between Romania and the issuing state.

## 10. Appeal

### 10.1 Levels of Appeal or Review to a Litigation
As a rule, a first-court judgment is subject to appeal. The request for appeal has to be filed within (a general term of) 30 days after the communication of the judgment to the parties.

The judgment issued by the court of first appeal is subject to a second appeal that can only be filed for particular reasons. In certain cases, strictly provided by law, the ruling issued by the appeal court cannot be challenged by means of a second appeal.

The law also provides for exceptional means of appeal, in particular cases.

### 10.2 Rules Concerning Appeals of Judgments
An appeal will be granted provided that:

- it is admissible;
- it meets all the requirements of any claim before the court (it is signed by the party or its legal representative, the party filing it bears an interest to this effect, the corresponding stamp fees have been paid); and
- it is grounded.

In addition, for a second appeal to be granted, it is necessary that the grounds invoked when filing the second appeal belong to the particular grounds stipulated by law for which a second appeal may be filed.

As a rule, appeals follow the hierarchy of the courts; for example, a claim settled in the first instance by the first court will be subject to a first appeal at the Tribunal and, if the case requires it (depending on its nature), a second appeal at the Court of Appeal. Similarly, a claim settled in the first instance by the Tribunal will be subject to a first appeal at the Court of Appeal and (depending on its nature) to a second appeal at the High Court of Justice. These procedural stages cannot be omitted during the course of the appeals process.

### 10.3 Procedure for Taking an Appeal
The procedure for judging an appeal is governed by the rules regulating the settlement of the first tiers of jurisdiction, to which a few derogations apply.

As a general rule, the request for appeal has to be filed within 30 days after the communication of the first-court judgment to the parties.

The appeal is filed to the first-tier court, which will transmit the appeal and the entire file to the superior court. The court proceeds to communicate the appeal to the respondent, who is granted a term of 15 days to submit their statement of defence. The statement of defence is then communicated to the appellant, who, within 10 days after its receipt, may submit an answer.

The written submission phase is followed by the oral phase, comprised of judicial inquiry and debates. The next phase of civil proceedings is the issuance of the judgment, which may be succeeded by a second appeal (if admissible), which has to be filed within 30 days from the communication of the ruling or enforcement procedure.

The duration of the appeal largely depends on the complexity of the case, the means of evidence to be administered and the preliminary aspects invoked by the parties. As such, settlement of an appeal may last from one month to several years, calculated from the date of the first hearing.

### 10.4 Issues Considered by the Appeal Court at an Appeal
In Romania, appeal is the ordinary means of challenging a judgment. Filing an appeal triggers a re-hearing of the entire case, unless the parties chose to limit, by means of the appeal filed, the part of the judgment to be re-heard. New evidence may be proposed by parties by means of the appeal or the statement of defence, and the court itself may order the re-administering or the supplementation of the evidence administered in the first court.

As a general rule, the parties may not bring new claims by means of an appeal or change the object or cause of the claim. However, in the appeal stage, the parties may explicitly detail claims which were only implicitly included in the claims/defences raised in the first court. As an exception, parties may also request, for the first time at the appeal stage, the interest and rates accrued after the issuance of the ruling of the first court, claims which became outstanding after the issuance of the first court ruling or damages incurred after the ruling of the first court was issued. Parties may also invoke legal set-off for the first time at the appeal stage.

The second appeal is considered an extraordinary means of challenging a judgment. The grounds of the second appeal need to fall within certain categories of grounds expressly stipulated by the law, which generally concern the legal aspects of the ruling and not the factual side. New forms of evidence may not be proposed by parties before the second appeal court, except for new documents, which need to be submitted either attached to the second appeal request or to the statement of defence.

### 10.5 Court-Imposed Conditions on Granting an Appeal
Once the general conditions for filing an appeal are met and the appeal is granted, the court cannot impose any conditions on, or pursuant to, such granting.

### 10.6 Powers of the Appellate Court after an Appeal Hearing
After hearing an appeal, the court may:

- either maintain the ruling issued by the first court if the appeal is annulled on procedural grounds (lack of payment of stamp fee, filing the appeal without observing the deadline, etc) or rejected as ungrounded; or
- annul or modify, totally or partially, the ruling issued by the first court (even by amending the reasoning of the ruling) if the appeal is admitted.

If the appeal is admitted, the appeal court will re-hear the case, on the merits or, under certain circumstances, may send the case to the first court to be re-heard.

As far as the powers of a court adjudicating a higher appeal are concerned, as a general rule, that court might annul the higher appeal on procedural grounds, reject it as ungrounded or admit it. However, if the higher appeal is admitted, depending on the court adjudicating the higher appeal, the case may be re-heard on the merits by the same court or sent to the appeal/the first court.

## 11. Costs

### 11.1 Responsibility for Paying the Costs of Litigation
In the initial phase of the litigation, each party is responsible for its own costs. The plaintiff is required to pay a stamp fee when filing a claim. As far as the expert's fee is concerned, when admitting an expert report, the court will also establish which party is going to pay the corresponding fee.

Once an award has been issued, the losing party may be ordered, at the prevailing party's request, to reimburse all, or part, of the prevailing party's costs, including attorneys' fees. The court has the power to order the losing party to cover several types of costs incurred by the winning party, including the stamp fee, the expert's fee, and lawyers' fees. The amount of the costs to be paid by the losing party might be challenged by both parties by means of an appeal.

### 11.2 Factors Considered When Awarding Costs
The court has the ability to limit the amount of the prevailing party's attorneys' fees by taking into consideration the difficulty of the litigation, the actual amount of work required from the attorneys and other similar elements. If a claim is only partly admitted, the court may order the costs to be shared (ie, each party will cover their own costs).

### 11.3 Interest Awarded on Costs
Under Romanian law, interest on costs is not awarded.

## 12. Alternative Dispute Resolution

### 12.1 Views of Alternative Dispute Resolution within the Country
Alternative dispute resolution (ADR), in the form of arbitration and mediation, has not traditionally been commonly used in Romania but has gained in popularity in recent years.

The most used ADR process is conciliation, which is usually organised by the parties themselves or by the assisting attorneys. In the past couple of years, mediation has been intensely

lobbied for but has still has not been used in a significant share of disputes.

Adjudication is also used, generally in disputes arising from International Federation of Consulting Engineers contracts.

Arbitration is more frequently used when one of the parties is based outside Romania and/or when one or both parties are acting in a professional capacity.

### 12.2 ADR within the Legal System

As a rule, the Romanian legal system does not really promote ADR. However, there is a general obligation on a judge to urge parties to try to settle their dispute amicably.

Since August 2014, following the Constitutional Court Decision No 266/2014, mediation is no longer compulsory before submitting a claim to court.

There are certain cases in which the law provides for a preliminary procedure. For example, in administrative law, the provisions require the fulfilment of a preliminary procedure taking the form of a preliminary request addressed to the institution refusing the claimed right, or the institution superior to the one refusing the right or the form of conciliation, when the claims derive from an administrative contract. In such a case, the preliminary procedure is compulsory. If a claim were to be filed without observing the preliminary procedure, it would be rejected as premature.

If either the law or the contract provides for another type of preliminary procedure, such as adjudication, the courts or Tribunals may compel the parties to undergo that procedure.

### 12.3 ADR Institutions

In general, there is room for improvement where the institutions offering and promoting ADR are concerned.

The main institution for ADR in Romania is the Court for International Commercial Arbitration (CICA), functioning within the Chamber of Commerce and Industry of Romania. In the past few years, arbitration has experienced a steady growth. The majority of the cases involve construction disputes, but various other contractual disputes are also referred to international arbitration, including energy-related disputes. Even steadier growth is expected, following the new set of rules adopted by CICA starting on 1 January 2019, which are aligned with the rules of the ICC and other similar institutions, such as the LCIA.

## 13. Arbitration

### 13.1 Laws Regarding the Conduct of Arbitration

The main body of law governing arbitration is included in the Code of Civil Procedure, which came into force on 15 February 2013. Book IV of the Code of Civil Procedure (On Arbitration) regulates national arbitration and also represents the general set of provisions applicable to international arbitration whenever the parties have not agreed on certain aspects in the arbitration agreement and have not vested the arbitral tribunal with settling those aspects either, while Title IV of Book VII sets out specific legal provisions regarding international arbitration and the effects of foreign arbitral awards.

The arbitration law includes mostly non-mandatory provisions, as a reflection of the principle, provided for in the Code of Civil Procedure, that parties are free to organise arbitral proceedings as they deem fit. However, parties' freedom is subject to observing public policy, a couple of mandatory provisions and ethics. There are a few mandatory rules, for instance certain validity requirements for the arbitration agreement, regarding the written form of the arbitration agreement or the authenticated form of the arbitration agreement in arbitrations regarding the transfer of the ownership right over an immovable asset. The law also imposes certain fundamental principles related to a fair trial from which no derogation is permitted (eg, the parties shall be given equal treatment, the right to a defence and a reasonable opportunity to present their case).

Romania ratified the New York Convention in 1961 by means of Decree No 186/1961 which came into force on 24 July 1961.

Romania reserved the right to apply the convention only to:

- the recognition and enforcement of awards made in the territory of another contracting state or, for awards made in non-contracting states, only subject to reciprocity (ie, namely to the extent to which those states grant reciprocal treatment); and
- disputes arising from legal relationships – whether contractual or not – that are considered commercial under the national law.

As the new Civil Code, which came into force in October 2011, repealed the former Commercial Code of Romania of 1887, in the absence of a specific body of law regulating commercial relationships, the concept should be construed broadly in the context of international arbitration, as encompassing relationships that are commercial in nature (whether contractual or not).

### 13.2 Subject Matters Not Referred to Arbitration

As a matter of principle, all disputes are arbitrable, unless there is a legal provision which states otherwise.

As far as national arbitration is concerned, the following matters are exempt from arbitration:

- civil status litigation;
- litigation with respect to legal capacity of persons;
- inheritance litigation;
- matters arising out of, or in connection with, family relations; and
- litigation regarding rights that the parties cannot dispose of (eg, in labour and employment law matters where the law expressly provides that a party cannot waive the legal rights established in their favour).

### 13.3 Circumstances to Challenge an Arbitral Award

The parties may challenge an arbitral award with a set-aside claim, on limitative grounds, respectively:

- the dispute was non-arbitrable;
- the arbitration agreement did not exist or was invalid/ineffective;
- the arbitral tribunal was not properly constituted;
- the claimant in the set-aside was absent and was not duly notified of the hearing when the main arguments were heard;
- the award was rendered after expiry of the time limit;
- the award granted something which was not requested (ultra petita) or more than was requested (plus petita);
- the award failed to mention the tribunal's decision on the relief sought and did not include the reasoning, the date or place of the decision or the signatures of the arbitrators;
- the award violated public policy, mandatory legal provisions or morality; or
- the Constitutional Court has declared the legal provisions relied on in the award to be unconstitutional.

### 13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Domestic arbitral awards are treated and enforced in the same way as court decisions, whereas foreign arbitral awards are subject to recognition and enforcement proceedings before the Romanian courts.

As a matter of principle, any foreign arbitral award is recognised and may be enforced in Romania as long as the dispute is arbitrable according to Romanian law and the award does not comprise measures contrary to the public order of Romanian private international law.

In order for the recognition and enforcement of an arbitral award to be granted, the parties must comply with certain formal requirements – they must file a request to this effect before a competent court and attach legalised or apostilled certified copies of the translated award and arbitration agreement. The court vested with hearing a request for the recognition and enforcement of a foreign arbitral award is prohibited from reviewing the merits of the dispute, its examination being limited to the grounds for refusal of recognition and enforcement, as set out in the Code of Civil Procedure.

The grounds for refusal of recognition and enforcement of the foreign award provided in the code follow those established in the New York Convention, such as the parties not having the capacity to conclude the arbitration agreement or the arbitration agreement not being valid.

## 14. Recent Developments

### 14.1 Proposals for Dispute Resolution Reform

Currently, there are no proposals for dispute resolution reform given that the Civil Procedure Code is quite new.

### 14.2 Impact of COVID-19

At the outset of the COVID-19 pandemic, the President of Romania issued a decree instituting a state of emergency in Romania, which provided that court hearings continued only with respect to urgent disputes and certain criminal matters, either with the physical presence of the parties or by videoconference. For all other disputes, proceedings were suspended and the activity of the court was limited to drafting the reasoning of the ruling. The deadlines for filing means of appeal in matters other than urgent disputes were interrupted, a new deadline starting to run once the state of emergency was over. Limitation periods of any kind were suspended for the entire duration of the state of emergency.

**Zamfirescu Racoţi Vasile & Partners** is a leading Romanian law firm, assuring both business and dispute resolution support and representation. ZRVP provides fully integrated advice in litigation, contractual disputes, banking litigation, insolvency/restructuring, public and administrative law, arbitration, mediation, competition, IP, enforcements and debt recovery, tax litigation and employment disputes. Its lawyers act for a broad spectrum of clients, particularly in the corporate and financial sectors, but also for government and state-owned entities and private clients. The firm, which has its headquarters in Bucharest, offers advice on litigation and arbitration matters at both local and international level.

## Authors

**Cosmin Vasile** is a managing partner of Zamfirescu Racoţi Vasile & Partners and head of the firm's arbitration practice group. He serves as counsel in a wide range of national and international disputes, including arbitrations conducted under the rules of the ICC, LCIA, UNCITRAL and ICSID. Cosmin concentrates on the resolution of high-exposure construction disputes, but also on commercial contracts-related disputes in areas such as energy and privatisation. He is a member of the Court College to the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, and was the ICC Young Arbitrators Forum regional representative for the Europe and Russia Chapter for the 2017–19 mandate.

**Alina Tugearu** is a partner and co-ordinator of the IP litigation practice at Zamfirescu Racoţi Vasile & Partners, who specialises in civil and commercial litigation, with a focus on international arbitration and administrative/contentious disputes. She has wide experience in trying arbitration cases before national and international arbitral panels in proceedings held under the auspices of the ICC, LCIA, ICSID, the Vienna International Arbitral Centre, the Court of International Commercial Arbitration (Bucharest) and under the UNCITRAL arbitration rules in ad hoc arbitration. Alina also has experience in complex projects involving construction disputes, including matters regarding International Federation of Consulting Engineers (FIDIC) contracts, post-privatisation-related disputes, and energy-related disputes.

**Zamfirescu Racoţi Vasile & Partners**

12 Plantelor Street
023974 District 2
Bucharest
Romania

Tel: +40 21 311 0517/18
Fax: +40 21 311 0519
Email: cosmin.vasile@zrvp.ro
Web: www.zrvp.ro

# Trends and Developments

***Contributed by:***
*Cosmin Vasile and Alina Tugearu*
***Zamfirescu Racoți Vasile & Partners*** ***see p.19***

## Adapting to Change

The COVID-19 global pandemic has affected people and industries around the world. The legal industry and, in particular, dispute resolution are no exception. Against the backdrop of the challenging effects of COVID-19, Romania's court system and actors have faced one of the biggest challenges to date but managed to adapt rapidly, avoiding significant disruption to ongoing litigation.

## Impact on Ongoing Litigation

The initial measures applied all over Europe led to a two-month lockdown in spring 2020, during the state of emergency decreed following the enactment of the President's Decree No 195/2020. All national courts suspended their activity in public court sessions, except in the case of a small category of urgent cases, with the settlement of all other cases being successively postponed until the end of the state of emergency. Amongst the provisions of the Decree, one of the most important from a procedural perspective was the suspension of the limitation period for the duration of the state of emergency (ie, for the period between 16 March and 14 May 2020).

The necessity of ensuring suitable conditions for continuing public sessions, once these resumed, led to a better organisation of the settlement of the cases, with fewer cases being trialled in the same session and separate time slots for each case being allotted. Also, parties were encouraged to use electronic means for submitting documents to be attached to the case file. In some limited cases, broad-minded judges/panels settled urgent cases via online hearings, even though the Romanian Civil Procedure Code does not allow for this possibility.

All things considered, the courts, counsel, and all other actors involved worked together to ensure minimal disruption to dispute resolution with the lowest possible health risks.

## Online Dispute Resolution Has Operated Smoothly in Arbitration

While national courts suspended operations and shut their doors until the crisis eased, arbitration has once again confirmed its status as a flexible and adaptable method for alternative dispute resolution. In the face of the ever-increasing restrictions on the movement of people and institutional shutdowns in Spring 2020, arbitration practitioners demonstrated the resilience and flexibility of international arbitration by continuing to resolve disputes remotely, with the assistance of various technological means.

Thanks to the efforts of arbitral institutions, tribunals, counsel and parties, the pandemic and its impact was minimised and, in some cases, even avoided by thoughtful use of case management tools that were either already available or were put in place in order to ensure the continued efficiency and fairness of the arbitration process.

The most frequently used international arbitration institution based in Bucharest, the CICA and the tribunals constituted under its auspices, has embraced the recommendations within the ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic, thus managing to ensure swift adaptation.

All actors were actively involved in tackling any possible procedural and administrative disruptions in a common effort to ensure efficient and fair arbitral proceedings, which has even led, in some cases, to parties choosing arbitration over litigation in order to avoid the disruption caused by the pandemic to the judicial system (the state of emergency leading to a suspension of almost all pending litigation, as mentioned above).

## General Tendencies in Dispute Resolution

At the outset of the pandemic, and in the context of the first lockdown, many were expecting that dispute resolution would experience a boost in cases once the lockdown ended. However, this did not happen, based on a somewhat complex explanation.

First, there is a general wait-and-see tendency because many of the affected industries are still to draw definitive conclusions as to the permanent effects on businesses.

Second, the aid measures adopted by the Romanian state created breathing room for various industries, which managed to survive several months of 2020. Amongst these were:

- a moratorium on debt repayments;
- incentives (ie, discounts) for on-time payments of corporate income tax;
- state compensation schemes with regard to employment;
- duty relief; and
- payment facilities.

Third, the recovery plan (*Romania Relanced*), announced on 1 July 2020, which had, as its main orientation, grants for companies, competitiveness and social protection measures.

However, the anticipated rise in litigation is certain to appear once the moratorium and the other measures cease their effects.

A few areas did experience a growing tendency in disputes (ie, real estate litigation following the impact of the lockdown on tenants in shopping centres and employment litigation following the cost-cutting measures), but not to a significant extent as most companies have striven to conclude agreements to see out the crisis amiably.

### How the Key Industries Were Affected

Based on the current development of the pandemic, it would seem that only the tip of the iceberg has been seen so far and the impact will continue to spread across all industries.

At the beginning of the COVID-19 pandemic, the National Institute of Statistics conducted several ad-hoc statistical surveys (Trends in the evolution of economic activity during March-April 2020, The Impact of SARS-COV2 on the volume of exports and imports of goods, and The Impact Assessment COVID-19 on the economic environment in March and April 2020), to quantify the impact of the health crisis on economic activity and the volume of foreign trade.

The results of these surveys were of real interest to policy makers, the media and users in general. The implications of the pandemic for economic activity and the natural movement of the population underlie new national and European statistical data requirements on the impact of preventive measures on sectors of national economies. In the coming months, the National Institute of Statistics will compile flash estimates to measure the impact of COVID-19 on the economy and society, complemented by a collection of the innovative practices that European Union countries have implemented to address key challenges, including the use of new data sources.

We are therefore far from drawing a line as to the effects of COVID-19.

### Changes in the Legal Profession

The pandemic did not leave the legal profession unaffected, with many law firms taking various precautionary measures to ensure that they could survive the crisis, from letting go of high-paid lawyers and resizing teams to adopting provisional decreases in monthly payments and from adapting services to meet the stringent requirements following pandemic disruptions to adapting pricing policies aimed at allowing clients to concentrate on the measures necessary to keep their businesses afloat.

In addition, considering the effects of the COVID-19 pandemic, many Romanian law firms considered it an imperative to provide their contribution and help those most impacted by the health crisis. Zamfirescu Racoți Vasile & Partners created a free legal hotline “Lawyers on Duty”, a service launched on 20 March 2020 which was available throughout the state of emergency in Romania. It served as a phone-based counselling hotline offering immediate, personalised legal guidance and we received hundreds of calls related to a variety of legal problems affecting the personal and professional lives of fellow citizens, a high call volume which confirmed that the initiative was necessary and useful. Other law firms had other services in place, from exhaustive webpages covering the constant legislative changes to custom-made legal opinions on various hot topics.

### Future Trends – Where Next?

This is an open question.

The only known factor is that technology will continue to gain ground and thus allow for the continuation of what is now life as we had never expected.

A new law is being enacted as we speak, allowing Romanian courts, amongst other measures aimed at overcoming the challenges of the pandemic with minimum health risks, to decide when to resort technology to carry out online court hearings.

Co-operation and collaboration remain at the centre of an effective response to the pandemic, as demonstrated daily across the globe in many ways.

*Contributed by:* *Cosmin Vasile and Alina Tugearu*, ***Zamfirescu Racoţi Vasile & Partners***

**Zamfirescu Racoţi Vasile & Partners** is a leading Romanian law firm, assuring both business and dispute resolution support and representation. ZRVP provides fully integrated advice in litigation, contractual disputes, banking litigation, insolvency/restructuring, public and administrative law, arbitration, mediation, competition, IP, enforcements and debt recovery, tax litigation and employment disputes. Its lawyers act for a broad spectrum of clients, particularly in the corporate and financial sectors, but also for government and state-owned entities and private clients. The firm, which has its headquarters in Bucharest, offers advice on litigation and arbitration matters at both local and international level.

## Authors

**Cosmin Vasile** is a managing partner of Zamfirescu Racoţi Vasile & Partners and head of the firm's arbitration practice group. He serves as counsel in a wide range of national and international disputes, including arbitrations conducted under the rules of the ICC, LCIA, UNCITRAL and ICSID. Cosmin concentrates on the resolution of high-exposure construction disputes, but also on commercial contracts-related disputes in areas such as energy and privatisation. He is a member of the Court College to the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, and was the ICC Young Arbitrators Forum regional representative for the Europe and Russia Chapter for the 2017–19 mandate.

**Alina Tugearu** is a partner and co-ordinator of the IP litigation practice at Zamfirescu Racoţi Vasile & Partners, who specialises in civil and commercial litigation, with a focus on international arbitration and administrative/contentious disputes. She has wide experience in trying arbitration cases before national and international arbitral panels in proceedings held under the auspices of the ICC, LCIA, ICSID, the Vienna International Arbitral Centre, the Court of International Commercial Arbitration (Bucharest) and under the UNCITRAL arbitration rules in ad hoc arbitration. Alina also has experience in complex projects involving construction disputes, including matters regarding International Federation of Consulting Engineers (FIDIC) contracts, post-privatisation-related disputes, and energy-related disputes.

**Zamfirescu Racoţi Vasile & Partners**

12 Plantelor Street
District 2
Bucharest RO-023974
Romania

Tel: +40 21 311 0517/18
Fax: +40 21 311 0519
Email: office@zrvp.ro
Web: www.zrvp.ro