

**International Judicial Assistance in Civil and Commercial Matters**  
**(a summary of the doctoral thesis)**

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The present study is divided into four main parts:

- Chapter I Introduction (1. Preliminaries; 2. International norms regulating the judicial assistance; 2.1 The Hague Conventions; 2.2 General overview on efforts striving for uniformization of the civil procedure in the European Union; 2.3 The European Union accession to the Hague Conference; 3. “Civil and commercial matters”).

- Chapter II The judicial status of the foreigner as a litigation party (1. Clarifications on terminology; 2. The notion of access to justice; 3. National regulations regarding the foreigner’s access to justice; 4. The legal aid in the internal law; 4. 1. Sedes materiae; 4.2. Scope of the law; 4.3. The right to legal aid. Its beneficiaries and its meaning; 4.4. The dynamic of the right to legal aid; 4.5. The content of the right to legal aid; 4.6. The request for legal aid and its procedural effects; 4.7. The procedure of awarding legal aid; 4.8. The ending of the legal aid; 4.9. The enforcement of the sums of money object of the legal aid; 4.10. The role of the Ministry of Justice in the legal aid procedure; 5. International instruments facilitating the foreigner’s access to justice. The Hague Convention of 25 October 1980; 5.1. Introduction; 5.2. The relationship between the Convention and the 1905 and 1954 Hague Conventions on civil procedure; 5.3. Object and beneficiaries of the legal aid; 5.4. The mechanism of transmission and solving the legal aid request; 5.5. *Cautio judicatum solvi* and *exequatur* on the obligation to pay legal fees; 6. The foreigner access to justice according to the EU law; 6.1. The general framework; 6.2. The scope of the Directive 2003/8/EC; 6.3. The procedure set up by the

Directive; 6.4. Solving the legal aid requests; 6. 5. Implementing the Directive in the Romanian law; 6.6. Comparison between the Hague Convention on access to justice and the Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes; 6.7. The relationship between Convention and Directive; 6.8. The European Court of Justice case law before the Directive 2003/8/EC; 6.9. Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters; 7. Efforts to improve the foreigner's access to justice under the aegis of the Council of Europe; 7.1. Internationals instruments; 7.2. ECHR case law).

- Chapter III The service abroad of judicial and extrajudicial documents (1. Preliminaries; 2. *Sedes materiae*; 3. The service abroad of judicial and extrajudicial documents according to the Romanian law; 3.1. Definitions and scope of the law; 2. Servicing documents abroad; 3.3. Servicing documents coming from abroad; 4. The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; 4.1. The general framework established by the Hague Convention; 4. 2. International mechanisms existing prior to the 1965 Convention; 4.3. The relationship between the Hague Conventions; 4.4. The scope of the 1965 Convention; 4.5. The procedure for the judicial documents; 4.6. Alternative channels of transmission (art. 8 - 11); 4.7. The expenses incurred by servicing; 4.8. The right to refuse the servicing by the requested state (art. 13); 4.9. Procedural effects of the foreigner's failing to appear in court; 5. The service abroad of judicial and extrajudicial documents according to the European Union law; 5.1. Introductory remarks. The history of the *sedes materiae* in European law; 5.2. The scope of the Regulation; 5.3. Authorities in the proceedings. Transmitting agencies and receiving agencies. The central authority; 5.4. Means of transmitting and servicing judicial and extrajudicial documents; 5.5. Judgment by default; 5.6. Relationship with agreements and treaties signed by the member states; 5.7. The protection of the information transmitted; 5.8. Means for good implementation of the Regulation; 5.9. Implementing the Regulation in Romania; 5.10. ECHR case law).

- Chapter IV The evidence in international civil litigation (1. The meaning of the term "evidence"; 2. The object of proof and its specific in international civil litigation; 3.

The admissibility of evidence in international civil litigation; 4. Presenting evidence before the court in international civil litigation; 5. The notion of international letter rogatory (letter of request); 6. International letter rogatory based on Law no. 189/2003; 6.1. Requesting abroad an international letter rogatory; 6.2. International letter rogatory received from abroad; 7. The Hague Convention of 18 March 1970; 7.1. The scope of the Convention; 7.2. Formal prerequisites; 7.3. The procedure in the requested state; 7.4. Taking of evidence by diplomatic officers, consular agents and commissioners; 7.5. The functioning of the Convention in the discovery procedure; 8. Taking of evidence according to the European Union Law; 9. Special formal prerequisites for documents presented as evidence in international civil litigation. The Apostille; 9.1. The scope of the Apostille Convention; 9.2. The content and effects of the Apostille; 9.3. The competent authority. Designation and obligations; 10. The proof of foreign law; 10.1. The mechanism set up by the Law no. 189/2003; 10.2. The Convention of 7 June 1968; 10.3. The new Rome I and II Regulations implication on proving the foreign law).

The doctoral thesis deals with the international judicial assistance in litigations pertaining to the civil and commercial matters from the Romanian perspective as the *forum* country.

New global realities have generated a judicial actor different from the traditional one, the transnational litigant, whose processual position, for equity reasons, must be brought close to that of the national party in the state of the forum.

The civil (commercial) process encompasses three general stages: the establishment of jurisdiction, the trial proper, the recognition and enforcement of judicial decisions already issued. From this perspective, the international judicial assistance confines itself to the second stage, the trial, the procedure, the sum of judicial activities prior to the delivery of the judgment. Among those activities, first thing to be dealt with in the courts proceedings must be the foreign litigant access to justice in Romania in civil and commercial matters. In this respect, I have looked at our internal law and the relevant provisions regarding the legal aid and the access to justice for the foreign parties, guaranteed by Romania to be in the same conditions as for its nationals, subject to reciprocity.

Our country is part of the 1980 Hague Convention of 25 October 1980 on International Access to Justice and I had examined at length this international instrument, taking a closer look at the Romanian way of implementing it.

Romania has also ratified the European Convention on Human Rights and it is bound to secure to everyone within its jurisdiction the rights and freedoms defined in Section I of the Convention, among them being the right to a trial. The very broad notion of „everyone within the jurisdiction” may refer to foreigners as well as nationals of a High Contracting State, and I have reviewed in extenso the European Court of Human Rights case law on this topic.

The most important European legal act in this field is the Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, that has been receiving the required attention.

After the rights and obligations of the foreign litigant in our national courts have been duly considered, the analysis of the trial proceedings have been examined closely, from two directions, a national one and an international perspective.

Internally, the Law no. 189/2003 regarding the judicial assistance in civil and commercial matters set up the scope and categories of the assistance: service abroad of judicial and extrajudicial documents; taking of evidence abroad; information on foreign law; access to justice.

The international dimension of the trial can be split twofold: the Hague Conventions and the European acts relating to the international judicial assistance in the form of collecting evidence abroad and transmitting legal documents to and from other countries.

The most important instruments developed by the Hague Conference on Private International Law within the realm of this work are: the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents; the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

As our accession to the European Union has become a fact, it is now very important for us to know the subject-matter Community law and case law of the European Court of Justice. Inside the European Union, the most important acts pertaining to the field of study, closely regarded in the thesis, are the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, the Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters and the Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

In addition, Romania, as a full member of the Council of Europe, has participated in its efforts in the field of international law (international acts and treaties, ECHR case law) designed to enhance the international judicial assistance. The most important acts adopted under the aegis of the Council of Europe in this regard are the European Convention on Information on Foreign Law, 7 June 1968, London and the European Agreement on the Transmission of Applications for Legal Aid, Strasbourg, 1977.

Significant parts of the study have been assigned to establishing the relations between the various international instruments themselves and between these and the Romanian internal legislation.

Throughout the study, I have reviewed the European Court of Human Rights' jurisprudence in the matter and I have discussed at length the relevant landmark cases that have emerged among the European Court of Human Rights' rulings. Where appropriate, I have also presented the position of our Constitutional Court as stated in relevant decisions if any.

As an overall assessment of the international judicial assistance available in the Romanian fora, I have concluded that there are sufficient means of ensuring an effective transnational litigation for any process in civil or commercial matters, based in our courts.

Keywords: international judicial assistance; civil and commercial matters; Hague Conventions; transnational civil procedure; Hague Conference; foreigner as a litigation party; access to justice; legal aid; *cautio judicatum solvi*; legal fees; EU law; Directive 2003/8/EC; case law; European Judicial Network in civil and commercial matters; Council of Europe; ECHR; service abroad of documents; Council Regulation (EC) No 1393/2007; evidence; Council Regulation (EC) No 1206/2001; international letter rogatory (letter of request); the Apostille; proof of foreign law; the London Convention of 7 June 1968.