

November 2005

ROMANIA

Explanatory note

The activity of research for documentation concerning the Romanian practice in this field revealed that such documentation exists at the level of judicial authorities.

There is no documentation issued by the executive or parliamentary Romanian bodies on this item.

As to the documentation provided by the judicial bodies from Romania, it comes out that the case-law is very poor. Moreover, the case-law is not uniform, which is understandable, taking into account that, in none of the cases, the Supreme Court of Justice pronounced a decision on this item, which would have consisted in guidelines for the judicial bodies.

In a case of 2001, the Tribunal of Bucharest considered that the 1961 Vienna Convention on Diplomatic Relations does not grant immunity for *iure gestionis* acts.

Nevertheless, in 2002, the Tribunal of Bucharest considered that the same Convention prevents a foreign State from being defendant in a case involving *iure gestionis* acts, such as acts related to labour rights of the employees of the Embassy.

The same opinion is supported by the Court of Appeal of Bucharest in an address to the Ministry of Foreign Affairs of Romania, stating that foreign States enjoy absolute immunity, irrespective of the nature of the acts fulfilled.

The fluctuant character of the judicial practice is, in the viewpoint of the Ministry of Foreign Affairs of Romania, an additional reason pleading for the elaboration of a legally binding instrument setting forth precisely in which hypothesis foreign States enjoy immunity.

(a)	Registration no.	RO/1
(b)	Date	29.05.2003
(c)	Author(ity)	Court of Appeal of Bucharest
(d)	Parties	-
(e)	Points of law	<p>The Court establishes that Romanian courts are not competent to consider any kind of disputes in which a foreign State, its representative of the diplomatic representation is defendant, excepting for cases where the respective State waives its immunity.</p> <p>In case where the foreign State or its representative is a claimant, it is deemed to have waived its immunity.</p>
(f)	Classification no.	0.a., 0.b., 0.b.1, 1.a, 2.a
(g)	Source(s)	Address from the chairman of the IIIrd Civil Section to the Chairman of the Court of Appeal, sent as being relevant for the case-law of the Court of Appeal of Bucharest to the Ministry of Foreign Affairs of Romania
(h)	Additional information	The classification from point f) is valid only for cases where the State is defendant in the dispute.
(i)	Full text - extracts - translation - summaries	Excerpts in English : Appendix 1

Appendix 1

Unofficial translation

“Romania

Court of Appeal of Bucharest

The IIIrd Civil Section

Cabinet of the Chairman

29.05.2003

To the President of the Court of Appeal of Bucharest

Following your letter no. 2869/c/13/05.2003, asking for the viewpoint of the magistrates from this Section with regard to the sphere of the States immunity and the participation of States in any dispute tried in Romania, we inform you that:

We consider that the foreign Stat, its representative of the diplomatic mission of the foreign State may not be defendants in any dispute tried in Romania, irrespective of their nature, taking into account that they enjoy immunity according to article 31 of the Vienna Convention on Diplomatic Relations, ratified by Romania by Decree no. 566 of 1968.

[...]

In case where the State or its representatives are applicants, they are deemed to have waived immunity. (art. 32 (3) of the Convention).

[...]”

(a)	Registration no.	RO/2
(b)	Date	5.06.2002
(c)	Author(ity)	Tribunal of Bucharest
(d)	Parties	A. S. M. vs The Embassy of P. in Romania
(e)	Points of law	The Tribunal establishes that according to the Vienna Convention on Diplomatic Relations (1961) diplomatic missions enjoy immunity, therefore they may not be a Party as defendant in disputes before the Romanian courts.
(f)	Classification no.	0.b., 0.b.2 1.a
(g)	Source(s)	Address from the chairman of the IVth Civil Section to the Chairman of the Tribunal of Bucharest, sent as being relevant for the case-law of the Tribunal to the Ministry of Foreign Affairs of Romania
(h)	Additional information	
(i)	Full text - extracts - translation - summaries	Excerpts in English : Appendix 2

translation

“Tribunal of Bucharest - the 4th Civil Section

The Civil Decision no.1136 R

Public hearing: 5.06.2002

[...]

The Court is called to pronounce upon the appeal on points of law dispute made by A. S. M. versus the Embassy of P. in Romania[...] having as an object a labour dispute [...].A. S.M. was an auditor at the Embassy of P. in Romania and considers that its labour contract was abusively put an end [...]

Taking into account art. 31 of the Vienna Convention on Diplomatic Relations which guarantees immunity of jurisdiction for diplomatic missions, the Embassy of P. in Romania may not be a Party in the present case. Having due regard to these legal provisions, the Court [...] rejects the contestation as being introduced against a person having no capacity of stay in Court as defendant. [...]"

Pilot Project of the Council of Europe on State practice on State Immunity

(a)	Registration no.	RO/3
(b)	Date	9.03.2001
(c)	Author(ity)	The Vth Civil and Administrative Section of the Tribunal of Bucharest
(d)	Parties	G. M. & T. I. vs The Embassy of P. in Bucharest
(e)	Points of law	The Tribunal establishes that in cases related to real estate, even if the foreign State is defendant, it has to be considered a legal person of Civil Law and therefore it does not enjoy immunity of jurisdiction.
(f)	Classification no.	0.b., 1.b
(g)	Source(s)	Address from the chairman of the Tribunal of Bucharest, sent as being relevant for the case-law of the Court of Appeal of Bucharest to the Ministry of Foreign Affairs of Romania
(h)	Additional information	
(i)	Full text - extracts - translation - summaries	Excerpts in English: Appendix 3

Appendix 3

Unofficial

translation

“Tribunal of Bucharest, the V th Civil and Administrative Section

Civil Decision no.593

Public Hearing of 9.03.2001

[...] The object of the case is the evacuation of the Embassy of P. from the building which is owes by the applicants. [...]

The Tribunal considers that the P. State has the capacity to stay in Court as defendant, as it acted in the case judged by the Court as a civil moral person and therefore is deemed not to have immunity of jurisdiction. [...]