



NEWS REPORT

Update:	News report 15 from 28 June 2009
Date:	15 June 2011
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Title:	Law for the enforcement of the Romanian New Civil Code is published establishing October 1 st 2011 as date of entering into force
Country:	Romania
<u>Context</u>	
Issue at stake:	New law announces entering into force of the New Civil Code on October 1 st 2011, a Code criticized for including discriminatory provisions sanctioning opposite-sex and same-sex civil partnerships and same-sex marriages, denying the right to adoption for same-sex couples and introducing a restrictive definition of 'family' as 'marriage between man and woman'
Ground of discrimination:	Sexual orientation
Source:	Law 71 from 10 June 2011 for the application of the New Civil Code - <i>Legea nr. 71/2011 pentru punerea in aplicare a Legii nr. 287/2009 privind Codul civil</i>
Field:	All

Content

Development: As a part of a very long and contested process, new codes - Civil Code, Criminal Code, Civil Procedure Code and Criminal Procedure Code, were adopted by the Government as draft laws on 25 February 2009 and they were submitted to the Parliament in order to initiate the legislative procedure. In spite of protests of human rights NGOs, media and trade unions, on 22 June 2009, the Government used the constitutional provision of assumption of responsibility by the Government before the Parliament, in order to have the drafts adopted without further parliamentary debates.¹

¹ The institution of assumption of responsibility is provided by Art. 114 of the Romanian Constitution and it is deemed in the constitutional theory and in the jurisprudence as a constitutional exceptional measure meant to ensure the promotion of

After two years of stalemate, , the Law for the enforcement of the New Civil Code (NCC) was published on 10 June 2011 establishing the date when it will enter into force as 1 October, 2011. The enforcement legislation provides for some clarifications regarding the New Civil Code, including some definitions. However, the legislation for the enforcement of the New Civil Code does not tackle on some of the provisions of the NCC which had been challenged for leading to discrimination on grounds of sexual orientation.²

Internet link source and additional information:

<http://www.juridice.ro/151549/legea-pentru-punerea-in-aplicare-a-noului-cod-civil-publicare-in-monitorul-oficial.html> (15.06.2011)

legislative provisions needed to ensure the governmental programme. Art.114 of the Romanian Constitution provides: (1) The Government may assume responsibility before the Chamber of Deputies and the Senate, in joint session, upon a program, a general policy statement, or a bill.

(2) The Government shall be dismissed if a motion of censure, tabled within three days from the date of presenting the program, the general policy statement, or the bill, has been passed in accordance with provisions under Article 112.

(3) If the Government has not been dismissed in accordance with paragraph (2), the bill presented shall be considered as passed, and the program or the general policy statement become binding on the Government.

(4) In case the President of Romania demands reconsideration of the law passed according to paragraph (3), the debate thereon shall be carried in the joint session of both Chambers.

² See Romania Flash Report 15: the new Civil Code expressly prohibits forms of civil union similar to marriage in Art. 277 by specifically stating 'marriage between same-sex persons is prohibited.' The text also aims to have an extra-territorial impact by adding 'same-sex marriages performed abroad, by Romanian citizens or by foreigners are not to be recognized in Romania.' Similarly, the new Civil Code mentions that same-sex or opposite-sex civil partnerships registered or contracted abroad by Romanian citizens or foreigners are not recognized in Romania. The Code also mentions that the legal provisions on the freedom of movement in Romania of EU/EEA citizens remain in force without clarifying however the conflict between the express provisions recognising the marital status of the EU citizens as granted by their countries mentioned in the legislation transposing Directive 2004/38/EC and the recent prohibition of recognition of same-sex marriages or partnership entered into abroad by same-sex couples. The new Civil Code also prohibits in Art. 462 (3) the adoption concluded by persons of same sex and defines in Art. 258 the family as being based on 'the marriage freely entered into by the spouses' expressly defined as 'union between a man and woman' in Art. 259. As the new Civil Code states that the family as defined above is entitled to protection from the society and the state, such a restrictive definition leaves unprotected a wide range of couples which did not or could not register their marriage/partnership (Roma, young couples, same-sex couples).