Call for papers: Ius Commune workshop contract law 2015
The French Contract Law Reform: Source of Inspiration?

The 20th Ius Commune congress will take place in Leuven (November 26 and 27, 2015). The workshop contract law will be devoted to the French Contract Law Reform (Le Projet d’Ordonnance 2015) and its potential influence in our legal systems.

Explanation of the general theme:

After more than 200 year of Code civil in France, several law Reform Projects for the law of obligations have emerged (e.g. Catala, Terré). In the near future, these will lead to a recodification of the French law of obligations. The act of 17 February 2015 authorizes the French government to modernize the general law of obligations in the Code civil. The ministry of justice published the most recent French Projet d’Ordonnance on its website on 25 February 2015. 1 It was subject to a public consultation and a final version is planned towards the end of this year. This project can serve as a source of inspiration (or irritation?) for the current Dutch law of obligations (reformed in 1992) and for the Belgian law of obligations (still based on the Code Napoléon). Moreover, it can be compared with the (soft-law) instruments such as the DCFR, the PECL, the Unidroit-principles, the CISG etc. which have served (to a certain extent) as a source of inspiration for the Projet.

The Projet of 2015 contemplates some major innovations and the codification of existing case-law. It is however clear that it is a compromise between the rather traditional Catala project and the more innovative Terré project.

In the pre-contractual phase, the dynamic conclusion of contracts is codified, a general regulation with regard to representation is adopted, the cause as a validity requirement is abandoned, partial nullity is accepted, a general regulation with regard to abusive clauses is adopted (also with regard to B2B-contracts)2,3, ...

As regards the phase of execution of a contract, the French Projet tries to regulate the hardship-doctrine (imprévision)4, codifies the ENAC and the exceptio timoris; 5 confirms the primacy of execution in kind, accepts price reduction6 as a general remedy and adopts a regulation with regard to extrajudicial termination of a contract.

With regard to the general regime of obligations the Projet innovates by incorporating rules with regard to unjustified enrichment, the transfer of debts and the transfer of contracts.

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2 The regulation in art. 1169 of the Projet with regard to abusive clauses for B2B-contracts is very far-reaching because it is not restricted to standard contracts (as is the case in Germany (§§ 305 juncto 307 BGB) and in the Netherlands (art. 6:231 juncto 6:233 NBW).
3 One can question the choice of the French legislator to codify only this aspect of the EU-abusive clause doctrine. Interesting parallels can be drawn with systems that choose to incorporate the EU-instruments within their legal Civil Code (such as the Netherlands or Germany) to prevent fragmentation. However, the French codification (limited to the law of obligations) does not apply this approach.
4 The French project prescribes for instance in article 1196 of the project that in case of hardship or imprévision ("changement de circonstances imprévisible (...) rend l'exécution excessivement onéreuse") a party can ask to renegotiate the contract and must execute the contract according the contractual terms during the negotiations. If one party refuses negotiations or if negotiations fail, parties can ask jointly a judge to adapt the contract. If this does not work, one party may ask the judge to terminate the contract. The question arises whether this is a good approach towards hardship or imprévision, because a joint agreement of the parties is necessary for a judge to adapt the contract (which is not the case under Dutch law: art. 6:258 NBW).
5 See art. 1220 Projet: a party can already suspend its own obligations when it is manifestly clear that the other party will not perform his contractual obligations on the expiry day (see similarly art. 6:263 NBW).
6 Instead of partial termination under Dutch law (art. 6: 270 NBW).
All reform projects are difficult balancing acts between innovation and respect for tradition. The current form of the project is respectful to the advice of Montesquieu that a legislature should only touch the law “à main tremblante”. The main question which arises from this project is whether we can draw lessons from it for our own legal systems. As becomes clear from the parliamentary preparation, one of the goals of the reform is exactly to make the French legal system more attractive and more influential on a European and international level. This begs the question as to what extent the current proposal will be able to meet this goal. This is the purpose of our ambitious workshop on the festive 20th edition of the Ius Commune conference.

Call for abstracts:

Both Ph.D. candidates and senior researchers are invited to submit an abstract of the paper (on one of the topics above or on a topic of one’s own choice relating to the general theme) they would like to present and/or publish in the conference volume (published by Intersentia in 2016). An abstract of the paper (min. 1, max. 3 pages) should be sent to the organizing committee no later than 15 July 2015. Shortly after that, the authors will be informed whether their papers are selected for a presentation during the workshop and/or for publication in the conference volume. All contributions should be in English. Should you have any questions please do not hesitate to contact the two members of the organizing committee:

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Short Bibliography

About the projects in 2013 and 2015


R. BOFFA, “Juste cause (et injuste clause)”, D 2015, (335) nrs. 4-16
F. ROME, "Droit des contrats: la réforme maudite?”, D 2014, (1033) 1033.
S. VAN LOOCK, "De hervorming van het Franse verbintenissenrecht: Le jour de gloire, est-il arrivé?", RW 2015, te verschijnen (www.rw.be).

See also e.g. in English (about earlier projects):