

ESF Exploratory Workshop on

European Contract Law and the Welfare State

Amsterdam (The Netherlands), 7-8 September 2009

Convened by:
Dr. Jacobien W. Rutgers

SCIENTIFIC REPORT

1. Executive Summary

The ESF exploratory workshop on European Contract Law and the Welfare State took place in Amsterdam on September 7th and 8th 2009. Fifteen participants from seven different European countries were present. The group consisted of a balanced mix of junior and senior researchers; people working in the area of European law, private law and labour law in academia and in the public sector. Due to some last minute cancellations, the convenor slightly rearranged the programme (see 'Final Programme').

The workshop was organized in five thematic blocks addressing theoretical and practical issues concerning the relationship between European Contract Law and the Welfare state, which were entitled (i) General Framework, (ii) Tenancy, Labour law and the Welfare State, (iii) Contract Law, General Conditions and the Welfare State (iv) Services of General Interest, Health Care, Contract Law and the Welfare State, (v) Contract Law, Public Policy and the Welfare State. These issues were addressed with a view to the different types of welfare states in the European Union as developed in political science literature.

The outcome of this workshop is that contract law plays a role in the welfare state, which differs from Member State to Member State, since there are different systems of contract law in the Member States and different types of welfare states in the European Union. The types of welfare states as developed in political science appeared to be a very valuable instrument to explain the differences between the Member States. Further, more research in this respect and preferably empirical research is necessary.

2. Scientific Content

The point of departure for the discussion about the role of contract law in the welfare state were the different types of welfare states and their characteristics in the European Union as they are developed in political science literature. Very roughly speaking an anglo-saxon type of welfare state can be distinguished from a Scandinavian, a southern European, a former communist one. Each of these types is characterized by a specific interaction between the state, the market and civil society. However, each type emphasizes a different element. For instance, in the anglo-saxon type, the emphasis is on the market. The protection provided to weaker parties in the market is a mere a safety-net. The most characteristic element in the continental types is civil society. Moreover, protection is provided to a larger group. In the southern European countries, it is not civil society, but the family which has a prominent role. The situation is rather unclear in the new Member States, the former socialist countries. The central question was to what extent are these different types of welfare states reflected in contract law or whether these types of welfare states could explain the differences in contract law.

During the first session on Monday, the relationship between the European Union and the welfare state was discussed and in particular to what extent the welfare state is still a matter for the member states. In the other presentation the focus was on the relationship between the European Union, the welfare state and contract law. One of the issues raised was to what extent solidarity plays a role in the welfare state and whether it is restricted to the national states and whether it can be expected that people are willing to provide solidarity in cross-border situations. This was a recurring theme during the workshop.

After lunch, labour law and rent and tenancy law were dealt with. These two issues are considered to be typical for a welfare state. A striking difference between the two is that the European Union has had an increasingly important influence on labour relations and labour law, whereas rent law and housing seems to remain a matter for the member states. With respect to tenancy rules, the differences in the legal systems were rather difficult to deduce to the different types of welfare states. The focus of the presentation on labour law was primarily on the influence of Europe on national labour law and labour relations. Also in this respect, the issue was raised what solidarity means in the context of labour relations; is it restricted to national situations or should it also exist in European situations.

In a separate session, the issue of general conditions in business to consumer contracts was discussed. This matter is harmonized on a European level by Directive 13/93 on unfair terms in consumer contracts. This directive contains minimum harmonization, which implies that Member States are allowed to introduce more stringent rules to protect the consumer. With respect to this issue, the different characteristics of the different types of welfare states were reflected in the national rules on unfair terms in consumer contracts despite European harmonization. For instance, in the Dutch situation, civil society plays an important role, since general conditions are drafted in bilateral negotiations. The consequence is that less terms are considered to be unfair or unbalanced to the detriment of the consumer. Under English law more is left to the market and when there is interference in the market, it is by means of public law instruments. The situation seems different again in France. It seems more difficult to enforce the rules on unfair contract terms under French law than under English law.

In the next session, the following day, the relation between contractual rights of patients and the welfare state were discussed and whether the legal position of the patient would alter if a directive on patients' rights would be adopted. Another point of attention was whether these different types of welfare states are also reflected in the different legal systems that govern the right of a patient.

In addition, the relation between public utilities and contract law was dealt with. A comparison was made between English and German law. It appeared that German law protects a broader group of consumers but in a more restrictive way than English law. English law, on the other hand, grants more protection to a smaller group of consumers. This seems to reflect the protection of weaker parties according to the theory that has been developed in political science literature.

Within contract law, a safety net is the public policy provision, which exist in nearly all the legal systems of the member states. When a contract is contrary to public policy, it will usually not be upheld by the law. The question was raised whether welfare state concerns could fall within this public policy exception and whether welfare state concerns are restricted to material matters or also include immaterial issues. Particular focus was given to the role of contract law in family law relations and the role of public policy.

During the workshop there were recurring issues. For instance, is a European welfare state feasible, since people, generally, tend to have less solidarity towards persons in other member states than in their own despite European texts on European citizenship. Another matter was the definition or description of a welfare state. Many different ones can be found. This issue was not properly addressed during this workshop, but it requires more careful consideration.

3. Assessments of the results

The workshop was a great success. It enabled young and senior researchers from different legal background to discuss the welfare state and its implications on contract law in Europe.

Outcome

- Short-run

The papers presented during this workshop will be published in a book in the series 'European Studies in Private Law' by Europa Law Publishing (Groningen, The Netherlands). The final papers are expected the first of December and a manuscript is expected to be submitted to the publisher in February 2010.

An application to the Dutch Science Foundation for a post-doc researcher who will explore the relationship between European contract law and the welfare state has been made in September 2009 by the convenor.

- Long-run

Further research has been explored during the workshop and via e-mail after the workshop. Thought is given to different alternatives. It was discussed to what extent empirical research needs to be done, to what extent research on this topic should be interdisciplinary and in which way researchers from other disciplines could participate. Further, during the discussions as to contract law the issue has been raised whether attention should be focused on either technical issues, for instance termination of a contract, and the different systems of the welfare state or other themes, for example, the relationship between the different types of welfare state and tenant/rent law.

The possibilities of creating a network applying for funding within the ESF- Eurocores-Framework will be explored.

4. Final Programme

Monday 7 September 2009

10.30-11.00	Welcome Jacobien Rutgers , Free University (VU), Amsterdam
11.00-13.15	General Framework
11.00-11.30	An Emerging Welfare State in the European Union Gareth Davies (Free University (VU), Amsterdam, The Netherlands)
11.30-12.00	<i>Coffee / Tea Break</i>
12.00-12.30	Contract Law, the Welfare State and the European Union Hugh Collins (LSE, London, UK)
12.30-13.15	Discussion
13.15-14.15	<i>Lunch</i>
14.15-15.45	Tenancy, Labour Law and the Welfare State
14.15-14.45	Contract Law and Tenancy in the European Union Christoph Schmid (ZERP, Bremen, Germanyinstitute, town, country)

14.45-15.15	Labour Law, Contract Law and the Welfare State Klara Boonstra (Free University (VU), Amsterdam, The Netherlands/FNV, Amsterdam, The Netherlands)
15.15-15.45	Discussion
15.45-16.15	<i>Coffee / tea break</i>
16.15-18.30	Contract Law, General Conditions and the Welfare State
16.15-16.40	A comparison of the institutional implications of the Directive on unfair terms in consumer contracts in France and the UK Ruth Sefton-Green (Paris I, Paris, France)
16.40-17.05	The Dutch Approach: a self-regulation dialogue on General Terms and Conditions The Dutch Approach: institutional implications of the Directive on unfair terms in consumer contracts in the Netherlands Thom van Mierlo (Sociaal Economische Raad (SER) The Hague, The Netherlands)
17.05-17.35	The institutional implications of the Directive on unfair terms in consumer contracts in Poland Rafal Manko (Translation service European Court of Justice, Luxembourg, Luxembourg)
17.35-18.15	Discussion
19.30	<i>Dinner</i>

Tuesday 8 September 2009

09.00-10.40	Services of General Interest, Health Care and Contract Law in the EC
09.00-09.30	Services of General Interest, Contract Law and the Welfare State Peter Rott (University of Bremen, Bremen, Germany)
09.30-10.00	Cross-Border Health Care and its Implications for Patient Autonomy Anniek de Ruijter (ACIL, Universiteit van Amsterdam, Amsterdam, The Netherlands)
10.00-10.40	Discussion
10.40-11.10	<i>Coffee / Tea Break</i>
11.10-13.00	Contract Law, Public Policy and the Welfare State
11.10-11.40	Contract law, Family Issues Restricting Freedom of Contract in the light of the Different Types of the Welfare State Maria Rosaria Rosella (University of Perugia, Perugia, Italy)
11.40-12.10	Public Policy Exceptions, Contract Law and the Free Movements Jacobien Rutgers (Free University (VU), Amsterdam, The Netherlands)
12.10-13.00	Discussion
13.00-14.00	<i>Lunch</i>
14.00-16.00	Discussion on follow-up activities/networking/collaboration
16.00	<i>End of Workshop and departure</i>

5. Statistical Information

Gender

40 % of the participants were female

60 % of the participants were male

<i>Nationality</i>	<i>Place of Residence</i>
Belgian nationality: 1	England: 2
Dutch nationality: 4	France: 2
English nationality: 3	Germany: 2
French nationality: 1	Italy: 2
German nationality: 2	Luxembourg: 1
Italian nationality: 2	The Netherlands: 5
Polish nationality: 2	Poland: 1

Career status

Professors: 5

Reader/Senior Lecturers: 3

Phd Candidates: 5

Other: 2

Participation from other public sectors

Most participants are employed in academia in the Member States mentioned. Four of the participants are (also) active in other areas of public life. One participant is legal adviser of the Federation of Trade Unions in the Netherlands (FNV). Another participant is legal adviser at the Social and Economic Council of the Netherlands and is responsible for bilateral negotiations concerning general conditions. One of the Polish participants is Deputy State Secretary at the Office of the Committee for European Integration of the Polish government and the other is a Lawyer Linguist, Polish Translation Division, Directorate General for Translation, Court of Justice of the European Communities.

6. Final List of Participants

1. **Klara BOONSTRA** (f)
Department of Labour Law,
Faculty of Law, Free University (VU)
FNV (Dutch Labour Union)
Amsterdam, The Netherlands
2. **Hugh COLLINS** (m)
Law Department, London School of Economics,
London, England
3. **Luca CRUCIANI** (m)
Faculty of law
University of Pisa, Pisa, Italy
4. **Gareth DAVIES** (m)
Department of International and European Law, Faculty of Law, Free University (VU)
Amsterdam, The Netherlands
5. **Anniek de RUIJTER** (f)
Department of European law, Faculty of Law, Universiteit van Amsterdam
Amsterdam, The Netherlands
6. **Floris de WITTE**
Law Department, London School of Economics
London, England
7. **Rafal MANKO**
Cour de Justice des CE
Luxembourg
8. **Maria Rosaria MARELLA** (f)
Facoltà di giurisprudenza, Università degli Studi di Perugia
Perugia, Italy

9. **Thom van MIERLO**
Sociaal Economische Raad (SER)
Den Haag, The Netherlands
10. **Peter ROTT** (m)
Universität Bremen
Bremen, Germany
11. **Jacobien RUTGERS** (f)
Department of Private Law, Faculty of Law, Free University (VU)
Amsterdam, The Netherlands
12. **Christoph SCHMID** (m)
Zentrum für Europäische Rechtspolitik an der Universität Bremen (ZERP)
Bremen, Germany
13. **Ruth SEFTON-GREEN** (f)
Centre Malher, Paris I
Paris, France
14. **Maciej SZPUNAR** (m)
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15. **Sandrine TISSEYRE** (f)
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