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Life Time Contracts

Social Longterm Contracts in labour, tenancy and consumer credit law

Social long-term contracts, soziale Dauerschuldverhältnisse, relational contracts, labour contract, contrat de durée, tenancy contracts, consumer loans, consumer credit contract, contratti “di durata” per l’esistenza della persona, services of first necessity, soziale Dauernutzungsverhältnisse

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Preface

Since 2005 we have been convinced of the necessity for a research programme to highlight the fact that the existing work on European Contract law Study Groups and their principles has to a large extent neglected life time contracts concerning labour, housing and consumer credit. To this end, on April 4, 2005, we made the first European Social Contract (EuSoCo) Declaration and presented a research project called «Towards a General Part of a European Code on long-term contracts and obligations in the fields of consumer credit, labour and tenancies» to the Ministry of Education, the university of Trento and Italian researchers (MIUR-Interlink 2005). Thus funding was obtained to organise a meeting for scholars well-placed to launch the ambitious project of contributing to a body of life time contracts law. In addition, our initiative from its outset linked in with the internationally-known programme being developed by the Coalition for responsible credit (ECRC/NCRC), which in its turn had likewise reached the view that the deficit of social competence in the monetary context was creating unresolved legal issues.

The first EuSoCo-meeting, organised with the help of Sebastien Clerc-Renaud and Carla Boninsegna, took place in the Legal Sciences Department of the University of Trento on September 25, 2009. With the aim of launching a discussion on the subject of EuSoCo Law, we invited the following scholars to Trento: Geraint Howells, Eva Kocher, Emmanuel Dockès, Elena Perez-Carilló, Nick Huls, Frey Nybergh, Andrea Nicolussi, Marcus Pilgerstorfer, Luisa Antonioli and Katsutoshi Kezuka. We reached the conviction at that time that, to produce a positive outcome, we would need to differentiate our group from others working in the field of European Contract Law and, more specifically, we adopted a multi-cultural approach in the complete certainty that Europe's strength lies in its cultural pluralism. The fact is, the absence of the theme of life time contracts from the European debate was due precisely to the failure to adopt a multicultural approach, a feature of the present book, representing the outcome of our research project. In fact it is a multilingual book, with some basic chapters written in those original European languages of the partners, which we expect a more than sufficient number of our readers to be able to understand. More detailed English summaries accompany these texts. However, most of the contributions have had to be translated into English by the authors, with the help of Rosemary Conaty-Fogitt (English – German) and Lesley Orme (English – Italian). The original language is able fully to impart the richness of the individual national legal system, as is shown in the contributions by Derleder, Forray, Nicolussi and Howells, amongst others.

The meeting saw the publication of the first EuSoCo paper, where we used the notion of life time contracts as a working definition for social long term contracts such as labour, tenancy and consumer credit contracts, to which we refer our readers in the introduction to the present volume. We also were aware of the fact that other socially meaningful long term contracts do exist in the area of goods of first necessity, associations and company law, but we assumed that the idea of a life time has nowhere emerged so clearly as in these three areas. The paper expressly set out that our initiative was not intended as a “simple” critique, from an outside perspective, of the social deficit in the existing projects in European contract law, but we intended to make a positive contribution to the development of a body of European social law. For these purposes we adopted a methodology which started out, as it were, from within the various national bodies of contract law, favouring the three sectors we had identified as being the most important from a historical perspective. In this way our project was freed from an approach which was too heavily weighted towards existing laws, as, for example, some Community initiatives are, such as the Study Group on Social Justice in European Law (Manifesto Group) or the Study Group on European Contract Law (SECOLA) where some of our members are also engaged – while maintaining the objective of engaging in debate with and influencing such initiatives. In particular, inspired by the plurality of national traditions, we nurtured the ambition of launching a transnational legal approach and, to that end, one Korean and

two Canadian scholars were subsequently involved in the project, as well as Katsutoshi Kezuka, the Japanese scholar who had taken part in the first meeting.

The papers and the short presentations given at the Trento meeting were then made available on an appropriate webpage [<http://eusoco.eu>] which meant that the group could expand to include scholars with an interest in the subject-matter to continue the debate. Meanwhile, the Hans-Böckler Foundation of the German Trade Union Association contributed to the funding of our research project, adding to the funding made available by the University of Trento's Legal Sciences Department, which financed a study into over-indebtedness, and by the private non-for-profit research association, the institute for financial services (iff e.V.) in Hamburg.

This Institute also organised the second EuSoCo-meeting, which took place in the Faculty of Economics and Social Sciences of the University of Hamburg on July 1, 2010, at which the following people took part: Geraint Howells, Eva Kocher, Nick Huls, Frey Nybergh, Andrea Nicolussi, Luisa Antonioli, Katsutoshi Kezuka, Kai-Oliver Knops, Claes Martinson, Iain Ramsay, Toni Williams and Anne-Sofie Henrikson. In the course of this seminar, seven individual themes were identified, which formed the basis for our later work: 1. Regulation of price; 2. Regulation of market power (rebalancing relationships); 3. Considering the specificities of the real persons (emergencies/desperate situations); 4. Access; 5. Termination; 6. Risk allocation (economic risk); 7. Variety of sources of law (most favoured principle (Guñstigkeitsprinzip), coordination, collective bargaining law, EU law etc.) 8. Participation procedures (strike and boycott; legal process; insolvency procedures) and institutions. The following day, also in Hamburg, the European Coalition for Responsible Credit Conference took place, in the course of which we held a workshop on European Social Contract Law.

21 January 2011 was a decisive moment for our project, when we were able to organize, again at the same Faculty at Hamburg University, a seminar with Christoph Schmid, Professor at the ZERP of the University of Bremen, who agreed to act as our group's expert on tenancy law. The iff then, in the same year, organised the third EuSoCo-meeting which took place in May, once again organised by iff at the Faculty of Economics and Social Sciences of the University of Hamburg. On that occasion the following were present: Elena Bargelli, Helena Klinger, Candida Leone, Andrea Nicolussi, Frey Nybergh, Fabio Pantano, Elena Perez Carrillo, Iain Ramsay, Orsola Razzolini, Christoph Schmid, Bob Schmitz, Maurice Tancelin e Toni Williams. From then on the project steadily took shape, to the point that, finally, the 4th EuSoCo meeting could be organized, which took place once more at the Legal Sciences Department of the University of Trento on 28 and 29th September 2012. Some of the book's authors took part, specifically Luisa Antonioli, Elena Bargelli, Geraint Howells, Frey Nybergh, Juana Pulgar, Orsola Razzolini, Christoph Schmid, Toni Williams and Helena Klinger, who also took on the role of supervising the organisation of the project. The objective of the last EuSoCo-meeting was to present the current state of our book project, through the contributions. In Trento we discussed the final version of our principles which have been transferred into the different languages by Rosemary Conatty-Foggitt (English), Udo Reifner (German), Luca Nogler and Andrea Nicolussi (Italian), Vincent Forray (French) and Elena Perez-Carillo (Spanish).

This publication aims to be only a first contribution to the themes raised by EuSoCo and for this reason, after publication, we shall be using our webpage (eusoco.eu) to enlarge and finalise the discussion of a topic which is of crucial importance to our immediate future. We will post reactions, reviews and new contributions, as well as translations or original versions of those presented in the book.

Lastly, we would like to emphasise that without the means, premises and financial engagement of the institute for financial services (Hamburg) and the Faculty of Law of the University of Trento and the enormous voluntary contributions of all participants who paid for their travel expenses, this long-term project would not have come this far.

Principles of Life time contracts (en/fr/de/it/es)

Prinzipien sozialer Dauerschuldverhältnisse

1. Lebenszeitverträge: Lebenszeitverträge sind soziale Dauerschuldverhältnisse, die mit Bezug zu einem Teil der Lebenszeit natürlicher Personen lebenswichtige Güter, Dienstleistungen, Arbeit und Einkommensmöglichkeiten zur Selbstverwirklichung und sozialen Teilhabe bereitstellen.
2. Humanität: Lebenszeitverträge stellen den Menschen in seiner Wirklichkeit und humanen Ausbildung in den Mittelpunkt. Es ist daher nicht nur der Vertragsabschluss sondern vor allem die dauerhafte Kooperation unter Berücksichtigung der Machtverhältnisse, die es im Recht zu steuern gilt. Persönliche Verhältnisse zu Dritten (insbesondere in der Familie) müssen Berücksichtigung finden.
3. Langfristigkeit: Das Vertrauen beider Vertragspartner in den Bestand des langfristigen Lebenszeitvertrages wird geschützt (z.B. Kündigungsschutz), so dass Vertragsauflösungen nur mit der Wirkung „ex nunc“ erfolgen. Eine Eingrenzung erfährt dieser Vertrauensschutz durch die Privatautonomie insoweit, als ein Mindestmaß an Entscheidungs- und Handlungsfreiheit eine vorzeitige Aufkündigung erforderlich machen.
4. Verbundene Verträge: Die Einbettung der jeweiligen Vertragsverhältnisse in ein Netzwerk von Verträgen erfordert deren Einbeziehung und Beachtung bei der Lösung rechtlicher Fragen.
5. Rücksichtnahme: Die Bereitstellung von Nutzungsmöglichkeiten für Verbraucher und Arbeitnehmer erfordert soziale Rücksichtnahme auf die konkreten körperlichen und seelischen Belange zum Schutz des Schwächeren. Das Gesetz oder andere kollektive Regeln sehen nach Art, Dauer und dem Grad der Bedeutung dieser Verträge für die Lebensverhältnisse der Betroffenen in zwingender Form verschiedene Stufen der Rücksichtnahme vor.
6. Produktive Nutzung: Wer im Rahmen von Lebenszeitverträgen Nutzungen und Einkommensmöglichkeiten bereitstellt hat alles zu unterlassen, was deren sozialen Zweck gefährdet.
7. Kollektivität und Ethik: Arbeitnehmer und Verbraucher können vom Staat verlangen, dass kollektive Systeme zu ihrer Interessenwahrung ebenso wie kollektive Wertsysteme von Treu und Glauben sowie den guten Sitten in den Prozessen von Abschluss, Gestaltung und Auflösung sozialer Dauerschuldverhältnisse Eingang und Berücksichtigung finden.
8. Zugang: Wer Lebenszeitverträge anbietet muss in Ankündigung, Vorbereitung und Abschluss sowohl bei der Definition der Gruppe, für die diese Nutzung bereitgestellt wird, wie auch innerhalb der Gruppe jede Diskriminierung nach persönlichen wie sozialen Merkmalen unterlassen. Die Bedeutung der Lebenszeitverträge für die Befriedigung menschlicher Grundbedürfnisse wie Wohnen, Arbeit, Teilhabe an der Wirtschaft erfordert ein Menschenrecht auf Zugang zu diesen Gütern und Dienstleistungen.
9. Entgelt: Leistung und Gegenleistung der Lebenszeitverträge dürfen nicht in einem auffälligen Missverhältnis stehen. Der Preis muss nach transparenten und diskriminierungsfreien Gesichtspunkten so bemessen sein, dass die Belastung tragbar und den Kosten angemessen ist.
10. Anpassung: Haben sich die sozialen und wirtschaftlichen Umstände, die die Grundlage des Lebenszeitvertrags bilden, nach Vertragsschluss schwerwiegend verändert oder stellen sich wesentliche Umstände, die zur Grundlage des Vertrags geworden sind, als falsch heraus und hätten die Parteien den Vertrag nicht oder mit anderem Inhalt schließen müssen, wenn sie diese Veränderung vorausgesehen hätten, so kann Anpassung des Vertrags verlangt werden, soweit einem Teil unter Berücksichtigung aller Umstände des Einzelfalls, insbesondere der vertraglichen oder gesetzlichen Risikoverteilung und seines sozialen Zwecks sowie der grundlegenden Pflichten der Person, das Festhalten am unveränderten Vertrag nicht zugemutet werden kann. Kollektive Regelungen haben den Vorrang.
11. Kündigung: Die Kündigung von Lebenszeitverträgen gegenüber Verbrauchern und Arbeitnehmern muss transparent, nachvollziehbar und sozial verträglich gestaltet sein. Sie ist ultima ratio. Sie muss die wahren und angemessenen Gründe nennen und diskriminierungsfrei erfolgen. Sie

Principles of social long-term contracts

1. Life time contracts: Life time contracts are long-term social relationships providing goods, services and opportunities for work and income-creation. They are essential for the self-realisation of individuals and their participation in society at various stages in their life.
2. Human Dimension: The subject matter of life time contracts is real-life circumstances. The role of the law governing them is to frame the power relationships of those contracts in terms of human development, so that on-going co-operation rather than the formation of the contract lies at the heart of the contractual relationship. Personal relations (like for example the family) have to be taken into account.
3. Long-term relationship: Mutual trust between the parties as to the durability of the long-term relationship must be protected and early termination must have only future effect, having no bearing on the contract prior to that point. Early termination must be restricted to circumstances in which the freedom and the autonomy of the individual is at issue and makes early termination necessary.
4. Linked contracts: Life time contracts are embedded in a network of linked contracts to which the law must have regard when legal questions fall to be decided.
5. Basic needs: The provision of essential goods and services for basic needs related to consumption and employment requires that physical, social and psychological considerations be taken into account in order to ensure the protection the weaker party to the contract. Stringent regulation or other collective rules will secure the degree of social protection needed in line with the subject matter of the contract, its duration and its importance in the life of the individuals concerned.
6. Productive use: The provider of essential goods and services or income-generating opportunities under a life time contract must avoid taking any action which will jeopardise the social purpose of the contract and the productive use of the rendered services.
7. Collective and ethical dimensions: Employees and consumers are entitled to expect that the collective aspect of their individual interests is safeguarded by the state through collective representation mechanisms, together with the application of general values of good morals and good faith which influence access, formation, contents, adaptation and dissolution of such relationships.
8. Access: Providers of life time contracts must refrain from discrimination in terms of the personal and social characteristics of consumers at all stages of the contract, from access to termination, including discrimination in terms of the group of intended users of the contract, or individual members of that group. The importance of life time contracts in meeting the basic human needs of subsistence, employment and participation in economic life gives access to these goods, services and income opportunities the status of fundamental human right (distributive justice).
9. Remuneration: The mutual obligations of life time contracts shall not be grossly disproportionate. Prices must be transparent and non-discriminatory and the charges must be affordable and in line with the costs.
10. Adaptation: If the social and economic circumstances upon which a life time contract is based have changed significantly since the contract was entered into, or if material circumstances from which the parties derived have arisen that are found to be at variance with its original situation to such an extent that the social nature of the contract is jeopardised, and if the parties would not have entered into the contract or would have entered into it on different terms had they foreseen this change, adaptation of the contract may be required if, taking into account all the circumstances of the specific case, and in particular the contractual or statutory allocation of risk and the fundamental obligation of a human being, one of the parties cannot reasonably be expected to continue to comply with the contract without variation of its terms. Collective regulation shall take precedence over individual adaptation.
11. Termination: Termination of life time contracts imposed on workers and consumers must be transparent, accountable and socially responsible.

soll sich nur an Gründen in der Person oder im Verhalten des Nutzenden sowie der Wirtschaftlichkeit der Bereitstellung für den Anbieter orientieren. Bei wirtschaftlichen Gründen sind kollektive Mechanismen des Interessenausgleichs zu suchen. Der einzelne und seine Interessenvertretung sind zu hören. Es ist Gelegenheit und Zeit für Vorschläge zur Vermeidung von Kündigung und/oder Kündigungsfolgen zu schaffen. Soweit die Kündigung im Interesse der Partei liegt, die den Vertrag erstellt und die Dienstleistung organisiert hat, muss sie die Interessen der anderen Partei gebührend berücksichtigen.

12. Kommunikation: Vom Beginn der Vertragsverhandlungen, während der Geschäftsbeziehung und bis hin zur Abwicklung des Lebenszeitvertrages soll der Dialog zwischen den Vertragspartnern auf einer gleichrangig, kooperativ an der Erfüllung des Vertragszwecks sachorientiert sowie einer direkt persönlich geführten Kommunikation beruhen. Vor jeder Vertragsgestaltung (Abschluss, Anpassung, Kündigung etc.) hat eine diesen Maßstäben entsprechende Anhörung zu erfolgen, die dem Grundsatz vertrauens-getragener Kommunikation Rechnung trägt.

13. Information und Transparenz: Während der Vertragsverhandlungen, der Vertragslaufzeit sowie nachvertraglich soll eine an den Bedürfnissen des Vertragspartners orientierte hinreichende, wahrheitsgemäße, vollständige, rechtzeitige und verständliche Information erfolgen, die bestehende Informationsasymmetrien überwindet.

14. Existenzsicherung: Soweit Lebenszeitverhältnisse regelmäßige Einkommen verschaffen, diese zeitlich und örtlich verfügbar machen oder sich auf Zahlungen aus solchem Einkommen beziehen, ist zu gewährleisten, dass das für die Sicherung des Existenzminimums notwendige Einkommen durch fortdauernde Zahlungen bzw. Schutz vor Pfändungen, Verjährungsregeln und Ausgleich nicht geschmälert wird.

15. Soziale Not: Die sozialen Risiken der Arbeitslosigkeit, Obdachlosigkeit und Überschuldung müssen in der individuellen wie kollektiven Gestaltung der Nutzungsverträge entsprechend ihrer gesellschaftlichen Verursachung angemessen berücksichtigt und durch das öffentliche Recht ergänzt werden

16. Vertraulichkeit: Die während der Geschäftsbeziehung eines Lebenszeitvertrages erlangten persönlichen Daten und darauf beruhende Bewertungen sind vertraulich zu behandeln und dürfen nur zur Erfüllung des Vertragszwecks benutzt werden.

Early termination against the will of the consumer, tenant or worker must be a measure of last resort. Disclosure of true and fair grounds for termination must be non-discriminatory and be provided a reasonable period before termination comes into effect. The only grounds for termination are personal behaviour of such significance as to merit termination, or financial circumstances or interests on the part of the provider which materially affect the viability of the subject matter of the contract. Where the reasons for termination are financial in nature, users are entitled to have recourse to mechanisms of collective redress, including the right of the individual to be heard or represented. This procedure must allow sufficient time for users to put forward measures preventing termination and/or its consequences. As far as the termination is in the interest of that party which has developed the contract and organised the service it has to consider the interest of the other party with due diligence.

12. Communication: Throughout the contractual relationship, from the beginning of the process of negotiation of the contract to its termination, a continuing and co-operative dialogue must be established on an equal basis and at a personal level between the parties with regard to fulfilling the purpose of the contract. Such a discussion must take place before each stage in the contract (formation, adaptation, termination) and communications must at all times be based on the principle of trust and confidence.

13. Information and Transparency: During the negotiation of the contract and for the life time of the contract accurate, complete, timely and understandable information must be provided which is adequate to overcome any information asymmetry that arises.

14. Securing livelihood: Where life time contracts provide for regular income, making it available according to time and place, or for payments to be drawn from that income, a minimum level of income must be guaranteed in the form of continuing payments sufficient to meet the consumer's subsistence needs and, if applicable, protection must be provided from attachment of income, seizure and individual voluntary arrangements with creditors.

15. Exclusion: The social risks of unemployment, homelessness and overindebtedness must be taken into account in both the individual and the collective forms of the contract with due regard to its social origin and in line with public law.

16. Confidentiality: Personal data obtained during a life time contractual relationship and assessments based on such data must be treated confidentially and only be used for the purpose of the contract.

Principes des contrats du temps d'existence

1. Contrats d'existence : Les contrats d'existence sont des relations sociales à long terme par lesquelles les individus se fournissent des biens ou des services, accèdent à un travail ou à une source de revenus. Ces contrats sont essentiels à la réalisation et l'insertion de l'individu dans la vie sociale, à différents stades de celle-ci.
2. Dimension humaine : ce sont les conditions concrètes de vie qui constituent la matière des contrats d'existence. Le droit qui les régit a pour fonction de contrôler le pouvoir qui s'exerce lors de la relation contractuelle afin de permettre le développement personnel des individus qui y participent. C'est donc la coopération continue des parties au cœur de la relation qu'il s'agit de régler, plutôt que le processus de formation du contrat. Les relations intimes (telles que les relations familiales) doivent être prises en compte.
3. Relation à long terme : la confiance mutuelle doit être protégée pendant toute la durée de la relation. Toute rupture anticipée ne doit produire d'effet que pour l'avenir et n'avoir aucune incidence sur la relation contractuelle antérieure à la rupture. La rupture anticipée doit être réservée aux circonstances dans lesquelles la liberté et l'autonomie de la personne sont en cause et rendent ainsi nécessaire une telle rupture.
4. Contrats connexes : les contrats d'existence sont insérés dans un réseau de contrats connexes qui doivent être pris en considération lorsque qu'un problème juridique doit être réglé.
5. Besoins essentiels : la fourniture de biens et services visant à la satisfaction des besoins essentiels de l'individu, dans le contexte d'une opération de consommation ou d'une relation de travail suppose que soient pris en compte des considérations d'ordre physique, social et psychologique afin d'assurer la protection de la partie la plus faible au contrat.
6. Clause d'utilité : le fournisseur de biens ou de services essentiels à l'existence, ou bien celui qui offre l'accès à une source de revenus doit s'abstenir de toute action qui pourrait compromettre la dimension sociale du contrat ou l'utilité des prestations contractuelles.
7. Aspects collectifs et éthiques : les salariés et les consommateurs sont fondés à attendre de l'Etat que la dimension collective de leurs intérêts individuels soit sauvegardée au moyen de mécanismes de représentation collective, ainsi que par l'application des valeurs générales d'une bonne morale et de la bonne foi, qu'il s'agisse de l'accès, la formation, le contenu, l'adaptation et la dissolution des relations contractuelles.
8. Accès : ceux qui offrent des contrats d'existence doivent s'abstenir de toute discrimination quant aux caractéristiques personnelles ou sociales des consommateurs à quelque étape du contrat que ce soit, depuis l'accès à celui-ci jusqu'à son terme. Ceci concerne tant la discrimination à l'égard du groupe auquel appartient la partie visée que la discrimination à l'égard du membre d'un groupe. Du fait de l'importance des contrats d'existence pour la satisfaction des besoins humains en termes de subsistance, de travail et de participation à la vie économique, il convient de donner à l'accès à ces biens et services ainsi qu'à ces sources de revenus le statut d'un droit de la personne humaine.
9. Prix : les obligations réciproques dans un contrat d'existence ne doivent pas être grossièrement disproportionnées. Les prix doivent être soumis à une exigence de transparence et de non-discrimination. Les frais doivent demeurer abordables et alignés sur les coûts.
10. Adaptation : en cas de changement significatif des conditions sociales ou économiques qui constituent le fondement du contrat d'existence, ou en cas d'augmentation des contraintes matérielles envisagées par les parties, de telle sorte que la nature sociale du contrat serait remise en cause, et de telle sorte que les parties ne se seraient pas engagées si elles avaient su que des modifications de cette ampleur pouvaient survenir, l'adaptation du contrat peut être requise à condition que, tenant compte de toutes les spécificités du contrat en cause, en particulier de la manière dont le contrat ou les lois répartissent la charge des risques contractuels, et en tenant compte des obligations fondamentales qui pèsent sur les personnes, on ne saurait raisonnablement attendre d'une partie qu'elle se conforme au contrat sans que son contenu ait été modifié. Les règles collectives d'adaptation doivent primer sur les adaptations individuelles.
11. Résiliation : la résiliation des contrats d'existence imposée aux salariés et aux consommateurs doit être transparente, responsable et

Principi sui contratti "di durata" per l'esistenza della persona

1. Contratti "di durata" per l'esistenza della persona: i contratti di durata per l'esistenza della persona sono contratti socialmente rilevanti i quali hanno per oggetto la soddisfazione di esigenze delle persone relative a beni e servizi primari, al lavoro ed alla capacità economica necessaria allo sviluppo della persona come individuo e nella sua vita di relazione.
2. Dimensione umana: punto di riferimento centrale dei contratti per l'esistenza della persona è la persona umana colta nella sua concreta realtà materiale e culturale. Il diritto non deve, quindi, preoccuparsi di regolare soltanto la conclusione del contratto, ma soprattutto la cooperazione duratura tra le parti facendo sì che essa non sia compromessa o distorta dalla eventuale differenza di potere (contrattuale) indotta dai rapporti di forza che sussistono tra le parti stesse. Si deve tener conto anche dei rapporti personali altamente significativi per la vita delle persone (come ad esempio, le relazioni familiari).
3. Durata: deve essere tutelato l'affidamento reciproco tra le parti circa il permanere nel tempo del contratto per l'esistenza della persona (prevedendo, ad esempio, una tutela in caso di recesso), in modo tale che il recesso o la risoluzione del contratto abbiano effetto solo "ex nunc". Tale regola può essere derogata dall'autonomia privata solo per i casi in cui lo scioglimento anticipato del rapporto risulta necessario per non mortificare la libertà di decisione e di azione delle persone.
4. Collegamento contrattuale: il fatto che i contratti per l'esistenza della persona si inseriscano in una rete di contratti impone di affrontare le questioni giuridiche che li riguardano considerando sistematicamente anche il collegamento negoziale.
5. Farsi carico della situazione della controparte: la messa a disposizione di beni e di possibilità di godimento a favore di consumatori e lavoratori presuppone la disponibilità a farsi carico in modo solidale della tutela della parte più debole, con riguardo alla sua integrità fisica e morale. Tenendo conto del tipo, della durata e dell'importanza di tali contratti per le condizioni di vita degli interessati, la legge e le discipline collettive devono prevedere in modo inderogabile, vari gradi di rispetto e protezione della controparte.
6. Uso produttivo: chi nell'ambito di contratti per l'esistenza della persona concede l'utilizzazione di beni o la disponibilità di denaro deve astenersi dal fare tutto ciò che possa compromettere gli scopi cooperativi degli stessi.
7. Dimensione collettiva e clausole etiche: i lavoratori dipendenti ed i consumatori possono pretendere che lo Stato predisponga e prenda in considerazione nelle fasi della conclusione, dello svolgimento e della cessazione dei contratti per l'esistenza della persona meccanismi collettivi di tutela dei loro interessi e che sia sempre dato rilievo ai valori richiamati dalla buona fede e dal buon costume.
8. Accesso: chi offre contratti per l'esistenza delle persone non deve compiere nessuna discriminazione personale o sociale. Ciò vale sia nel momento della predisposizione, sia in quello della pubblicità, sia nella conclusione, inclusa la eventuale definizione della categoria di destinatari. La rilevanza che hanno i contratti per l'esistenza della persona, avendo essi ad oggetto il soddisfacimento di bisogni primari della persona quali l'abitazione, il lavoro e la partecipazione alla vita economica, esige il riconoscimento di un diritto umano all'accesso mediante il contratto a tali beni e servizi.
9. Corrispettivo: la prestazione e la controprestazione relative al contratto di durata per l'esistenza della persona non possono risultare manifestamente sproporzionate tra loro. Il corrispettivo deve essere determinato secondo criteri trasparenti e non discriminatori ed in modo tale che esso sia sostenibile ed adeguato ai costi.
10. Adeguamento e inesigibilità: può essere chiesto l'adeguamento del contratto se le circostanze sociali ed economiche che oggettivamente rappresentano il sostrato del contratto per l'esistenza della persona si sono notevolmente modificate dopo la conclusione del contratto stesso oppure se le circostanze che hanno costituito i presupposti fondamentali del contratto si rivelano diverse da quelle considerate dalle parti tanto da far ritenere ragionevolmente che le parti o non avrebbero concluso il contratto o l'avrebbero concluso a condizioni significativamente diverse.

socialement acceptable. La rupture anticipée contre la volonté du consommateur, du locataire ou du salarié doit avoir lieu en dernière extrémité. La déclaration des motifs sincères et équitables de rupture du contrat doit être non-discriminatoire et prévoir un délai de préavis raisonnable avant que celle-ci ne prenne effet. Seuls le comportement d'une partie justifiant une rupture de contrat, les conditions économiques ou l'atteinte aux intérêts du cocontractant de telle sorte que la continuité de l'objet du contrat se trouve compromise constituent des motifs de résiliation. Lorsque la résiliation a lieu pour des raisons économiques, l'autre partie a un droit de recours dans le cadre des procédures collectives de règlement, y compris le droit d'être entendue ou représentée. Le processus doit laisser un temps suffisant à l'autre partie afin de prendre les mesures propres à préparer la résiliation et / ou ses conséquences. Dans la mesure où la résiliation a lieu dans l'intérêt de la partie qui a élaboré le contrat et organisé la fourniture des prestations, les intérêts de l'autre partie doivent être pris en considération, avec toute la diligence attendue lors de la résiliation.

12. Communication : tout au long de la relation contractuelle, depuis le début des négociations jusqu'au terme du contrat, le dialogue et la coopération des parties doivent être établis sur des bases égalitaires, et individuelles, en ce qui concerne l'accomplissement des objectifs contractuels. La discussion doit être mise en place à chaque étape du contrat (formation, adaptation, résiliation) et la communication doit être basée sur la confiance.

13. Information et transparence : afin de remédier aux asymétries de l'information qui pourraient survenir entre les parties, une information adéquate, complète, opportune et compréhensible doit être fournie, au cours de la négociation et pour toute la durée du contrat.

14. Garantie des moyens de subsistance : lorsque le contrat d'existence prévoit le versement de revenus réguliers, les mettant à disposition à un temps et un lieu déterminés, ou prévoit le prélèvement des paiements sur les revenus d'une partie, il doit être garanti que la partie concernée conserve un montant minimum de ressources afin d'assurer sa subsistance. Le cas échéant, une telle la protection doit s'étendre aux voies d'exécution, aux mesures de saisie et aux accords passés avec les créanciers pour l'apurement des dettes.

15. Exclusion : les risques sociaux du chômage, du surendettement et de la perte de logement doivent être pris en compte dans toutes les formes individuelles ou collectives de contrat, en considérant les origines sociales de la personne, et conformément aux dispositions du droit public.

16. Confidentialité: les données communiquées dans le cadre d'un contrat d'existence et les estimations faites à partir de ces données doivent faire l'objet d'un traitement confidentiel et ne doivent être utilisés que dans le cadre de l'objectif contractuel.

La richiesta può aver luogo se, tenendo conto di tutte le circostanze del caso concreto ed in particolare della distribuzione contrattuale e legale del rischio, nonché dello scopo cooperativo del contratto e di eventuali obblighi fondamentali della persona, non si può esigere che una delle parti rimanga vincolata al contratto col contenuto immutato. Devono essere prioritariamente applicate eventuali regolamentazioni collettive.

11. Recesso: il recesso da un contratto per l'esistenza della persona subito dai consumatori o dai lavoratori dipendenti deve essere trasparente, controllabile socialmente accettabile. Esso deve rappresentare l'estrema ratio. Il recesso deve, inoltre, indicare i motivi reali ed adeguati, nonché evitare sempre discriminazioni. L'atto di recesso deve essere giustificato solo da ragioni attinenti, rispettivamente, alle condizioni fisiche del debitore, al suo comportamento oppure ad un eccesso di costo economico della cooperazione creditoria. Se il recesso dipende da motivi economici devono essere privilegiati meccanismi collettivi di conciliazione. Il debitore ed i suoi rappresentanti devono essere previamente sentiti. Deve essere prevista la facoltà, ed il tempo necessario per esercitarla, di avanzare proposte per evitare il recesso o mitigarne le conseguenze. Quando il recesso è nell'interesse della parte che ha predisposto il contratto e ha organizzato il servizio il suo esercizio fa sempre sorgere obblighi di protezione della controparte.

12. Comunicazione: il dialogo e il confronto tra le parti contrattuali deve essere improntato, già a partire dall'inizio delle trattative precontrattuali, nel corso del rapporto contrattuale e fino alla cessazione degli effetti del contratto per l'esistenza della persona, al modello di una comunicazione paritaria, orientata in modo cooperativo alla realizzazione degli scopi contrattuali. Tale comunicazione dev'essere condotta in modo personale e diretto tra le parti. Prima del compimento di qualsiasi atto unilaterale attinente al contratto (adeguamento, recesso etc.) deve essere sentita la controparte con modalità che rispettino i canoni enunciati, e in ogni caso il principio di tutela dell'affidamento reciproco.

13. Informazione e trasparenza: durante le trattative precontrattuali, lo svolgimento del contratto, così come nel periodo successivo alla cessazione, la parte che predispone e organizza il contratto deve prestare costantemente informazione in modo veritiero, esauriente, puntuale, comprensibile e attento ai bisogni della controparte.

14. Garanzia del minimo vitale: se il contratto per l'esistenza della persona procura con regolarità delle somme di danaro (che ad esempio possono formare un reddito o una rendita), o le rende disponibili in un determinato tempo e luogo, oppure fa riferimento a prelievi da tali somme per effettuare dei pagamenti, deve essere preservato il reddito minimo vitale escludendo obblighi di pagamento periodico, pignoramenti, forme di prescrizione e compensazione che intacchino tale minimo vitale.

15. Esclusione sociale: nella strutturazione individuale e collettiva dei contratti per l'esistenza della persona devono trovare adeguata considerazione, in rapporto alle loro cause socio-economiche, i rischi di disoccupazione, di mancanza di alloggio e di sovra-indebitamento. La relativa disciplina deve essere integrata da quella di diritto pubblico..

16. Trattamento confidenziale dei dati: i dati personali acquisiti in occasione del contratto per l'esistenza della persona , così come le valutazioni inerenti a tali dati devono essere trattati in modo riservato e possono essere utilizzati solo per l'esecuzione del contratto.

Principios de los contratos sociales de larga duración para la existencia de las personas, o “contratos para la existencia”

1. Los “contratos para la existencia” se definen como relaciones jurídicas contractuales de larga duración cuyo objeto es satisfacer necesidades humanas esenciales a través de bienes y servicios. Facilitan la integración y participación de las personas en la sociedad, a lo largo de su vida.
2. Dimensión humana. Las circunstancias de la vida real de las personas contribuyen a configurar el contenido de los “contratos para la existencia”. Corresponde al derecho establecer el marco para que las relaciones de poder subyacentes en tales contratos se orienten al desarrollo humano, para que la cooperación entre las partes contractuales ocupe un lugar central en la relación (más allá de las reglas jurídicas sobre conclusión del contrato); y para que se tenga en cuenta el contexto personal en el que estos “contratos para la existencia” se desarrollan (incluidas las relaciones familiares)
3. Relaciones duraderas. Debe protegerse la confianza recíproca entre las partes en cuanto a la duración de los “contratos para la existencia”. La rescisión, revocación o cancelación contractual únicamente pueden desplegar efectos de cara al futuro, pero nunca retroactivos. La cancelación sólo puede admitirse en circunstancias en las que, de no permitirse, se afectaría negativamente a la libertad y la autonomía de los individuos estén en juego.
4. Contratos vinculados. Los “contratos para la existencia” se desarrollan en el contexto de redes de relaciones contractuales vinculadas, que son relevantes para interpretar la problemática jurídica derivada de tales “contratos para la existencia”.
5. Necesidades básicas. En los “contratos para la existencia” relativos a bienes y servicios para satisfacer las necesidades esenciales de las personas (consumo, relaciones laborales, vivienda) deben tomarse en consideración las circunstancias materiales, sociales y psicológicas para proteger a la parte contractual más débil. Corresponde al derecho garantizar un nivel de protección adecuada al objeto del contrato, a su duración y a su importancia para la vida de los individuos afectados.
6. Cláusula de utilidad. Los proveedores de bienes o de servicios, o de rentas para satisfacer necesidades esenciales de las personas, deben evitar cualquier actuación que comprometa la dimensión social de los “contratos para la existencia” y/o para favorecer el uso productivo de las prestaciones.
7. Aspectos colectivos y éticos. Los asalariados y los consumidores tienen derecho a la protección del Estado y a que se salvaguarden sus intereses por medio de mecanismos de representación colectiva, así como de la aplicación de los principios generales de ética y buena fe a los “contratos para la existencia” en todas sus fases (acceso, formación, contenido, adaptación, y resolución).
8. Acceso: Los proveedores que ofrecen “contratos para la existencia” deben abstenerse, en cualquiera de las fases del contrato (desde el acceso a la relación contractual hasta su término) de toda discriminación basada en las características personales o sociales de los consumidores, es decir, discriminaciones por motivo del grupo al que pertenezca el individuo afectado, o por causa de su posición dentro del mismo. El acceso a los bienes, servicios y rentas mediante “contratos para la existencia” debe gozar del estatuto de los derechos humanos y de la justicia distributiva, por su importancia para la satisfacción de las necesidades humanas, subsistencia, empleo y participación en la vida económica de las personas.
9. Precio. Las obligaciones recíprocas que tienen su fuente en los “contratos para la existencia” deben ser equilibradas y proporcionadas. Los precios han de ser transparentes y no discriminatorios; manteniéndose los gastos asociados a tales contratos, asequibles y proporcionales.
10. Adaptación. Puede exigirse la adaptación de los “contratos para la existencia” en caso de cambio significativo de las condiciones sociales o económicas que concurren en su desarrollo, cuando tales modificaciones afecten a la propia naturaleza de “contratos para la existencia” y cuando, de haberse conocido tales modificaciones las partes no se habrían comprometido. Será una condición para la adaptación el que tenidas en cuenta las especificidades del contrato y en particular el reparto legal o contractual de los riesgos contractuales, así como las obligaciones contractuales derivadas para las personas, pueda deducirse razonablemente que el individuo no se hubiera comprometido, sin mediar una modificación del contrato. Las reglas colectivas de adaptación prevalecerán sobre las adaptaciones individuales.
11. Anulación. La anulación de los “contratos para la existencia” impuesta los asalariados y los consumidores debe ser transparente, responsable y socialmente aceptable. La rescisión anticipada contra la voluntad del consumidor, del inquilino o del asalariado sólo será posible en situaciones extraordinarias y excepcionales, y mediando motivos explícitos y equitativos. Nunca será discriminatoria, su efectividad irá precedida de un plazo de preaviso razonable. Sólo es posible cuando el comportamiento de una de las partes sea tan grave que lo justifique, o cuando las circunstancias financieras que afecten al proveedor hagan materialmente inviable el desarrollo del contrato. Cuando la anulación se base en motivos financieros, el consumidor contará con procedimientos colectivos de defensa en lo que ser escuchado y representado. El proceso debe garantizar que las partes dispongan de tiempo suficiente para adoptar medidas de preparación frente a la anulación y / o sus consecuencias. En tanto que la anulación se efectúa en interés de la parte que redactó el contrato y organizó el abastecimiento de las prestaciones, ésta debe respetar los intereses de la otra parte.
12. Comunicación. A lo largo de la relación contractual en los “contratos para la existencia”, desde el comienzo de las negociaciones hasta su terminación, el diálogo y la cooperación entre las partes se basarán en la igualdad en el cumplimiento de los objetivos contractuales, la comunicación y la confianza.
13. Información y transparencia. Para solventar posibles asimetrías de información entre las partes, en las negociaciones precontractuales y en cada fase de los “contratos para la existencia” se facilitará información adecuada, completa, oportuna y comprensible.
14. Garantía de los medios de subsistencia. Cuando los “contratos para la existencia” den lugar al abono de rentas regulares, en tiempo y lugar determinados; o prevén deducciones sobre las rentas disponibles por las personas; la parte afectada conservará siempre un mínimo de recursos con el fin de asegurar su subsistencia. Esta protección se mantendrá en vía de ejecución, en los embargos, y en los acuerdos con acreedores.
15. En la interpretación de “contratos para la existencia” se tendrán en cuenta los riesgos sociales derivados del desempleo, del sobreendeudamiento y de la pérdida de vivienda, a la luz de la perspectiva social de la persona, y de las disposiciones del derecho.
16. Confidencialidad. Los datos comunicados en el marco de los “contratos para la existencia” así como las estimaciones realizadas por el proveedor, deben ser objeto de un tratamiento confidencial. Sólo pueden utilizarse en el desarrollo contractual.

EuSoCo declaration (en/de/fr/it/es)

Erklärung

¹Die Verfasser dieser Erklärung, Verbraucher-, Miet- und Arbeitsrechtler sowie Vertreter des allgemeinen Vertragsrechts sind tief besorgt, dass der Weg zu einem europäischen Vertragsrecht auf einem verengten Kaufrechtsmodell aufbaut, demzufolge die Vertragspartner allein Informationen zum Ausgleich rechtlicher Benachteiligung erhalten können. ²Ökonomische und soziale Interessen der Arbeitnehmer, Verbraucher und Mieter in Langzeitverträgen haben dagegen bisher keine adäquate Berücksichtigung erfahren. ³Das Kaufvertragsmodell ist zur Leitfigur in einer Reihe von Richtlinien wie der Verbraucherrechtsrichtlinie geworden. Die Konsumentenkreditrichtlinie schreibt bindend ein neues punktuell synallagmatisches Vertragsmodell für das Darlehen vor. Ähnliche Wirkungen haben Richtlinien im Bereich der Arbeit. In der Dienstleistungs- und Kreditgesellschaft wird dies neue reduktive Verständnis von Arbeit, Konsum und Wohnen die Errungenschaften bei Lebenszeitverträgen zum Schutz von Arbeitnehmern, Verbrauchern und Mietern bedrohen.

⁴Das Modell des Zeit indifferenten Kaufvertrages muss um ein zweites grundlegendes Modell ergänzt werden, das wir als Lebenszeitvertrag bezeichnet haben. ⁵Es soll soziale Gerechtigkeit für die Menschen ausdrücken können, für die ökonomische Effizienz im Sinne von Profitabilität nur ein Mittel ist. ⁶Es sollte Antworten für Veränderungen in der Lebenssituation bereithalten und mehr als eine einfache Tauschgerechtigkeit bieten. ⁷Materieller Schutz für soziale Schwäche neben der Information für die Auswahl auf dem Markt gehört dazu ebenso wie eine kollektive und soziale Dimension von Arbeit und Konsum, wie sie in Tarifverträgen aber auch in allgemeinen Prinzipien enthalten sind. ⁸Die Vertragsfreiheit der Anbieter und Arbeitgeber sollte um die Anerkennung sozialer Freiheit der Arbeitnehmer, Mieter und Verbraucher ergänzt werden, in der die drei großen Bedrohungen unserer Zeit: Arbeitslosigkeit, Überschuldung und Obdachlosigkeit ernst genommen werden.

⁹Wir werden international in mehreren EU-Sprachen zusammen arbeiten, um den Schatz nationaler Kulturen im Arbeits- und Privatrecht sichtbar zu machen. ¹⁰Dabei werden wir die grundlegenden Vertragsformen, Prinzipien, gemeinsamen Ansätze und rechtlichen Errungenschaften im gegenwärtigen wie auch im historischen sozialen Vertragsrecht erforschen. ¹¹Wir wollen nicht nur Gewerkschaften, Verbraucherverbänden und anderen Vertretern der Zivilgesellschaft sondern auch den offiziellen Stellen in der Gesetzgebung und anderswo, die mit der Erarbeitung betraut sind unsere Hilfe anbieten, wenn sie mit uns der Meinung sind, dass die Akzeptanz eines zukünftigen Europas nur dann erreicht werden kann, wenn der Verlust an nationaler Autonomie durch ein wirklich soziales Europa kompensiert wird, das sich auch im Recht auf die sozialen Traditionen und Erfahrungen in den Mitgliedsstaaten stützt.

Declaration

¹We, a group of academics knowledgeable in consumer, tenancy and labour law, are deeply concerned that the path to a harmonised European system of contract law as envisaged by the European Commission and the Parliament will be built on a reductive model of commercial and consumer sales, where information is the only substantive concession to social interests. ²Economic and social rights of workers, consumers and tenants in long-term relations have got no adequate place. ³This is the case for the Consumer Rights Directive of 2011, which has as its core element the sales law model. Other instances can be found in the Consumer Credit Directive of 2008 and in the Directives concerning labour, which turn life time contracts into synallagmatic spot relations. In the modern service and credit society the new understanding of such contractual relations at the EU as well as national level poses a threat to the achievements in social protection with regard to life time contracts.

⁴The liberal sales model of information is indifferent to life time, provides no sufficient protection for the weak and has no regard for the productivity of those who work for their living. Commercial sales contracts need to be completed by a second model based on what we call life time contracts. ⁵It should provide social justice related to human needs and life time, to which economic efficiency in the sense of profitability can only be a means. ⁶It should be able to cope with long-term relational problems of changes in human lives instead of providing only remedies typical of spot contracts. ⁷It should provide substantive protection for the weak instead of information for choice only, it should acknowledge the collective and social dimension of labour and consumption expressed in collective agreements and general principles. ⁸The contractual freedom of suppliers and employers in the traditional sales-based contract model should be complemented with the freedom of social interests to be sheltered from the three dangers of our time: unemployment, over-indebtedness and homelessness. ⁹We shall work together internationally, make use of different EU languages in order to incorporate the wealth of national legal cultures in labour and private law. ¹⁰This will be done in order to study the basic contractual forms, principles, common approaches and achievements in the existing as well as the historical national social contract law. ¹¹We offer our professional support not only to trade unions, consumer organisations, tenant organisations and community groups in the civil society, but also to those officials working in the legislative process who share our conviction that the way to a unified Europe can compensate the loss of national autonomy only through social developments which also in the law are built on social traditions and experiences of the Member States.

Déclaration

¹Nous, les signataires, groupe d'universitaires compétents dans les domaines du droit à la consommation, droit de la location et le droit du travail, affirmons notre profonde préoccupation avec le chemin vers un système européen harmonisé du droit des contrats envisagé par la Commission européenne et le Parlement. Une route bâtie sur un modèle réduit à la transaction et basé sur la vente commerciale de biens aux consommateurs, où l'information est la seule concession significative accordée aux intérêts sociaux. ²Les droits économiques et sociaux des travailleurs, des consommateurs et des locataires dans les relations à long terme qu'ils exercent, ne figurent nulle part appropriés.

³Ceci est le cas en ce qui concerne la directive Droit des consommateurs de 2011, qui a pour élément primaire son modèle de droit de la vente, ainsi qu'à travers d'autres exemples comme la directive sur le crédit à la consommation de 2008 et les directives concernant le droit du travail, qui eux aussi, transforment des contrats de durée de vie en relations « spot » à rapports synallagmatiques. Pour la société moderne de services et de crédits, dans laquelle nous vivons aujourd'hui, cette nouvelle compréhension de relation contractuelle, interprétée au niveau européen comme au niveau national, constitue une menace pour les acquis de la protection sociale en matière de contrats de l'existence. ⁴Le modèle de vente, libéral et basé sur l'information, est indifférent à la vie, ne fournit aucune protection suffisante pour les faibles et n'a aucun égard vers la productivité de ceux qui travaillent pour gagner leur vie. Les contrats commerciaux de vente doivent être complétés par un second modèle basé sur ce que nous appelons des contrats de l'existence. ⁵Ces contrats devraient fournir une justice sociale liée aux besoins humains et le temps de vie du contrat, état des choses ou l'efficacité économique, dans le sens de la rentabilité, ne peut être qu'un moyen et non une fin en soi. ⁶Ces contrats devraient être en mesure de faire face aux problèmes relationnels sur la période de temps comprenant des changements dans les circonstances et situations de vies humaines, et une chose que les remèdes typiques des contrats au comptant, dit « spot », ne sont pas en mesure de fournir. ⁷Ces contrats devraient assurer une protection matérielle pour les faibles, et non seulement l'apport d'informations pour le choix à lui seul. D'où la nécessité de ce modèle à reconnaître la dimension collective et sociale du travail et de la consommation, chose exprimée dans les conventions collectives et les principes généraux. ⁸La liberté contractuelle accordée aux fournisseurs et aux employeurs par le modèle de contrat traditionnelle et basé sur la vente, doit être complétée par la liberté des intérêts sociaux à s'exprimer et de se mettre à l'abri des trois fléaux de notre époque: le chômage, le surendettement et le sans-abri. ⁹Nous travaillerons ensemble au niveau international et nous nous servirons des différentes langues de l'union européenne pour nous permettre d'intégrer la richesse des cultures juridiques nationales en matière de droit du travail et droit privé, dans nos travaux. ¹⁰Ceci sera effectué afin d'étudier les formes de base contractuelle, des principes, des approches et accomplissements communes dans le domaine du droit du contrat social, autant contemporaines que dans l'histoire nationale. ¹¹Nous offrons notre soutien professionnel non seulement aux syndicats, associations de consommateurs, associations de locataires et autres groupes communautaires de la société civile, mais aussi aux fonctionnaires travaillant dans la procédure législative. Surtout si ces responsables partageant notre conviction que le chemin vers une Europe unie ne peut compenser la perte d'autonomie nationale que par des évolutions sociales qui, comme dans la loi, sont construites sur la base de traditions sociales et d'expériences des États membres.

Dichiarazione

¹Gli autori di questa dichiarazione, un gruppo di accademici che si occupano di diritto dei consumatori, dei rapporti di locazione e del lavoro così come del diritto generale dei contratti, hanno maturato una forte preoccupazione che il diritto contrattuale europeo si sviluppi sul modello semplificante della disciplina della compravendita in virtù del quale le parti contrattuali possono al più ottenere diritti di informazione finalizzati a riequilibrare svantaggi giuridici. ²Al momento non sono stati ancora tenuti adeguatamente in considerazione gli interessi economici ed esistenziali dei lavoratori, dei consumatori e dei conduttori relativi ai contratti di durata rilevanti per l'esistenza delle persone.

³Il modello del diritto della compravendita è assurdo a figura guida in una serie di direttive sulla tutela del consumatore. Ciò avviene nella direttiva sulla tutela del consumatore del 2011 che è stata, appunto, splasmata sul modello della compravendita. Esiti analoghi si registrano in relazione alla direttiva sul credito al consumo del 2008 così come in direttive in materia di diritto del lavoro le quali trasformano i contratti di durata per l'esistenza della persona in rapporti (sinallagmatici) spot. Nella moderna società dei servizi e del credito questo nuovo modo riduttivo d'intendere tali contratti a livello comunitario e nazionale finirà con il rimuovere i progressi registrati nella tutela sociale grazie ai contratti di durata per l'esistenza della persona. ⁴Il modello del contratto di compravendita che astrae dall'esistenza delle persone deve essere affiancato da un secondo modello basilare, che abbiamo ritenuto di denominare: contratto di durata per l'esistenza della persona. ⁵Esso deve garantire giustizia sociale ai bisogni esistenziali delle persone per le quali l'efficienza economica finalizzata al profitto rappresenta solo un mezzo rispetto al fine dell'esistenza. ⁶Esso deve mettere, inoltre, a disposizione risposte per modificazioni che intervengono nelle situazioni di vita ed offrire una tutela più intensa di quella che consegue alla semplice giustizia di scambio. Appartiene a tale tutela la protezione sostanziale delle situazioni di debolezza sociale la quale integra la garanzia di essere informati sulle scelte che operano nel mercato. ⁷Essa comprende pure la dimensione sociale e collettiva del lavoro e del consumo che trova espressione nei contratti collettivi ma anche in principi generali. ⁸La libertà contrattuale dei datori di lavoro, dei locatori così come e di coloro che offrono beni e servizi sul mercato, dovrebbe essere regolata in modo tale da tenere adeguatamente conto di tre grandi rischi sociali della nostra epoca quali la disoccupazione, il sovra-inddebitamento e la mancanza di alloggio. ⁹Collaboreremo a livello internazionale utilizzando una pluralità di lingue in uso nell'Unione europea, per rendere visibile il patrimonio culturale del diritto del lavoro e del nuovo diritto civile nazionale. ¹⁰A tal fine saranno oggetto della nostra attività di ricerca le principali forme contrattuali, i relativi principi, approcci comuni nonché gli affinamenti giuridici del diritto sociale contrattuale non solo contemporaneo ma anche storico. ¹¹E' nostra intenzione offrire la nostra collaborazione non solo alle organizzazioni sindacali, di tutela dei consumatori e ad altre forme di rappresentanza della società civile, ma anche alle autorità competenti a legiferare o comunque sia incaricate dell'elaborazione delle normative, qualora convengano con noi che si potrà aspirare a raggiungere il consenso su un futuro modello europeo solo se la perdita dell'autonomia nazionale verrà adeguatamente compensato da un'Europa realmente solidale che anche in campo giuridico poggi sulle tradizioni e conquiste sviluppate e realizzate negli Stati membri.

Declaracion

¹Los autores de esta declaración, un grupo de académicos que trabajamos en los ámbitos de derecho de consumo, arrendamientos y derecho laboral, así como en derecho general de contratos, hacemos pública nuestra preocupación porque el derecho contractual europeo armonizado este enraizándose en el modelo contractual de la compraventa, en virtud del cual los derechos de información constituyen el núcleo para reequilibrar las desventajas de una de las partes. ²En dicho modelo no se garantizan debidamente los intereses económicos y sociales de los trabajadores, los consumidores y los inquilinos que son parte contratante en acuerdos de larga duración para satisfacer necesidades básicas (“contratos para la existencia”).

³Así, la Directiva relativa a la protección de los consumidores de 2011, la Directiva sobre crédito al consumo del año 2008, o las Directivas sobre derecho laboral y contratos de arrendamiento para fines residenciales que regulan contratos a largo plazo “contratos para la existencia,” reproducen el modelo contractual de la compraventa. En la actual sociedad de servicios y crédito, esta forma de entender tales contratos a escala comunitaria y nacional tendrá como resultado eliminar los avances en la protección social de los contratos a largo plazo para la existencia de la persona (“contratos para la existencia”). ⁴En el modelo de contrato de compraventa, las consideraciones existenciales como el cambio de circunstancias, resultan indiferente, y no ofrece suficiente protección a los más débiles. Debe complementarse con un segundo modelo básico que denominamos aquí de “contratos para la existencia”. ⁵Este segundo modelo sirve para garantizar la justicia social en la cobertura de las necesidades esenciales de las personas a lo largo de su vida, y en ese contexto, la eficiencia económica o el fin de lucro constituyen únicamente medios. ⁶Debe dar respuesta a las consecuencias de las modificaciones de las circunstancias a lo largo de la vida de las personas, y ofrecer mayor protección que la derivada de la justicia de intercambios comerciales sinalagmáticos de tracto único. ⁷Debe garantizar una tutela sustancial para los más débiles frente a las circunstancias sociales, y no sólo un derecho a la información sobre las diversas opciones del mercado; reconociendo plenamente la dimensión colectiva y social del trabajo y del consumo expresada en convenios colectivos y en principios generales. ⁸La libertad de contratación de los proveedores de bienes y servicios y de los empleadores, debe completarse con la libertad del interés social para hacer frente a los tres principales riesgos sociales de nuestro tiempo: desempleo, endeudamiento excesivo y vivienda. ⁹Cooperamos en el plano internacional mediante una pluralidad de lenguas de la Unión Europea, para aprovechar la riqueza de las culturas jurídicas europeas del derecho privado y del trabajo. ¹⁰Nuestra investigación se centrará en las formas contractuales básicas, sus principios, enfoques comunes, así como en la legislación social nacional contemporánea e histórica. ¹¹Ofrecemos apoyo profesional no sólo a los sindicatos, organizaciones de consumidores, asociaciones de inquilinos y grupos de la sociedad civil, sino también a los funcionarios competentes para legislar y regular que compartan con nosotros el deseo de alcanzar un consenso sobre un modelo europeo único, donde la pérdida de autonomía nacional sea compensada adecuadamente por una verdadera protección social basada en las tradiciones y logros desarrollados y aplicados en los ordenamientos de los distintos Estados miembros.

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