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THE LAW APPLICABLE TO THE PROCEDURE FORM – COMPARISON BETWEEN THE ROMANIAN AND THE MOLDAVIAN LEGISLATION

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Abstract:

The paper presents a comparison between the Romanian and the Moldavian legislation regarding the law applicable to the procedure form.

The author analyses the provisions of the new Romanian Civil Procedure Code, the ones from the Moldavian Civil Procedure Code, the dispositions of the Regulation (EC) no. 593/2008, of the Apostille Convention and of the treaties signed between the Republic of Moldova and other countries in the field of civil juridical assistance.

Also, the relevant decisions of the Romanian and Moldavian courts of justice are taken into consideration.

Keywords:

procedure form, apostille, applicable law, Romanian Civil Procedure Code, Republic of Moldova Civil Procedure Code.

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The procedure form regards the civil law suit development and is governed by the forum law (*lex processualis fori*), meaning that the applicable procedure law rules are the ones from the country whose court of justice is competent to solve the law suit, even if one of the parties is a foreigner.

Thus, in Title IV of the Republic of Moldova Civil Procedure Code is presented the procedure regarding the law suits with a foreign law element. According to article 458 of the Republic of Moldova Civil Procedure Code, „in the civil law suits with a foreign element, the Moldavian courts of justice apply the national procedure legislation, if there are no different dispositions. The object and the grounds of the civil law suit in this cases are determined by the law that regulates the material aspects of the juridical relation, as well as the procedural quality of the parties. The proof means of the juridical act and the proving power of the act are the ones stipulated by the law of the place where the juridical act has been signed or by the law chosen by the parties, if they have the right to choose; still, it is possible to apply the Moldavian law if it allows other proof means than the ones stipulated for the juridical act proof. The proof administration is done according to the Moldavian law. The proof of facts is done according to the law of the place where they were produced. The proof of civil status and the proving power of the civil status acts are regulated by the law of the place where the juridical act had been signed."[2].

The authors from the speciality literature have underlined the fact that the exterior form of the juridical act does not have the same meaning in all law systems. In the English law system it is considered that the legal requirements regarding the written conclusion of the contract, it's signing and postage are procedure forms that are the subject of the forum law, if they are stipulated in order to make the contract enforceable by legal action in a court of justice or in order to be used as a proof mean, respectively these are formal validity conditions, if their fulfilment is stipulated for the contract validity[3].

*According to article 22 of the 1996 Treaty between Romania and the Republic of Moldova regarding the civil and penal juridical assistance, „*The juridical acts that are emitted by the competent authorities or by other institutions

[2] The Republic of Moldova Civil Procedure Code no. 225-XV/2003, published in the Official Monitor of the Republic of Moldova no. 111-115/451/12.06.2003.

[3] Ion Filipescu, Andrei Filipescu, *Tratat de drept internațional privat (International private law treatise)*, Universul Juridic publishing house, Bucharest, 2007, p. 321.

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pertaining to one of the Contracting Parties, as well as the private signature writings, to which these institutions are conferring certain date and are attesting the signature veracity, are valid on the territory of the other Contracting Party without any other legalization. This disposition is applicable in regard to the extracts and copies of these acts. 2. The acts mentioned in paragraph 1 have, on the territory of the other Contracting Party, the same proving power as the same type acts of this last Contracting Party"[4].

*According to article 13 from the 1993 Treaty between the Republic of Moldova and the Russian Federation regarding the juridical assistance and the civil, family and penal juridical relations, „*1) The acts that have been concluded or certified by the justice institutions or by an official person from the territory of a Contracting Party, in the limits of their competences and in the form established and certified by a seal, are valid on the territory of the other Contracting Party without any other legalization. 2) The acts, which on the territory of a Contracting Party are acknowledged as official, have the same proving power on the territory of the other Contracting party"[5].

In article 15 from the 1993 Treaty between the Republic of Moldova and Ukraine regarding the juridical assistance and the civil and penal juridical relations it is stipulated the fact that „the juridical acts concluded or legalized by the adequate authority of one of the Contracting Party, having the official seal and the signature of the authorised party, are valid on the territory of the other Contracting Party without any other legalization; this refers also to the copies and the translations of the acts that are legalized by the adequate authority. The acts that are officially recognized on the territory of one of the Contracting Party are also considered official on the territory of the other Contracting Party."[6].

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[4] *The Treaty between Romania and the Republic of Moldova regarding the civil and penal juridical assistance from 1996 from Kishinev, ratified by the Republic of Moldova Parliament Decision no.1018-XIII/1996,* published in the Official Monitor of the Republic of Moldova no. 83/785/26.12.1996, available on-line at http://www.mfa.gov.md/tratate-internationale-rm, http://lex.justice.md, *ratified by* Romania by way of Law no. 177/1997, published in the Romanian Official Monitor no. 310/13.11.1997.

[5] *The Treaty between the Republic of Moldova and the Russian Federation regarding the juridical assistance and the civil, family and penal juridical relations from 1993 from Moscow, ratified by the Republic of Moldova Parliament Decision no. 260-XIII/1994,* Tratate internaţionale (International treaties), vol. 21, 1999, p. 49.

[6] *The Treaty between the Republic of Moldova and Ukraine regarding the juridical assistance and the civil and penal juridical relations from 1993 from Kiev, ratified by the Republic of Moldova Parliament*

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According to article 13 from the Independent States Community Convention regarding the juridical assistance and the civil, family and penal juridical relations of the 22nd of January 1993, „1) The acts that have been drafted or certified by the justice authority or by the official person on the territory of a Contracting Party, in the limit of their competences and in the established form and certified by a seal, are valid on the territories of other Contracting Parties, without any other legalization. 2) The acts that are officially recognized on the territory of a Contracting have the same proving power on the territory of the other Contracting Parties"[7].

Similar dispositions to the ones from the article 458 of the Republic of Moldova Civil Procedure Code existed in articles 158-161 from the Romanian Law no. 105/1992, that have been repealed on 15.02.2013[8]. Some authors considered that article 161 line (1) from Law no. 105/1992 limited the area of the applicable laws, in the sense that it stipulated only the alternative application of the *locus regit actum* and *lex voluntatis*[9] rules. The facts proof is done according to the law of the place where they were produced. The proof of civil status and the proving power of the civil status acts are regulated by the law of the place where the invoked writing was concluded. The proof administration is done according to the Romanian law. In regard to the enforcement proceedings and the measures that can be taken in case of a faulty enforcement, the law of the country where the enforcement takes place will be applicable.

According to the dispositions of article 230 letter q) from the Law no. 71/2011 for the application of the new Romanian Civil Code, articles 1-33 and articles 36-147 from the Law no. 105/1992 have been repealed

Decision no. 261-XIII/1994, Tratate international (International treaties), vol. 22, 1999, p. 85.

[7] The Independent States Community Convention regarding regarding the juridical assistance and the civil, family and penal juridical relations from 22 January 1993 from Minsk, *ratified by the Republic of Moldova Parliament Decision no.* 402-XIII/1995, Tratate Internaţionale (International treaties), vol. 16. 1999, p. 261.

[8] Violeta Cojocaru, Raluca-Oana Andone, Reflectarea în literatura de specialitate a aspectelor conflictuale privind condiţiile de formă ale actului juridic (The speciality literature reflection on the conflict of law aspects regarding the formal validity conditions of the juridical act), „Revista Moldovenească de Drept Internaţional şi Relaţii Internaţionale (Moldavian Journal of International Law and International Relations)" no. 1/2011, p. 64.

[9] Dragoş Alexandru Sitaru, Drept internaţional privat (Private international law), Lumina Lex publishing house, Bucharest, 2001, p. 219.

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starting from 01.10.2011[10]. Thus, from Law no. 105/1992 only the dispositions of articles 34-35 regarding the applicable law for the maintenance obligation and the dispositions of articles 148-183, representing Chapter 12. „International private law procedure dispositions", including section II entitled „The law applicable in international private law suits" were still in force [11]. Starting with 15.02.2013, the provisions of articles 148-181 from the Romanian law no. 105/1992 have been replaced by articles 1050-1118, correspondent to the 7th Book entitled „The international civil law suit" from the 2010 Romanian Civil Procedure Code, instituted by way of Law no. 134/2010.

Thus, according to articles *1073-175* from the 2010 Romanian Civil Procedure Code, „regarding the international civil law suits, the court of justice applies the Romanian procedure law, under the reserve of expressly contrary dispositions. The qualification of a problem as being one of procedure law or of material law is done according to the Romanian law, under the reserve of the juridical institutions without an equivalent in the Romanian law. The procedure quality of the parties, the object and the cause of the application for summons in the international civil law suit are established according to the law that governs the material aspects of the legal relation on trial". On the basis of article *1068* from the 2010 Romanian Civil Procedure Code*, „the procedure capacity of each of the parties on trial is governed by his national law, and the procedure capacity of the stateless person is governed by the Romanian law"*[12].

Article 1076 from the 2010 Romanian Civil Procedure Code stipulates the fact that „the proof means for proving a juridical act and the proving power of the writing are the ones stipulated by the law chosen by the parties, when the law of the country where the juridical act was signed is giving them this freedom of choice. In the absence of this freedom or

[10] Law no. 71/2011 for the application of the new Romanian Civil Code, published in the Romanian Official Monitor no. 409/10.06.2011.

[11] Raluca-Oana Andone, Modificări aduse de Noul Cod civil în materia Dreptului civil. Partea generală. Persoanele. Drepturile reale şi în domeniul Dreptului internaţional privat (Modifications brought by the new Civil Code in the area of the Civil Law. General Part. The natural persons and the legal entities. The rights in rem and in the area of Private International Law), „Jurnalul de studii juridice (Journal of legal studies)" no. 1/2011 - Supplement for the scientific communications from the International Conference of 21st-22nd of April 2011 „The legislation reform in the area of Civil Law", p. 61-81.

[12] The Romanian Civil Procedure Code – Law no. 134/2010, published in the Romanian Official Monitor no. 485/15.07.2010, republished in the Romanian Official Monitor no. 545/03.08.2012.

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when the parties did not use it, the law of the country where the juridical act was signed is applicable. In exchange, the facts proof is governed by the law of the country where these were produced or done. Still, the Romanian law is applicable if it allows other proof means than the ones stipulated by the above-mentioned laws. The Romanian law is also applicable in case it accepts the witness proof and the judge assumptions proof, even in the situations when these proof means would not be admissible according to the foreign applicable law. The civil status proof and the proving power of the civil status acts are governed by the law of the place where the invoked writing was concluded. The proof administration in the international civil law suit is governed by the Romanian law".

In the Romanian speciality literature some authors affirmed that the forum law governs the proof administration (*litis ordinatoria*), such as the interrogation performance, the witnesses proposal, the false writing procedure and the proof evaluation; in exchange, the law of the country where the writing was concluded or the law that governs the material aspects of the legal relation on trial is applicable to the proof admissibility (*litis decisoria*). The law that governs the material aspects of the legal relation is applicable in regard to the procedure quality, the burden of proof, the legal assumptions, the judicial testimony, the proof agreements. The pre-constituted proof means are governed by the law applicable to the formal aspects of the juridical act, so that the formal validity conditions, the proving power, the value of the beginning of written evidence, the value of the writing date are governed by the law of the country where the juridical act was concluded or by the law chosen by the parties; also, the forum law is applicable when the witness proof and the judge assumptions proof are accepted, even if these are not allowed by the foreign applicable law[13].

In the French juridical literature, the law applicable to the material aspects of the legal relation on trial is governing the object of the proof and the burden of proof. The law governing the form (such as *locus regit actum*) is applicable to the admissibility of the written proof means and the proving power of the writings. The proof means administration is done

[13] Ion Filipescu, *Drept internațional privat (International Private Law)*, Actami publishing house, Bucharest, 1999, pp. 331-332.

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according to the forum law, which also governs the witness proof, the confession and the judge assumptions[14].

According to article 230 letter a) from the Law no. 71/2011 for the application of the 2009 Romanian Civil Code, the proof domain was regulated, until the entering into force of the new Romanian Civil Procedure Code, by the articles 1169-1206 from the 1864 Romanian Civil Code regarding the admissibility and the proving power of four means of proof – the writings, the testimony, the confession, the assumptions, as well as the burden of proof, and by the articles 167-225 and articles 235-241 from the 1985 Romanian Civil Procedure Code, regarding other three proof means – the expertise, the on-site investigation and the material proofs, as well as the proof administration procedure. The proof aspects are no longer to be found in the new Romanian Civil Code – Law no. 287/2009, but in the Law no. 134/15.07.2010 regarding the new Romanian Civil Procedure Code, in force starting from 15.02.2013, according to Law no. 76/2012 for its application, modified by the Government Emergency Ordinances no. 44/2012 and no. 4/2013[15].

In articles 259-352 from the new Romanian Civil Procedure Code – Law no. 134/2010 the writings proof, the witness proof, the confession, the expertise, the on-spot investigation and the material proofs are being regulated in detail, and in article *26*, entitled „The law applicable to the proof means", the following are stipulated: „(1) The admissibility conditions and the proving power of the pre-constituted proofs and of the legal assumptions are governed by the law in force at the time of the juridical facts occurrence, which are the object of the probation. (2) The proof administration is done according to the law in force at the time of their administration".

In article 18 regarding the burden of proof from the Regulation (EC) no. 593/2008 it is stipulated the fact that the law that regulates a contract obligation on the basis of this regulation is applicable, in the contract obligation area, if it contains rules that are constituting legal assumptions or that are distributing the burden of proof. The contract or the juridical act meant to produce juridical effects can be proved by any

[14] Fongaro Eric, *La loi applicable à la preuve en droit international privé*, Librairie générale de droit et de jurisprudence, Paris, 2004, p. 24, p. 107, pp. 225-227.

[15] Raluca-Oana Andone, Drept civil. Persoanele - în reglementarea Noului Cod Civil (Civil Law.The natural persons and the legal entities – in the new Civil Code regulation) – electronic form university course support, Iaşi, 2012, p. 7.

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proof mean permitted either by the forum law or by any of the laws mentioned in article 11 of the Regulation, on the basis of which the contract or the respective juridical act is valid from the formal point of view, under the condition that the respective proof means can be administered in front of the invested court of justice[16].

In regard to the effects of the juridical act concluded abroad with the observance of the *locus regit actum* rule, the juridical act, that was validly concluded abroad, will have the same proving power in Romania as the one stipulated in the law of the country where the juridical act has been concluded. Thus, in Romania it will be possible to administer the witness proof of the juridical act concluded abroad even overpassing the value of 250 lei, if the law of the country where it was concluded allows it[17].

The juridical act concluded in a foreign country in the forms stipulated by the law of the country where the juridical act was concluded will not be enforceable in Romania as well, even if it would be enforceable according to the law of the country where the juridical act was concluded, the solution being grounded on the sovereignty principle and on the countries equality principle. This juridical act will become enforceable in Romania by way of the *exequatur* procedure.

According to article 466 from the Republic of Moldova Civil Procedure Code, the official juridical acts that are issued, drafted or legalized abroad can be presented to the Republic of Moldova courts of law only if these are over legalized on hierarchical administrative way and, afterwards, by the diplomatic missions or the consular offices of the Republic of Moldova. The administrative over legalization is governed by the procedure established by the origin state of the juridical act, followed by the over legalization performed either by the diplomatic mission or the consular office of the Republic of Moldova from the origin state or by the diplomatic mission or the consular office of the origin state in the

[16] Raluca-Oana Andone, Norme conflictuale privind forma actului juridic cuprinse în Noul Cod civil şi în *Regulamentul (CE) nr.593/2008 privind legea aplicabilă obligaţiilor contractuale - Roma I* (Conflict of law dispositions regarding the form of the juridical act from the new Civil Code and from the EC Regulation no. *593/2008 regarding the law applicable to contract obligations –Rome I)*, „Dinamica dreptului românesc după aderarea la Uniunea Europeană. Comunicări prezentate la Sesiunea ştiinţifică din anul 2010 a Institutului de Cercetări Juridice (The dynamics of the Romanian law after the EU adhesion. Communications from the 2010 Scientific Session of the Juridical Research Institute)", Universul Juridic publishing house, Bucharest, 2011, p. 202.

[17] Ion Filipescu, op. cit., p. 339.

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Republic of Moldova and, afterwards, in both situations, by the Republic of Moldova Ministry of External Affairs (and European Integration). The over legalization of the acts drafted or legalized by the Republic of Moldova courts of law is done by the Ministry of Justice and the Ministry of Internal Affairs, on behalf of the Republic of Moldova authorities. The official acts issued on the territory of a member state of the international treaty to which the Republic of Moldova is a contracting party are acknowledged as writings without over legalization in the Republic of Moldova courts of justice".

A similar disposition was to be found in article *162* of the Romanian Law no. 105/1992. Starting from 15.02.2013, the article *1078 from the 2010 Romanian Civil procedure Code is applicable, which states that the official writings, drafted or legalized by a foreign authority or by a public foreign agent, can be presented in front of the Romanian Courts of justice only* „if these are over legalized, by hierarchical administrative way in the state origin and by the Romanian diplomatic mission or consular office, for certifying their signatures and seal. The administrative over legalization is governed by the procedure established in the act's state origin, followed by the over legalization performed either by the Romanian diplomatic mission or consular office from this state or by the diplomatic mission or consular office of the origin state in Romania and, afterwards, in any of these two situations, by the Ministry of External Affairs. The exemption of over legalization is allowed on the basis of the law, of an international treaty to which Romania is a party or on the basis of reciprocity. The over legalization of the juridical acts drafted or legalized by the Romanian courts of justice is done by the Ministry of Justice and the Ministry of External Affairs, on behalf of the Romanian authorities, in this order".

The Republic of Moldova has adhered to the *Hague Convention regarding the abolishing of the foreign official juridical acts legalization condition (the Apostille Convention) from the 5th of October 1961 by way of Law no. 42-XVI/2006, entered into force on 16.03.2006. Thus, either on the basis of the Apostille Convention or on the basis of bilateral conventions, the foreign juridical acts over legalization formality has been abolished by the* Republic of Moldova in the relations with certain states, such as Romania.

By way of Government Emergency Ordinance no. 66/1999, Romania has adhered to the *Apostille Convention*. The competent Romanian authorities for applying the apostille stated in the 1961 Hague Convention are the courts of justice for the documents that are issued by an authority or by a

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clerk from a state jurisdiction, including the ones issued by a prosecutor, a registrar or a judiciary executor, the public notary chambers for authentic writings, and the prefectures for the official statements, such as the registration mentions, the certain date investment visa and the signature legalizations on a private signature writing, according to article 2 *of Government Emergency Ordinance no.* 66/1999. In exchange, the Convention is not applicable to the documents drafted by diplomatic or consular agents and to the administrative documents that have a direct link to a commercial or customs operation.

The articles 2-3 from the 1961 Hague Convention stipulate the fact that „each contracting state is exempting of over legalization the acts to which the Convention applies and that are going to be presented on its territory. The over legalization refers only to the formality through which the diplomatic or consular agents of the country where the act is going to be presented are attesting the veracity of the signature, the quality under which the signatory of the document has acted or, if that is the case, the identity of the seal and of the stamp on this act. The only formality that could be requested in order to attest the veracity of the signature, the quality under which the signatory of the document has acted or, if that is the case, the identity of the seal and of the stamp on this act, is the apostille imprinting, issued by a competent authority of the state wherefrom the document is issued. Still, the above-mentioned formality cannot be requested when either the laws, the regulations or the usual practices in force in the country where the act is going to be presented or a settlement between two or more contracting states is abolishing, simplifying or exempting the act of over legalization"[18].

According to articles 3-4 of the 1961 Hague Convention, the apostille is imprinted exactly on the act or as an extension of the act and must be according to the model that is annexed to the Convention. If it is done properly, the apostille attests the veracity of the signature, the quality under which the signatory of the document has acted or, if that is the case, the identity of the seal and of the stamp on this act. The foreign judgment represents an act (*instrumentum*) issued by a foreign authority and

[18] *Convention regarding the abolishing of the foreign official juridical acts legalization condition from Hague of 1961, to which the Republic of Moldova hase acceded by way of Law no. 42-XVI/2006,* published in the *Republic of Moldova* Official Monitor no. 47-50/24.03.2006*, and to which Romania has adhered by way of Law no. 52/2000 for the approval of Government Ordinance no. 66/1999,* published in the *Romanian* Official Monitor no. 169/20.04.2000.

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is assimilated to the authentic writing, having the proving power up to false registration in regard to the personal ascertainment of the foreign judge, respectively it has the proving power up to the contrary proof in regard to all of the other ascertainment, based on the evidences administrated by the parties. In the speciality literature, the proving power of the foreign judgement has been classified in „external proving power, that involves the checking of its formal validity, its signatures and seal, in order to establish if the presented writing is really a judgement, power insured by the over legalization procedure, respectively internal proving power, that refers to the establishment of the truth value from which the factual ascertainment of the foreign judgment can benefit"[19].

The acknowledgement is the operation through which the authority of a foreign judgment is ascertained, on the basis of its force of *res judicata*, while the *exequatur* is the judiciary procedure through which the foreign judgment is declared enforceable, following the control performed by the court of justice of the state where the enforcement is to be performed[20]. The enforcement of the foreign judgments is performed according to the law of the country where their enforcement is requested[21].

The acknowledgement and the enforcement of the foreign judgments is performed on the basis of article 467 of the Republic of Moldova Civil Procedure Code, that stipulated the following: „The foreign judgments, including the transactions, are acknowledged and enforceable of full right in the Republic of Moldova either if this is stipulated in the international treaty to which the Republic of Moldova is a party or on the basis of the reciprocity principle in regard to the effects of the foreign judgments." According to the article 468 of the Republic of Moldova Civil Procedure Code, „the foreign judgment that has not been executed voluntary can be enforced on the territory of the Republic of Moldova, at the creditor's request, on the basis of the approval decision

[19] Violeta Cojocaru, Recunoaşterea şi executarea hotărârilor judecătoreşti străine în materie civilă în Republica Moldova (The acknowledgement and the execution of the civil foreign judgements in the Republic of Moldova), The Moldova State University publishing center, Kishinev, 2007, p. 55.

[20] Ioan Macovei, Drept internaţional privat - în reglementarea Noului Cod civil şi de procedură civilă (Private international law – in the new Civil Code and new Civil Procedure Code regulation), C. H. Beck publishing house, Bucharest, 2011, p. 270, p. 274.

[21] Violeta Cojocaru, op. cit., p. 44

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issued by the court of justice where the enforcement is to be performed. In case the debtor does not have a domicile or the headquarters in the Republic of Moldova or when the domicile is not known, the judgement is enforced at the place where his goods are situated".

In the Republic of Moldova Supreme Court of Justice Decision no. 7/1998 regarding the jurisprudence related to the application of some legal dispositions regarding the acknowledgement and the enforcement of foreign judgments in patrimonial or non-patrimonial law suits on the territory of the Republic of Moldova it is stipulated the fact that „the court of justice that examines the application of summons is limited to the control of fulfilling the conditions stipulated in the treaties, the international conventions to which the Republic of Moldova is a party, regarding that specific issue. The issues regarding the legality of the judgement are in the exclusive competence of the court of justice that is issuing the judgement. On the Republic of Moldova territory, the foreign judgements of the courts of justice and of the arbitration courts, that are definitive or immediately enforceable, are going to be acknowledged and enforced, if the treaty, the international convention does not stipulate otherwise."[22].

Under the previous Romanian legislation, the acknowledgement and the enforcement of the foreign court of justice or arbitration judgments was done on the basis of the articles 166-181 of the Romanian Law no. 105/1992. Starting with 15.02.2013, the dispositions of articles 1080-1095 of the 2010 Romanian Civil Procedure Code regarding the acknowledgement and enforcement of the foreign judgments are applicable, which are referring to the contentious or non-contentious matter jurisdiction court of justice acts**,** the notary acts and the acts of any other competent authority from *a non-EU member state*, as the article *1079* from the 2010 Romanian Civil Procedure Code is defining the notion of foreign judgments.

Thus, according to articles 1080-1081 of the same law, „the foreign judgments are acknowledged of full law in Romania, if these refer to the personal statute of the citizens of the state where the judgments were issued or, if being issued by a third country, have previously been acknowledged in the citizenship state of each party or, in the absence of the acknowledgement, have been issued on the basis of a law that has

[22] The Republic of Moldova Supreme Court of Justice, Decision no. 7/1998, available on-line at http://csj.md.

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been determined as applicable according to the Romanian private international law, are not contrary to the Romanian private international law public order and the right to a defence has been respected. The judgments regarding other law suits can be acknowledged in Romania in order to benefit from the power of *res judicata*, if these are definitive according to the law of the country where these were issued, if the court of justice that has issued them has had the competence of judgement, according to the law of the headquarters country, and if there is a reciprocity in regard to the effects of the foreign judgments between Romania and the court of justice state issuing the respective judgement".

The acknowledgement application of summons is judged by the court wherefrom are the domicile or the headquarters of the person that has refused the foreign judgments acknowledgement. The Romanian court of justice cannot examine the material aspects of the foreign judgment and cannot modify it, according to the dispositions of articles 1083-1084 of the 2010 Romanian Civil Procedure Code.

According to the articles 1088-1089 of the 2010 Romanian Civil Procedure Code, „the foreign judgments that are not voluntary executed by the obligated parties can be enforced on the Romanian territory at the request of the interested person, by the court where the enforcement will take place, with the observance of the conditions stipulated in article 1081 of the same law, as well as of the condition that the judgment is enforceable according to the law of the state where the court of justice that has issued it has the headquarters".

„The foreign judgment issued by the competent court of justice has got proving power in Romania, in regard with the ascertainment that it contains, if it satisfies the requests necessary for its authenticity according to the law of the state where the court of justice that has issued it has the headquarters. The ascertainment made by the foreign court of justice does not have the above-mentioned proving power if these are not compatible with the Romanian private international law public order. Proof of the facts ascertained by the foreign court of justice can be done by any proof mean", according to article of the 2010 Romanian Civil Procedure Code.

In regard to the foreign arbitration judgement issued by a competent arbitration court, these have in Romania the proving power regarding the factual situations which these are ascertaining, on the basis of the articles 1117-1118 of the 2010 Romanian Civil Procedure Code, the

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court not having the option of examining the arbitration judgement regarding the material aspects of the arbitration case.

In the relationship between Romania and the European Union member states the Regulation (EC) no. 44/2001 of the European Parliament and of the Council of the 22nd December 2000 regarding the competence, the acknowledgement and the execution of the civil and commercial judgements is applicable. According to the article 33 line (1) of this Regulation, „a judgement issued in a member state is acknowledged in the other member states without being necessary any special procedure", and, according to the article 38, „a judgement, issued in a member state and enforceable in that state, is enforced in another member state when, at the request of any of the interested parties, has been declared as enforceable in the respective state; the territory competence is determined by the domicile of the party against whom the enforcement is requested or by the place of enforcement". On the basis of article of the Regulation, „the party that invokes the acknowledgement of a judgement or that is requesting the enforcement approval of a judgement must present a copy of the judgement that fulfils the necessary conditions in order to establish its authenticity" and to present a certificate issued by the court of justice or by the competent authority from the member state where the judgement was issued, which should stipulate that this is enforceable[23].

In article 13 of the Republic of Moldova Civil Procedure Code, the Moldavian legislator affirms that „when judging the civil law suits, the court of justice applies the legislation of another state according to the law or the international treaties to which the Republic of Moldova is a party. On the purpose of ascertaining the existence and the content of the laws or of any foreign type of law, the court of justice requests, in the established manner, the assistance of the competent Moldavian authorities. If it is impossible to obtain the necessary information about a law or any other foreign juridical act, even if it has undertaken all necessary measures, the court of justice will apply its own national law". On the basis of article 16 of the Republic of Moldova Civil Procedure Code, „the enforcement on the Moldavian territory of the foreign court of justice or international arbitration judgments or interpellations is done

[23] *Regulation no. 44/2001 of the* European Parliament and of the Council regarding the competence, the acknowledgement and the execution of the civil and commercial judgements, published in the European Union Official Journal no. *L12/16.01.2001, p.1-23, available on-line at* http://eur-lex.europa.eu.

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according to this law, the international treaties to which the Republic of Moldova is a party, as well as on the basis of the reciprocity principle".

The 2009 Proposal for a European Parliament and Council Regulation regarding the competence, the applicable law, the acknowledgement and the enforcement of the court of justice judgements and of the authentic writings in the area of the successions, as well as the creation of an European inheritor certificate has been commented in the speciality literature: „The harmonization of the national dispositions of international private law and of the succession international procedure dispositions, as well as the creation of an European inheritor certificate are, in principle, meritorious initiatives, because these facilitate and accelerate the liquidation of the cross-border successions in the benefit of the European Union member states citizens. Still, the European inheritor certificate will represent the source of numerous divergences with the national inheritor certificates, that are regulated in most of the national legislations from the member states and that are still applicable, including for the successions with a foreign law element. Some authors have supported the freedom of circulation of the authentic writings in the succession domain and their cross-border usage, but their acknowledgement stipulated in article 34 from the Regulation proposal is considered improper, because it is a notion used in the area of the court of justice judgements. If the idea of acknowledgement is pursuing the elimination of the present apostille usage, then this aspect should be clarified"[24]. In exchange, according to article 35 from the Regulation proposal, the authentic writings registered and enforceable in a member state are declared enforceable in another member state according to the procedure stipulated in articles 38-37 of the Regulation (EC) no. 44/2001.

The Decision no. 2re-232 of 28th of August 2008 of the Economic College of the Republic of Moldova Supreme Court of Justice, in the Milport Marketing LLP versus ÎM Cristal Flor law suit, refers to the acknowledgement and enforcement approval of a foreign judgment. „By using the proxy of 03.04.2008, Fiona Parascheva, on behalf of Trinitron Investments Ltd, has mandated Vitalie Nagacevschi to act on behalf of Dagget Group LLC, including to represent its interests in all courts of

[24] Marius Kohler, Markus Buschbaum, La reconnaissance des actes authentiques prévue pour les successions transfrontalières. Réflexions critiques sur une approche douteuse entameé dans l'harmonisation des règles de conflits de lois, „Revue critique de droit international privé" nr. 4/2010, p. 631, p. 651.

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justice. The proxy had been legalized by N.G. Petrides – the person mandated by the Ministry of Internal Affairs of the Cyprus Republic to legalize the documents from Limassol, who has confirmed the fact that Fiona Paraskeva has presented the documents (constitutive acts, statutes, registration documents of Trinitron Investments Ltd and of Dagget Group LLC), that prove her right to issue the proxy. On the above-mentioned proxy was imprinted the apostille of Cyprus, according to the Convention regarding the abolishing of the foreign official juridical acts legalization condition from Hague of the 5th of October 1961, to which the Republic of Moldova has acceded by way of Law no. 42-XVI/2006.

The above-mentioned documents are presumed to be authentic, because these have been authenticated by notaries, on the basis of the constitutive acts and registration documents of Trinitron Investments Ltd and of Dagget Group LLC. The documents are acknowledged on the territory of the Republic of Moldova on the basis of the apostille that is imprinted by the foreign competent authorities. The assignment contract of 16.04.2008 is not opposable to the Dagget Group LLC Company, because this was signed by another person than the authorized one - Fiona Paraskeva"[25]. In our opinion, the Moldavian Supreme Court of Justice decision was correct.

Through the Decision no. 2re-9/2011, issued in the S.R.L. „Domotehnica-Nord" Ukraine versus S.R.L. „Donteh-Plus" Republic of Moldova law suit, the Economic College of the Republic of Moldova Supreme Court of Justice, judging the appeal declared by SRL „Donteh-Plus" Republic of Moldova against the Economic Appellate Court of the 25th of October 2010 regarding the acknowledgement and enforcement approval in the Republic of Moldova of the Decision no. 15m/2010 of 29.04.2010 of the International Arbitrage Court from the Ukraine Chamber of Commerce and Industry regarding the receiving of the debt in a total sum of 28.784,45 U.S. dollars in the account of S.R.L. „Donteh-Plus" Republic of Moldova on behalf of S.R.L. „Domotehnica-Nord" Ukraine, has stated that „examining the cause in the absence of S.R.L. „Donteh-Plus" Republic of Moldova, even if this has requested the postponing of the examination through the telegram of 28.04.2010, invoking the reason that the company administrator is ill, without annexing any evidence in this sense and without issuing a proxy for

[25] The Republic of Moldova Supreme Court of Justice, Decision no. 2re-232/2008, *available on-line at* http://csj.md.

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another person for representing the company at the court hearing, cannot be considered a ground for refusing the acknowledgement and enforcement approval of the arbitrary judgement of 29.04.2010"[26]. In our opinion, the decision of the Moldavian Supreme Court of Justice was thorough.

In the Decision no. 5205/27.06.2007 of the Romanian Supreme Court of Justice, the IV th Civil and Intellectual Property Section, the court of justice has applied the dispositions of the Romanian legislation regarding the *apostille*. The Romanian Supreme Court of Justice has correctly accepted the appeal as thorough, by considering the fact that the appeal court of justice has wrongly eliminated from the evidences the inheritance certificates issued by the authorities of Israel on behalf of the plaintiff, considering that these do not fulfil the formal conditions stipulated by article 162 line (1) of the Law no. 105/1992, in order to be used in front of the Romanian courts of justice (respectively, these are not legalized). Thus, according to the Emergency Government Ordinance no. 66/1999, Romania has adhered to the 1961 Hague Convention regarding the abolishing of the foreign official juridical acts legalization condition, according to which each contracting state exempts of over legalization the acts to which this convention applies, meaning the official acts that have been concluded on the territory of a contracting state and that are going to be presented on the territory of another contracting state. In these conditions, the only formality that could have been requested in order to attest the veracity of the signature, the quality of the act signatory or, if it is the case, the identity of the seal and of the stamp, was the apostille, according to articles 3 - 4 of the Convention. The writings presented by the plaintiff had the apostille that was imprinted by the competent authority of Israel, from which the documents were issued, so that not acknowledging their juridical efficiency was wrongly done, a solution that we are supporting[27].

Through the Decision no. 963/08.02.2005 of the Romanian Supreme Court of Justice, the IV[th] Civil and Intellectual Property Section, the court of justice has applied the Romanian legal dispositions regarding *the exemption of apostille imprinting formality*. In this case, because the plaintiff

[26] The Republic of Moldova Supreme Court of Justice, Decision no. 2re-9/2011, *available on-line at* http://csj.md.

[27] Şerban Alexandru Stănescu, *op. cit.*, pp. 171-175; Romanian Supreme Court of Justice, Decision no. 5205/2007.

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used the acts issued on the territory of the United States of America for their proving power, the dispositions of articles 2-3 of the 1961 Hague Convention regarding the abolishing of the foreign official juridical acts legalization condition could be applicable, to which both U.S.A. and Romania are parties, according to which each state is exempting of over legalization the acts to which this convention is applicable and that are going to be presented on its territory, the only formality that could be requested being the imprinting of the apostille in order attest the veracity of the signature, the quality of the act signatory or, if it is the case, the identity of the seal and of the stamp. In the case brought to justice, because it was a proxy issued by the plaintiff in front of the Romanian consulate of New York, such a formality was no longer necessary, the Hague Convention not being applicable to the documents concluded by the diplomatic or consular agents, according to the expressly stated dispositions of article 1 line (3) of the convention, an opinion that we are acceding to. The document concluded by the Romanian diplomatic agency has the proving power of an authentic ac,t on the basis of article 8 letter b) of the Law no. 36/1995[28].

In the Decision no. 5053/24.04.2006 of the Romanian Supreme Court of Justice, the IVth Civil and Intellectual Property Section, is to be found an example of *the exemption of apostille imprinting formality* application. In article 3 line (2) of the Hague Convention it is stipulated the fact that the formality mentioned in line (1) (the apostille) cannot be requested when, by means of an agreement between two or more states, this formality is eliminated, simplified or the act is exempted from over legalization. In article 14 of the Decree no. 368/1976 it is stipulated that, in the civil and commercial legal relations between Romania and Belgium, the documents that are issued by the judiciary authorities of one of the two states and that are having their seal, as well as the documents to which they are ascertaining the date, the signature veracity or the conformity with the original, are exempted from any legalization, when these have to be used on the other state territory.

In respect to the provisions of these two acts and that are applicable to the bilateral relations between Romania and Belgium, the appeal court of justice has correctly appreciated that the proxy of the respondent plaintiff, that is concluded in authentic form by a public

[28] Şerban Alexandru Stănescu, *op. cit.*, pp. 185-194; Romanian Supreme Court of Justice, Decision no. 963/2005.

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notary, fits into the writings category, which, according to the article 14 of the bilateral convention, are exempted from the apostille imprinting formality. The fact that Romania has adhered to the Hague Convention to an ulterior date, after the bilateral Convention was signed, without any reserves, does not mean that the bilateral Convention is no longer producing effects[29].

In the French-Romanian bilateral relations the apostille imprinting formality is eliminated, on the basis of articles 9-10 of the Convention between the Romanian Socialist Republic and the French Republic regarding the juridical assistance in civil and commercial matters, adopted in Paris on 5.11.1974, ratified by de Romania by way of Decree no. 77/1975, and in the bilateral Romanian-Austrian relations – on the basis of article 25 of the Convention between the Romanian Socialist Republic and the Austrian Republic regarding the juridical assistance in civil and family matters and regarding the validity and the acts transmission, adopted in Vienna on 17.11.1965, ratified by de Romania by way of Decree no. 1179/1968.

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[29] Şerban Alexandru Stănescu, *op. cit.*, pp. 171-175; Romanian Supreme Court of Justice, Decision no. 5053/2006.

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