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## Principles of modern contract law

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**Abstract.** Harmonization of law is inevitably linked with overall procedure for adjusting the national legislation by establishing a framework of acceptable principles and common rules in the field of Contract Law in the European Union. With the adoption of uniform rules to be applied in the field of regulation of contracts at the same time removing barriers that arise as a hindrance to smooth flow of transactions, which enriches the legal doctrine. The paper specifically highlights the role of Landon's principles, which are one of the most significant acts of unification adopted in the area of harmonization of Contract Law in the European Union. The European Union as a separate sui generis entity covers most of the countries in this region. For its legal legislation used in the European Union is actually a set of legal rules governing the mutual relations that come to natural and legal persons. Intense harmonization of contract law is implemented for almost three decades, during which it is conducted within and under the auspices of the EU institutions and the academic community.

**Keywords:** European Union treaty law, principles, harmonization.

### 1 Introduction

The process of globalization undoubtedly has a major impact on the development of private law, primarily for the purpose of equalizing the legal norms, but also because of the development of the legal doctrine. This particularly affected the legal doctrine of Contract Law, which according to its nature as a part of civil law, and in separate legal aspects of contract law. As far as the legal theory of European private law<sup>1</sup>, the process of internationalization and globalization of contract law, imposed the need for accelerated harmonization and codification within the European Union for the Commission on European Contract Law (CECL)<sup>2</sup> in 1982 began work on the principles of European Contract Law. This in return will allow codification of contract law in the European Union in the framework of its legal system, which it will finally be transformed from Fictio Iuris to Ius Commune.

### 2 European contract law

In recent decades there has been a need for separate regulation of different species to specific trade agreements that processes for international and European doctrine that regulated the field of contract law, imposing the necessity of accepting new and different standards than those typical of classic contractual right. In such circumstances the national rights can solve existing problems of collision of norms in contract law only in a way that rules imposed by the European Union, in a satisfactory and harmonious way to incorporate in existing national legislation. But sometimes it is not entirely impossible, for the need of maintaining a coherent structure of private law in general is possible only by taking radical reforms in this area.<sup>3</sup>

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<sup>1</sup> RIEDL, K., The Work of the Lando-Commission from an Alternative Viewpoint, European Review of Private Law (2000), 1, pg. 5

<sup>2</sup> Commission on European Contract Law.

<sup>3</sup> A more detailed analysis of it at: SCHÜLTE-NÖLKE, H., The New German Law of Obligations: an Introduction, German Law Archive, <http://www.iuscomp.org/gla/>; SCHLECHTRIEM, P., The

To overcome these problems the Commission on European Contract Law developed the " Principles of European Contract Law " also known as " Ole - Land principles<sup>4</sup> ." These principles are nascent European Contract Law and of course the new European Civil Code. They in turn are of particular importance to the legal doctrine in the European Union they contribute to finding a common denominator for the different systems of private law and toward creating a new *ius commune Europae*.<sup>5</sup> In its extensive work , despite the adoption of classical principles , the Commission in its work devoted particular attention to: the application of the principles , the sphere of freedom of bargaining , concluding contracts , the calculation of the terms , scope of authority of agents, validity of contracts , meeting contracts , change of circumstances , change of debtors , netting , obsolescence and anything else that is in the context of specific agreements . Although these principles have more character references , they are used in all member states of the European Union , regardless of which of the following countries , the system of civil law "civil law" or the case ( Anglo-Saxon ) "common law system " .

Regarding the application of Ole - Landon's principles , provided that these rules be applied as general rules of contract law in circumstances where: the contracting parties will make an integral part of the contract , or when expressly agreed to their application or in circumstances when the parties have not made a legal system and rules that will apply to their contract .<sup>6</sup>

Their hierarchy , is primarily the application is determined by the undertaken obligations of States to harmonize existing national legislation with international agreements and conventions or special circumstances they can apply immediately . The main objectives of Ole - Landon's principles are<sup>7</sup>: enabling counterparties to certain issues in its contractual right to use a neutral approach to legal rules , ie to exclude the possibility of the application of national law only on one side ; enabling arbitrage disputes arising from the contract ; serve as the basis of a draft Code SA contracts , as well as a European code of private law ; facilitating mutual trading within the European Union ; strengthen the European single market ; bridging the differences between civil law and common law legal systems ;

Some of the principles are similar or identical legal substitutes in the national legislation of the Republic of Macedonia , particularly in Contract Law . They are: the principle of diligence and honesty (art.1.201<sup>8</sup> ) ; freedom of bargaining ( art.1.102 ) and freedom arrangement of the Obligations <sup>9</sup>; performance of obligations in a manner agreed ( art.9.102 ) or by ZOO duty to fulfill obligations<sup>10</sup> ;

Principles of European Contract Law are the most complex and most respected international project aimed at harmonization of European contract law . They are the basis for a new European private law.<sup>11</sup> Because of this thing lately , a new term is often used in contemporary legal doctrine , and it is " Europeanization of private law."<sup>12</sup>

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German Act to Modernize the Law of Obligations in the Context of Common Principles and Structures of the Law of Obligations in Europe, German Law Archive, (2002) Oxford U Comparative L Forum 2 at ouclf.iuscomp.org.

<sup>4</sup> Principles of European Contract Law (Principles of European Contract Law - PECL) prepared by a special commission set up in 1970 The Commission on European Contract Law (CECL). In 1998 published the first and second part of principles, in 2002. the third part.

<sup>5</sup> V.T.Koopmans, Towards a new " *ius commune*", u. De Wirrte/Forder,1992, str.43-51

<sup>6</sup> Article 1.101 of the principles adopted by Ole - Lando Commission. (Principles of European Contract Law - PECL)

<sup>7</sup> More about this at: Lando, O.- Beale, H.: „Principles of European contract Law, Parts I and II “ , Kluwer Law int., 2000. Pages: 95.-97.

<sup>8</sup> Article 5 Obligations Act. OJ.RM..18/2001

<sup>9</sup> Article 3 Obligations Act. Official .RM..18/2001. Abrogated by the Constitutional Court of the Republic, U.br.67/02, OJ.RM.59/2002

<sup>10</sup> Article 10 Law on Obligations. Official. RM..18/2001.

<sup>11</sup> Zimmerman, R. (2004). Načela evropskog ugovornog prava - moderna manifestacija stare i moguća osnova za novu osnovu evropske pravne doktrine privatnog prava. *Pravo i privreda*, 41(9-12), 35-74.

<sup>12</sup> Christian Joerges, »On the Legitimacy of Europeanising Private Law«, Jus Comune Lectures on European Private Law, February 2003.

### 3 Conflict of Laws in European Contract Law

Eliminating conflict of laws in the area of European contract law is possible only in circumstances of taking the essential unification using national resources over and above the maintenance of a national system of courts. Such unification is theoretically possible within the European Union, which in turn has an adequate system of regulation "regulations" and that the institution has the Court of Justice of the European Union, if necessary, can provide original interpretations of uniform rules that are used by Member States. In all circumstances where this does not work globally, previous attempts at unification through international bilateral or multilateral agreements, essentially a level more or less successfully implemented harmonization of national legislation with the European legal doctrine.

In fact the process of harmonization of legislation in this area involves the necessity of lifting the conflict of laws and not allow the termination of the use of "colonized norms". Based on this procedure and further national legislation remain as a source for resolution of disputes regarding contracts, but their content is more or less through harmonization receives considerable degree of unification.

The process of unification and harmonization is a complex phenomenon. In recent years significant progress has been achieved in terms of: the organized international unification, reception of international decisions into national rights unification within the European Union.

Within the organized international unification as a positive example is the Convention of the United Nations on Contracts for the International Sale of Goods (KUMP), which on a large scale is accepted worldwide. It arose as a product of UNCITRAL<sup>13</sup> which paid special attention to the study of contract law in Europe and America.

The reception of international law into domestic solutions is most successfully done in the area of modernization of the Civil Code of the Federal Republic of Germany (BGB) in the section that treats contracts, which are accepted based solutions adopted the basic principles of KUMP, as well as the generally accepted uniform law for the sale of movable property physically.<sup>14</sup>

However most of this area has been done within the European Union (formerly European Economic Community), where the compilers of the new European treaty law believe that unification is most effective in circumstances of voluntary acceptance of the operators in the market, which is far more efficient than unification can be implemented through adoption of state regulations.

Association of European Contract Law (SECOLA)<sup>15</sup> considered a clear view about where its member Jacques Ziller noted: "In the matter of contract law, the quality of existing and future Community law should be improved through measures of consolidation, codification and rationalization of legal instruments in force, and by developing a "common frame of reference." The framework should be established to explore opportunities to develop relationships and terms of contract law in the EU that could be used by companies and commercial enterprises of the Union."<sup>16</sup>

However the codification and adoption of uniform rules to be applied in the field of regulation of contracts in the European Union, at the same time removing barriers that arise as a hindrance to smooth flow of transactions, which enriches and legal doctrine.

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<sup>13</sup> Commission under the United Nations mandate for harmonization and unification of international trade law.

<sup>14</sup> Reinhard Zimmermann, *Breach of Contract and Remedies under the New German Law of Obligations. Centro di studi e ricerche di diritto comparato e strtmiero*, s.48, Rim 2002., str. 8.

<sup>15</sup> "SECOLA" was established to assist the study of European contract law and improve its quality. It organizes: open, interdisciplinary and international platform for discussion, with focus directed towards new EU legal measures and proposals for future legislation

<sup>16</sup> Martijin Hoselnik, *Politics of European Civil Code. Prosvetno Delo*, Skopje, 2012. pg.107.

## 4 Conclusion

The area of contract law in recent years has made small and insignificant steps towards setting up a single European legal framework arising from the new universal European treaty law. Although undoubtedly there have been made considerable efforts there are still a major problem and the fact that between the legal systems of the Member States of the European Union in the field of private law, and in that part of the law of contract and there are significant differences. However it does not mean that efforts are undertaken and implemented harmonization of national legislation, aimed at creating a single European *ius commune* in the matter of civil law, and therefore of course in contract law. The entire process of harmonization of contract law in the European Union according to many indicators is going in the direction of legal doctrine and matter of contract law into a single Act "European Civil Code".

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