

THE PROJECT `CODES ARE COMING!`

General Context

The new Civil Code (Law no. 287/2009) was published in the Official Journal in 2009 and shall enter into force at October 1st, 2011. Probably in one year at the most the other 3 new codes shall enter into force.

The new Civil Code was substantially amended by the Law no. 71/2011. This bill not only provides for the application of the Code's provisions, but also amends approximately 15-20% of its content.

There is no comprehensive manual or doctrine¹ on the new legislation yet.

General Objective

The Project started by the Superior Council of Magistracy aims at achieving two objectives:

- One major objective: to prepare all legal professionals for the knowledge and implementation of the new Codes
- One secondary objective: knowledge of the fundamental legislation by the population, especially by the litigants. Thus, if individuals know their rights and obligations, certain litigations/disputes shall be prevented; for disputes in process, knowledge of the procedural rules shall generate a more prompt/speedy deployment of the trials.

Specific purpose

The project envisages the unitary application of the law. If the new Codes shall be implemented correctly from the beginning, a **unitary judicial practice** shall emerge. This is because it is obvious that the first judgments delivered by the courts will quickly be passed among judges and lawyers, as an example to pursue in similar cases.

Requirements

In order to have a correct and unitary case law, the following requirements must be met:

- The final version of the legal act (for the legal practitioners to get acquainted with)
- Swift and solid training (for the legal practitioners to apply it)

¹ Monographs published before the occurrence of the Law no. 71/2011: Coordinator university professor PhD. Marilena Uliescu "The New Civil Code. Comments", Universul Juridic Publishing House, Bucharest, March, 2010; Ion Turcu, „The New Civil Code. Law no. 287/2009. Fifth book. On The Obligations. Art. 1164-1649. Comments and explanations”, CH Beck Publishing House, 2011; Gheorghe Piperea, „Introduction on Commercial Contract Law”, CH Beck Publishing House, 2011.

Step one: the entry into force of the New Civil Code (NCC)

SCM Decision

The very short time, the lack of a plan for informing the population and especially for training the magistrates on the topic of the new regulation, as well as the lack of necessary budget resources at NIM determined the Plenum of the Superior Council of Magistracy to set up a working group, on the 26th of May 2011. The objective of this working group is to establish and plan the necessary measures for preparing the judicial system for the entry into force of the Civil Code.

Judge Cristi Danileț (coordinator) and Judge Adrian Neacșu, members of the Council volunteered to assist this group on behalf of SCM.

Inter-institutional Group

The kick-off meeting of the Inter-institutional Working Group for the Implementation of the NCC was held on the 2nd of June 2011. The WG will coordinate the stage of preparing and implementing the new Code. During the next sessions several other entities were identified to be involved.

The present composition of the Group is as follows:

- **training institutions for legal practitioners:** National Institute of Magistracy, National School of Clerks, National Institute for the Training and Improvement of Lawyers, the Romanian Notary Institute, the National Centre for the Training and Improvement of Bailiffs, the Romanian Banking Institute; the Legal Research Institute has not yet responded the invitation to join the WG.
- **authorities responsible for training practitioners:** Superior Council of Magistracy, High Court of Cassation and Justice, Public Ministry, Ministry of Justice, the Romanian National Union of Public Notaries, the Romanian National Union of Bailiffs. For the proper implementation of the project, these institutions shall conclude a protocol for permanent collaboration.
- **professional associations and unions:** National Union of Judges in Romania, the National Association of Retired Magistrates, the Association of specialized legal personnel assimilated to judges and prosecutors – Pro Justitia, National Trade Union Federation of staff of courts and prosecutor's offices - Projust;
- **civil society:** Centre for Legal Resources, Romanian Academic Society, LideriJust Association, the Society for Justice, Romanian Training Institute, TATA Association, the Law Club.
- **Specialized/dedicated sites:** Juridice.ro, Euroavocatura.Ro. DreptOnline.ro, seminariionline.ro, Avocatnet.ro also contacted us. www.privesc.eu will be contacted as well.

The Importance of the Group:

Representatives of judges, prosecutors, court clerks, lawyers, public notaries, bailiffs and civil society reunited for the first time around the same table in order to get involved in identifying new adequate ways to implement the new Code.

The Group will actually ensure the connection between institutions competent for the training of professionals and enable the decision making process at the level of each such institution.

The available resources will be shared, the information relating to the training of legal practitioners will be circulated among institutions and swift and adequate ways to enhance them will be found.

Working Sessions:

3 meetings were organized so far:

- June 2nd, 2011
- June 9th, 2011
- June 22nd, 2011

The next meeting will be held on July 8, 2011.

The presidents of the courts of appeal were informed about the content of the program during 17-18 June 2011, in Mamaia. Also, the documents used by the Working Group are available on the [SCM](#) website.

Implementation schedule

For the implementation of the NCC 3 major components were identified:

1. Operational and administrative component
2. Information/training component
 - 2.1. training of professionals
 - 2.2. information of the public
3. Free online e-learning
 - 3.1. Commented Civil Code
 - 3.2. Online resources

The launching of the project: immediately after the official version of the republished Civil Code will be published in the Official Journal

1. The operational-administrative component

1.1. Republishing of the code

- The NCC will be republished, with the amendments made by the enforcement law in June 2011;
- The Ministry of Justice will provide the free of charge distribution of one copy to each judge (ideally to all judges, mandatory to civil law judges).

1.2. Reorganization of sections and commercial tribunals

Until 20th of June, the presidents of courts and tribunals answered to a letter send by the SCM's President, asking for their opinion on the reorganization of sections and commercial tribunals, taking into consideration the provisions of Law no. 71/2011.

The operations will be finalized by gathering the proposals sent by leading boards of courts to the SCM. The SCM will adopt the proposals in July and September 2011.

At the level of the HCCJ, the reorganization will be made at the proposal of the leading board.

1.3. Other matters

- Registers, forms: will be republished by presidents of courts;
- Random distribution of cases: if the former commercial section will be transformed in a civil section with two panels specialized in commercial law, the ECRIS allows for the random distribution of cases between the two civil sections.

1.4. Relationship with authors and publishing houses

The present project will be presented to professors who participated as authors to the drafting of the codes. It will also be presented to publishing houses².

² Some can offer a real support: EUROLEX published the correspondence NCC and the old Civil Code.

2. (In)formation Component

This component relates to classical means of forming and informing.

2.1. Forming/Training of law professionals

- Each training institution will increase in the next period the meetings for discussing the institutions provided for in the NCC³.
- Due to the lack of time and the interest of each category for the code's authors to participate to as many meetings possible, seminars/conferences organized by judges, prosecutors, lawyers, juridical counselors, public notaries, bailiffs, mediators⁴ will be encouraged; in cities with universities, the teachers will be involved. The members of the Group will draft a common event schedule that will be distributed in the territory; the presidents of Courts of Appeal will be informed in this respect by the Superior Council of the Magistracy. The attributions to organize the professional training are the task of courts' vice-presidents;
- Each category of law professionals will provide for the others human and logistical resources;
- The NSC has two working papers, namely „Civil law institutions in the new Civil Code” and „The institution of family in the new Civil Code”, which will be amended according to Law no. 71; public notaries, bailiffs and prosecutors also have training materials and working analysis;
- Each meeting, conference, event organized on the NCC (but not exclusively) must be broadcasted online, recorded and published on the website⁵, or at least the documents/slides used will be kept;
- At the level of the SCM, a database concerning the articles published in the specialty literature on the new codes was already established, since 2009; the list will be published on the SCM website;
- The Ministry of Justice proposed an individual professional training plan and submitted it to courts;
- INPPA is involved in training activities by organizing conferences and post-university courses at the Bucharest University.

The provisions of Law no. 71/2011 and the new institutions of the NCC will be especially considered.

³ For example, NIM developed a training programme for 10 trainers in September, in Bucharest, with the participation of the codes' authors; the programme consists of 4 seminars that will be video recorded; the trainers will consequently, in September and October 2011, held a series of 16 seminars in the territory, each with 30 magistrates and representatives of other professions. The trainers, if they are magistrates, must be suspended from any other tasks during the organization of seminars. The clerks will be trained by responsible judges, who will participate to training seminars.

⁴ One first such conference was organized in Constanta, between 24th 25th of June 2011, „[Knowing, understanding and applying the new fundamental codes of Romania \(New Civil Code and New Civil Procedural Code\)](#)”. The conference was organized by INPPA, and judges were invited.

⁵ The conference „[Entry into force of the new Civil Code: realities and legislative challenges of modernisation of the Romanian society](#)”, organized in Bucharest on the 30th of June 2011 by the Ministry of Justice, was recorded on the website www.privesc.eu and further published on www.juridice.ro.

In order to realize the proper documentation, the embassies could assist by indicating some specialty books, as well as experts. Such experts could participate in Romania to an international conference bearing the theme on institutions of the NCC⁶.

Additional funds will be used from the support programme developed with Switzerland, as soon as the funds will be available. From that time on, the NIM will finalize the draft proposed activities.

2.2. Informing the public

The public must be informed on the new rights and obligations of citizens, at least in order to prevent litigations. As such:

- Brochures for litigants will be distributed at the headquarters of courts, prosecutor's offices, as well as in public places as schools, town halls, etc;
- A section with TV programmes available online must be developed;
- Forms for claims in court must be available online and in courts (especially taking into consideration the perspective of entry into force of new procedural codes).

The TV broadcasters are interested in inviting experts in their programmes, who will explain in minutes the amendments provided by the NCC and the new institutions.

Commercial websites (www.seminariionline.ro) are interested in presenting institutions of the NCC in a TV studio, broadcasted online, with the possibility of asking questions live ("webinar" concept).

Until the present, the NIM trainers Liviu Zidaru, Bodan Dumitrache and Gabriela Răducan expressed their availability.

⁶ The French Ambassador informed the President of the SCM, by a letter, that he is willing to provide assistance if requested. For example, from the French law, the following institutions were assumed: common parental authority, compensatory allowance, prenuptial agreement, matrimonial regimes, and compensatory obligation in divorce.

3. E-training component

Concept: A website for the NCC will be developed, comprising of all information, from the compound of the commission that drafted the Code to theoretical explanations and jurisprudence on NCC. Basically, the civil code will be commented and annotated online, available free of charge.

Importance: It will ensure the training of law professionals, as well as the unification of the judiciary practice (for old institutions), respectively the creation of new, but unitary, judicial practices (for new institutions). The training costs are reduced.

The project developed for the NCC will be a pilot project for the following new codes.

Principles: education, practical unification, transparency and gratuitousness.

The project will comprise of a public website dedicated, at first, to the civil code, which will latter extend to the other three codes. The website represents a common project, developed on a free platform type *wiki* (ex: Wikipedia), open to volunteer contributors, with a technical and encyclopedic character.

Subsequently, the project will be scaled at the level of the other codes, when entering into force, gaining the configuration and the functionality of a *juridical online encyclopedia*.

Content: the public website will be developed in three components:

- a. civil code, commented and annotated at the level of articles and juridical institution;
- b. multimedia library, with the function of uploading text, audio or video files (for example: records of seminars, conferences, training courses, etc);
- c. dictionary of juridical terms from the civil code.

Access: The content of the website will be available free of charge to professionals and the public, being under a license *creative commons*, that will allow for the information to be retrieved, including for drafting derivate and commercial means papers, with mentioning the source. The access from abroad will constitute a method of training the professionals working abroad (from example, consuls) or foreigners found in relations with an extraneity element.

Technical aspects:

- Internet domain: is already purchased www.iurispedia.ro and will be assigned free of charge and on a permanent basis to the SCM;
- Website hosting: will be ensured free of charge by Bogdan Stăncescu.
- Technical platform: will be ensured free of charge by Bogdan Stăncescu.
- Administrators: 10 people are required, assigned on books. The LideriJust Association volunteered.

Aspects related to the content:

The following will have priority: new institutions, transitory provisions and sections concerning family law.

The posting rules will be clear; plagiarism will not be accepted; the responsibility belongs to contributors.

The contributors will be law professionals or law students. They will be able to post only after login in, providing real identification data. Contributors will be among magistrates, lawyers, teachers, retired magistrates, assimilated counselors, notaries, clerks with juridical studies, law students, and trainers. One contributor will be able to modify or erase what another wrote; mutual control will increase the value of the comment. In case of errors, administrators can decide to return to the previous form of commentary. In addition to the page commented, there will be a page for discussion between contributors.

Invitations will be sent to Faculties where log in accounts will be created for teachers. The teachers are considered special participants and will benefit from the *freezed* page.

The editors have the role of administrators and will ensure technical assistance and will manage the information on the website (corrections, uploading materials for contributors who do not post online, removing contributors that infringe the rules). The editors are provided by LideriJust Association.

Scientific Board: a responsible per book will be assigned from the members of the Inter-institutional Group or from the authors of the code, who will interfere in situations that generate interpretations. For book no. 7, Professor Ph.D. Augustin offered his services.

The content of the commented page

The structure of the code will be followed for the comment: book, title, chapter, section, sub-section, institution, law provision. The contributors will decide what articles to comment, respecting the following structure:

1. **Text of the article** (official version, that will be automatically introduced)
2. **Entry into force:** according to Law no. 71/2011
3. **Explanatory memorandum:** will strictly refer to the history of the provision (if a text is assumed from the old legislation, the correspondence will be indicated), the explanatory memorandum (according to official explanations published on the Parliament's website from previous thesis, explanatory memorandum for the Code, explanatory memorandum for Law no. 71) or the EU legislation which implementation ensures.
4. **Doctrinal comment:** for old institutions, the existing doctrine and the relevant jurisprudence will be used as bibliography; for institutions assumed from foreign codes, the proper foreign doctrine and jurisprudence will be identified. The necessary purchases will be made by the SCM.
5. **Jurisprudence:** relevant decisions will be attached, the declared purpose of this section being the unification of practice by using some jurisprudential

unique benchmarks. To each commented article/institution of the NCC, relevant practice will be annexed: for old institutions, the non-debated judiciary practice solutions must be identified (out of the already published practice and taking into consideration the hierarchical importance of courts- the role of the HCCJ by the Legislation, Studies and Documentation Department is essential). If there are different solutions, the scientific board must decide (thus helping with the unification of practice that seldom derives from not knowing such reference decisions). For new institutions, as soon as the courts will solve cases, the relevant decisions must be quickly assumed and published on the website, in order to serve as a pattern (thus helping to the creation of unitary jurisprudence).

6. **Relations with other provisions:** sources of law (constitutional, etc), reverberation in other laws (for example special laws), relations with other articles (from the Civil Code or others), incidence of other provisions (for example, EU Regulations)
7. **Comparative law elements**
8. **Bibliography:** reporting to available online bibliography will be encouraged.

Group Coordinator,

**Judge Cristi Danileț
SCM member**