

INFLUENCE OF EUROPEAN INITIATIVES IN NATIONAL COURTS

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INFLUENCE OF EUROPEAN INITIATIVES IN NATIONAL COURTS

- Influence in National Courts
- Influence in arbitration (EPCL less influence in arbitration than in national courts. UNIDROIT Principles, Unilex.info)
- Influence in national legislation (Spanish proposal for the modification of the Law of obligations and contract Law)

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- **European Principles of Contract Law (EPCL)** Mentioned 2 times by the Spanish Supreme Court in 2008 , 2 in 2009, 1 in 2010, 1 in 2011, and 7 in 2012 . At least 260 times by lower courts between 2006 and 2012.
- **Principles of European Tort Law (PETL).** Mentioned 4 times by the Spanish Supreme Court in 2010, 1 time in 2011 and 2 times in 2012. Mentioned at least 79 times by lower courts between 2006 and 2012.
- **Draft Common Frame of Reference (DCFR).** Mentioned 5 times by the Spanish Supreme Court in 2010, 2 in 2011 and 3 in 2012. At least 19 times by lower courts between 2010 and 2012

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European Principles of Contract Law

- **To confirm legal principles or rules:** good faith and fair dealing (1:201), excuse due to an impediment (8:108), right to damages and measure of damages (9:501, 9:502, 9:505)
- **To confirm interpretations or principles set by the Spanish courts:** sufficient agreement and determination of price (2:103/6:104), legal interpretation of silence when duty to disclose (2:204 and 4:107), primacy of common intention of the parties in interpretation of contracts (5:501), preliminary acts relevant for interpretation of contracts (5:502 [a]), change of circumstances (6:111), requirements for the termination of contracts (8:103, 9:303), specific performance within a reasonable time (9:102 [3]), right to withhold performance (9:201), possibility of extra-judicial termination (9:303), effects of termination (9:305 to 9:308), right to damages and extension (9:503), solidarity of obligations (10:102)
- **To interpret (and “integrate”) national Law:** good faith and refusal of early performance (7:103), fundamental breach (8:103 [c]), compensation of debts by the court decision (13:102)

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Principles of European Tort Law

- **To confirm legal principles and interpretation of Civil Code by the Spanish courts:** damage caused by multiple activities [3:103(1)], difference between causation in fact and causation in law (3:101/3:201), causation in law (closeness between damaging activity and its consequence/purpose of the rule [3:201 (a) and (c)], general rule of fault liability (4:101), concept of abnormally dangerous activity (5:501), liability for auxiliaries and their need to act within the course and scope of functions (6:102/6:101?), purpose of damages (10:101), restoration in kind (10:104), recoverable pecuniary damage (10:201), concept of personal injury (10:202), measure of damage (10:203), concept of non-pecuniary damage (10:301),
- **To interpret (and “integrate”) national Law:** proof of damage (estimation 2:105), required standard of conduct (relation of proximity or special reliance/dangerousness of the activity [4:102.1])

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Draft Common Frame of Reference

- **To show how a matter is regulated in modern legal systems or the differences between the European systems:** preference for interpretation which gives terms effect (Art. II.8:106), revocation of donations for gross ingratitude (Art. IV.H.4:201); unjust enrichment (Art. VII-7:102)
- **To confirm interpretations or principles set by the Spanish courts:** good faith and acts according to previous conduct (Art. I-1:103.2), double effect of termination of contracts (end of obligations [Art. III-3:509] and restitution of benefits [Art. III-3:510]), restitution of fruits upon termination (Art. III-3:510.5), solidarity of obligations (Art. III-4:103)

EUROPEAN INITIATIVES: WHAT INFLUENCE SHOULD THEY HAVE?

- “the criteria stated in an international disposition of a conventional character which is part of our legal system, also reflected in a document that legally formulates the principles (...) common to the different legal systems, in as far as they reflect and try to order, with the purpose of elaborating uniform rules, the practice followed in relations that exceed the national scope, **should serve to integrate art. 1.124 C.C, following the mandate to interpret it in accordance with the social reality of the moment in which it is applied**” (Spanish Supreme Court, October 31, 2006)
- “**the common origin of the rules in the European Principles of Contract Law allow their use for the interpretation of the existing legal rules on our Civil Code**” (Spanish Supreme Court, December 17, 2009)
- “**no matter if they (PECL) are not positive Law rules, they have an undeniable doctrinal value**” (Spanish Supreme Court, July 30, 2012)

EUROPEAN INITIATIVES: WHAT INFLUENCE SHOULD THEY HAVE?

- European initiatives are not a source of Law in Spain
- Case law is not a source of Law in Spain. Court decisions complete the legal system with the doctrine that the SC establishes when interpreting and applying the sources of Law.
- Spanish Courts rely on the prestige of the European initiatives to add that prestige to its decisions
- Spanish Courts have used them as a firm legal resource to decide cases alongside Spanish sources of Law or previous Court interpretations
- Spanish Courts interpret *de facto* giving solutions that coincide with the European initiatives
- soft law “softly “ entering and inspiring the national legal systems (all?)