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The regulation of services contracts in Spain

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Örebro Universitet, March 10, 2015
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Concept

- “Lease of services” → provision of services
- Contract by which one party undertakes to perform a service to the other party in exchange for a price (art. 1.544 C.C.)

Characteristics

- Characteristics:
 - Bilateral
 - By consent
 - Onerous (essential)
 - Not formal

Regulation

- Regulation of services in the C.C. → Derogated (not expressly) by Labour Law and the Spanish Constitution
- Agreement of the parties → disadvantages for consumers
- Loopholes filled with general rules or by analogy (construction, mandate,...). And PECL/DCFR for interpretation?

Differences with construction contracts

- Provision of a service → activity → obligation of means (diligence)
- Construction → activity+result → obligation of result
- Grey areas

Rights and obligations of the parties.

- Service provider:
 - Perform the service
 - Diligence (*lex artis ad hoc*)
 - Personally (possible assistants or auxiliaries)
- Client:
 - Payment of price (certain; usages or tariffs)
 - Cooperation with service provider

Duration

- Without term (indefinite ok; not perpetual)
- For a term
- For a particular service

Particularities of processing services in the DCFR

- Performance of the service on an existing movable, incorporeal or immovable (repairing, maintaining, cleaning, assembling, installing, ...).

Particularities of processing services in the DCFR

- Rights and obligations of the client:
 - Cooperate: Hand over the thing or give access to site; Provide components, materials and tools (when necessary); provide information, ...
 - Possibility to inspect
 - Accept return on the thing once processed (if fit for the use)
 - Pay the price
- Rights and obligations of service provider:
 - Take precautions to prevent damage to the processed thing
 - Return the thing or control of it when requested