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**The Construction of Precontractual
Liability as a Link between Social
Contact and Objective Good Faith in
the Brazilian Legal System**

Christian Sahb Batista Lopes

Professor

Federal University of Minas Gerais

Brazil

Luciana Helena Gonçalves

Student

Federal University of Ouro Preto

Brazil

Athens Institute for Education and Research
8 Valaoritou Street, Kolonaki, 10671 Athens, Greece
Tel: + 30 210 3634210 Fax: + 30 210 3634209
Email: info@atiner.gr URL: www.atiner.gr
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The Construction of Precontractual Liability as a Link between Social Contact and Objective Good Faith in the Brazilian Legal System

Christian Sahb Batista Lopes
Professor
Federal University of Minas Gerais
Brazil

Luciana Helena Gonçalves
Student
Federal University of Ouro Preto
Brazil

Abstract

In this study we aim at demonstrating the possibility of the application of a German theory, the social contact theory, in the Brazilian legal system. In this manner, we will address the origin of the social contact theory, a relevant German case law that approaches it and we will also discourse about objective good faith, *culpa in contrahendo* and precontractual liability, legal conceptions which are to some extent related to the social contact theory. By presenting this analysis, we will expose, through the demonstration of the similarities and differences between these institutes and the theory in focus, how the social contact plays a role in the expansion of the legal protection of the individuals, not in a specific context, the contractual phase, but in all other contexts in which a relevant social contact is identified. The application of this German theory in the Brazilian legal system is substantially important, as it emerges from the bosom of society and safeguards the society itself, becoming a tool for seeking fairness in judicial decisions involving obligations. This is precisely what the Brazilian case law indicates, by accepting and applying this theory, and will be shown in this study.

Keywords: Social contact; objective good faith; *culpain contrahendo*; precontractual liability.

Contact Information of Corresponding author:

Christian Sahb Batista Lopes: christiansbl@gmail.com
Faculdade de Direito da UFMG. Av. João Pinheiro, 100, Belo Horizonte, MG - 30130-180

Luciana Helena Gonçalves lulyh_g@hotmail.com and lucianahgoncalves@gmail.com
Departamento de Direito. Universidade Federal de Ouro Preto. Ouro Preto, Minas Gerais, Brasil.

Introduction

The Professor Couto e Silva explains that the social contact, a German concept, is the source of all the wider obligations, as a representation of life in society.¹ The *International Encyclopedia of Comparative Law* contains the approach of the social contact being the basis of protective duties and diligence at a time when the contract does not exist. That corresponds to the duty of care between a physician and a patient in the common law of England². Thus, it is relevant to discuss the social contact as a trigger for precontractual liability. How does it work in Brazil?

This study also presents a comparative approach, because the core of the discussion meets support in a German institute expressed in the *German Civil Code*³, *culpa in contrahendo*, an abstract concept which runs through several legal systems, but it is not expressly contained in the Brazilian law, for instance.

That shows a gap in our legal system, which is supplied by an indeterminate concept of objective good faith, a principle which guides the *Brazilian Civil Code*⁴. This study aims at analyzing the implementation of such an institute in the Brazilian law, as the liability case between a famous tomato sauce manufacturer and farmers who received seeds and cultivated them, confident that their production would be purchased.

This case shows the necessity of a regulation which emerges from the bosom of the society and safeguards the society itself. Therefore, the precontractual liability shows to be relevant not only to the international trade, but to the possibility of an access to lay population to an equitable and judicial solution.

We start this article with the quote below, which brings us to the core of our study, in view of the emergence of the social contact theory. In this manner, we can verify that there is a justification for the non-existence of the statement of intent in the examples below, precisely because the social contact theory creates an obligation. Thus, these examples demonstrate that:

'To assert simply that contracts are a result of a statement of intent is not enough, there is the risk of slipping into a blind voluntarism of the nineteenth century, which seeks the contract as a mere phenomenon of

¹ Zanitelli, L. M. *The notion of social contact, from sociology to C. do Couto e Silva's unitary theory of the obligations*. Available at <http://www6.ufrgs.br/ppgd/doutrina/zanitel1.htm> [05 May 2012]. [In Portuguese].

² David, R. & Tunc, A. (1983). *International encyclopedia of comparative Law*.V.11. Leiden:Martinus Nijhoff Publishers, p.98.

³ Germany. *German Civil Code*. 'Ausfertigungsdatum: 18.08.1896. Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 27. Juli 2011 (BGBl. I S. 1600) geändert worden ist'. Available at: <http://www.gesetze-im-internet.de/bgb/> [05 May 2012].

⁴ Brazil. *Law no. 10.406 of January, 10, 2002*. Establish the Brazilian Civil Code. Available at: http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm [05 May 2012].

the will. In fact, what statements exist, when a person takes a bus or requests to connect electricity or telephone in his or her house?’¹.

The social contact theory

The German author Günter Haupt is at the heart of the social contact theory, creating a theory originally about obligational relations, based on a social behavior (another expression referring to the social contact). This theory aims at supporting the mass relations of the contemporary industrial society. Therefore, it admits the creation of types of contractual relations based not on the classical dogma of the will, but on a simple typical behavior (cited by Karl Larenz)².

As an example of the application of the social contact theory, we have the performance of the German Federal Court of Justice, the *Bundesgerichtshof* (BGH)³, related to Hamburg’s city center, namely, there were not enough spaces to parking, thus, the city transformed parts from a public location into a parking lot, creating an obligation of a parking fee payment.

In this case, the defendant left his vehicle repeatedly in this parking lot, and stated to the invigilator at the service of the company that he refused the vigilance and would not pay the parking fee. The defendant justified he relied on the prerogative of a public use of the location. The German Federal Court of Justice decided against the defendant, and ordered him to pay the parking fees, by arguing that the individual cannot avert the juridical consequences of his or her own action. In this way, according to Karl Larenz:

‘The BGH judged that the internal disposition of the defendant is not relevant nor when he, as in this case, manifested it from the beginning, openly to the invigilator. With this, the BGH expressly followed the doctrine, first presented by Günter Haupt and later developed by myself. This doctrine, said the BGH, directs, not ignoring the reality of the life in relation to the current mass circulation of goods, to a result which corresponds to a reasonable way for expression of these typical behaviors’⁴.

Therefore, we concluded by Haupt's theory that:

‘Instead of the presentation of a ticket, in the area of the means of public transport, it is the real use of the means of transport which creates the contractual relationship, and this is applied for both parties’⁵.

¹Fiuza,C.(2007). ‘For a redefinition of the contractuality’. In: Oliveira, A (ed.), *Civil Law: Current Issues II*. 253- 266. Belo Horizonte: Del Rey. [In Portuguese], p. 254.

²Larenz, K. (1958). *Lehrbuch des Schuldrechts*.V.1.Berlin and Munich: C.H. Beck, p. 33.

³Larenz,K.(2006) ‘The creation of privies by typical social behavior (1956)’.*GV Law Journal* 2 (1): 055-064, p. 56.

⁴Larenz,K.(2006) ‘The creation of privies by typical social behavior (1956)’.*GV Law Journal* 2 (1): 055-064, p. 57.

⁵Larenz,K.(2006) ‘The creation of privies by typical social behavior (1956)’.*GV Law Journal* 2 (1): 055-064, p. 58.

This theory has found a place in the Brazilian law by the Professor Clóvis do Couto e Silva.¹ His pioneering work approached the legal relationship as dynamic and considered it as a process, which shows us that, in a general sense, the social contact is a representation of life in society, being the source of all the wider obligations.

Thus, his approach is of paramount importance for the analysis of the legal relationship as a whole, implying, for example, the existence of the precontractual liability, because of a pre-existing social contact, which triggers reciprocal duties. The social contact breaks the classical dogma of the will in respect of contract law, because it is related to the complex unit of its motives and circumstances.

Professor Zanitteli brought relevant comments about the theme:

*'Haupt named social contact among the situations, which he characterized as a cooperative relationship between two or more individuals, not based on contracts. Haupt included in the category of the social contact the hypothesis of culpa in contrahendo'*².

The similarities and differences between the social contact, culpa in contrahendo, precontractual liability and objective good faith

Friedrich Kessler and Edith Fine brought the following explanation for the concept of *culpa in contrahendo* developed by Jhering:

'The doctrine of culpa in contrahendo goes back to a famous article by Jhering, published in 1861, entitled Culpa in contrahendo, oder Schadensersatz bei nichtigen oder nicht zur Perfektion gelangten Verträgen [...] In Jhering's view, the German common law of his day, the so called Gemeines Recht, was seriously defective in not paying sufficient attention to the needs of commerce. It did not adequately correct the will theory and the meeting of minds requirement [...] Of course, the party who has relied on the validity of the contract to his injury will not be able to recover the value of the promised performance, the expectation interest. But, he suggested, the law can ill afford to deny the innocent party recovery altogether; it has to provide for the restoration of the status quo by giving the injured party his "negative interest" or reliance damages. The careless promisor has only himself to blame when he has created for the other party the false appearance of a binding obligation. This is the meaning of culpa in contrahendo [...] Going beyond a mere correction of the will dogma, culpa in contrahendo became anchored in the great principle of good faith and fair dealing which permeates, we

¹ Silva, C. V. do C. e (2006). *The obligation as a process*. Rio de Janeiro: FGV Editor. [In Portuguese].

² Kessler, F. & Fine, E. (1964). 'Culpa in contrahendo, bargaining in good faith, and freedom of contract: a comparative study'. *Harvard Law Review* 77(3): 401-449, p. 401-404.

are told, the whole law of contracts, controlling, indeed, all legal transactions¹.

Why, precisely, are we referring to *culpa in contrahendo*?

The core of this discussion meets support in *culpa in contrahendo*, a German institute expressed in the *German Civil Code*.² In its section 311.2, the *German Civil Code*³ refers to the obligational relations, not only created by contracts, but due to other relations of social contact (similar business contacts), framed in *culpa in contrahendo*. Besides, the precontractual liability is considered as a contemporary application of *culpa in contrahendo*.⁴

Getting into the Brazilian legal system, we realize that Couto e Silva tried to solve the problem of the theory of the sources of the obligations, by creating an unitary theory of the obligations, in order to enclose the contractual and non-contractual obligations, from the notion of the social contact. In this way, according to this author, the social contact goes beyond the borders of *culpa in contrahendo*, and becomes the common source of all kinds of obligations.

According to Zanitelli's idea, Couto e Silva adopted a term (the social contact), whose abstraction is enough to encompass several species of obligations, bringing the both liabilities (contractual and non-contractual) together. Thus, it reduces the separation between these liabilities, which is often seen as absolute in the doctrine.

Resuming the exposition of Zanitelli:

'Couto e Silva distinguishes the duties resulted from the application of the good faith principle, which are instrumental duties, from the independent duties [...] The social contact is the source of the independent duties, differing only by the fact that, here, the value of the social contact by the law is not due to the incidence of a legal rule or principle, like the good faith principle, but simply due to the idea that the mere fact of living in society triggers consideration duties in relation to the interest of the others'⁵.

¹ Zanitelli, L. M. *The notion of social contact, from sociology to C. do Couto e Silva's unitary theory of the obligations*. Available at <http://www6.ufrgs.br/ppgd/doutrina/zanitell1.htm>. [05 May 2012]. [In Portuguese].

² Germany. *German Civil Code*. 'Ausfertigungsdatum: 18.08.1896. Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 27. Juli 2011 (BGBl. I S. 1600) geändert worden ist'. Available at: <http://www.gesetze-im-internet.de/bgb/> [05 May 2012].

³ Germany. *German Civil Code*. 'Ausfertigungsdatum: 18.08.1896. Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 27. Juli 2011 (BGBl. I S. 1600) geändert worden ist'. Available at: <http://www.gesetze-im-internet.de/bgb/> [05 May 2012].

⁴ Martins-Costa, J. H. (1999). *The objective good faith in Private Law: system and science in the obligational process*. São Paulo: Journal of the Courts. [In Portuguese], p. 472.

⁵ Zanitelli, L. M. *The notion of social contact, from sociology to C. do Couto e Silva's unitary theory of the obligations*. Available at <http://www6.ufrgs.br/ppgd/doutrina/zanitell1.htm> [05 May 2012]. [In Portuguese].

It is relevant to notice the link between the social contact and the objective good faith, because they refer to the concrete behavior of the parties, behavior that due to being social (arising from the social contact) must be undertaken in a reasonable manner, through a standard (of the objective good faith).

However, both are different legal concepts despite of this similarity. We understand the social contact or typical social behavior as the ground to create a liability through the statement of intent.

That is to say, the statement of intent gives rise to an obligation because it originates a social contact, which causes the promisor to be bound to his or her promise which engenders reliance on the promisee's party that the performance will be forthcoming.

The statement of intent does not create a bond due its formality, being a conscious and coherent declaration which creates a duty which is qualified by the social contact. In fact, the social contact causes the promisee to reasonably rely on the promise she or he received.

Its relation with the objective good faith is inexorable. Both play a role of expanding the protection, beyond the formality of the words contained in the statement of the promisor. Thus, the joint use of these two concepts is of great value, as we will demonstrate with support of the case law.

It is interesting to mention that in the discussion about the legal nature of the social contact, the Italian Professor Emilio Betti considered it as a set of duties prior to the legal transaction execution, namely, as an anticipation of the objective good faith principle, or like its preliminary effect¹.

Here a question arises: in which aspect does this conclusion coincide with the original concept of the social contact, referring to the example of the parking fee demonstrated above? In that context, the defendant had expressly stated his intent to refuse the payment; in this manner, how would this example be applied as a protection of the parties?

Both approaches make the need of conscious individuals of their inclusion in the social environment evident, thus, with a duty to their own actions in society.

In this way, the social contact theory becomes a bond that engenders the interest and trust between the parties, through it, the reciprocal statement of intention becomes an expectation.

Accordingly, Betti suggested that:

*'We free ourselves from the doctrinal form of the statement of intent aimed at legal effects and create a concept of the legal transaction closer to the reality, which also covers the typical social behavior'*².

¹ Silva, C. V. do C. e (2006). *The obligation as a process*. Rio de Janeiro: FGV Editor. [In Portuguese], p. 77.

² Larenz, K. (2006). 'The creation of privies by typical social behavior (1956)'. *GV Law Journal* 2(1): 055-064, p. 59.

In spite of the sharp abstraction of Couto e Silva's conception, we related the social contact theory to *culpa in contrahendo* due to its allusion in the *German Civil Code*¹, in its section 311.2.

An example of the application of *culpa in contrahendo* is the decision of the Court of Kiel, in Germany². This case shows that the plaintiff renounced other customers due to the booking made by the defendant, who booked a table of 5/6 people for seven days and cancelled the reservation on the fifth day.

The Court granted compensation because of the application of *culpa in contrahendo* referring to the 'performance in good faith' (in the section 242 of the *German Civil Code*)³. The amount to be compensated was based on reliance interests.

The Professor Paulo Brasil Dill Soares presented the following comments related to this matter:

*'The argument used by Jhering was the ethical duty, the standard behavior that the parties in negotiation must have. If this standard behavior is violated, it enables the liability against the party who had infringed the objective good faith. Through Jhering's theory, the Courts fixed a liability for the precontractual breach, and subsequently the principle of trust was introduced in 1923 by Stoll [...] What is required to complete the assumption of existence of negotiations is not, however, a certain amount of conversations or acts performed by who contracts. What will be crucial to a configuration of a contractual negotiation as sufficient to enable the liability due to a breach will be the quality of the contact between the parties'*⁴.

In a critical and comparative study of *culpa in contrahendo*, Professor Caballero evidenced that:

'The legal incorporation of culpa in contrahendo doctrine is a recent erupted phenomenon. Currently, only a few European legal systems include it within their legal frameworks, precise norms which foresee

¹ Germany. *German Civil Code*. 'Ausfertigungsdatum: 18.08.1896. Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 27. Juli 2011 (BGBl. I S. 1600) geändert worden ist'. Available at: <http://www.gesetze-im-internet.de/bgb/> [05 May 2012].

² Germany. Court of Kiel. J. 22 January 1998 - 8 S 160/97. Available at: http://www.kostenlose-urteile.de/LG-Kiel_8-S-16097_Schadensersatz-fuer-nicht-in-Anspruch-genommene-Tischreservierung-im-Restaurant.news10232.htm?sk=3bf0486071c286b95f02b233715fa5d1 [05 May 2012].

³ Germany. *German Civil Code*. 'Ausfertigungsdatum: 18.08.1896. Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 27. Juli 2011 (BGBl. I S. 1600) geändert worden ist'. Available at: <http://www.gesetze-im-internet.de/bgb/> [05 May 2012].

⁴ Soares. P.B.D. (2011). 'The economic and legal effects of the precontract in the private relations.' *Journal of the Master of Law – UCB* 5(1). Available at: <http://www.portalrevistas.ucb.br/index.php/rvmd/article/view/2638/1616> [05 May 2012], p 70-73.

general rules that discipline this matter and the activities of the parties during the phase of the contractual formation, except the Greek Code of 1940 (article 197), the Italian Civil Code (article 1337 and 1338), the brand new Portuguese Civil Code (article 227) and the German Civil Code, through the reform introduced by the modernization of the Law of Obligations, being located its section 311.2 [...] Even before the reform mentioned, this theory was developed by an intensive court movement, which formed over time as part of the German legal system'.¹

It is also extremely important to analyze Karl Larenz's study about the social contact theory. The German author reminds us of the case of the compulsory parking fee payment already exposed. Thus, he concluded that although the defendant has expressed his intent to the contrary, he entered into a binding legal transaction and bound himself. His public use of the parking and his social behavior demonstrated an assumption of consciousness of his act.

Accurately, explained Professor Larenz:

'Also a six year boy can know that getting on a train costs money. Against that, it must be required that the individual is conscious about the circumstances in which the meaning of his typical social behavior results, namely, for example, knowing that a mean of public transportation to be used or a parking lot has as obligation to pay a fee. What should be known equalizes the knowledge [...] This understanding, which is treated here, was first recognized by Haupt, in his own particularity, and others followed his idea, but they do not say so much about a delineation of the typical social behavior [...] Simitis looked through this idea as an expression which would change the social function of the private law. Bärman and Betti wanted that through this notion the concept of the contract could extent itself, embracing the idea of the social contact'².

In this way, the Professor Judith Martins-Costa explained the incidence of trust that encompasses the human behavior, being dispensable to adduce in which phase it will appear (pre- or pos- contractual phase) in order not to consider the parameter of the contract as a mark, demonstrating variable behaviors according to the concrete circumstances.

The application of the social contact theory in the Brazilian precontractual liability cases

The actual application of the theoretical issues discussed above can be studied in two precontractual liability cases judged in Brazil. The first one is known as

¹ Caballero,V.M. (2011). 'A legal-historical approximation of culpa in contrahendo in the preliminary negotiations.' *Brazilian Journal of Constitutional Law (RBDC)* 17.Avaliable at: <http://bdjur.stj.jus.br/dspace/handle/2011/42654> [05 May 2012], p. 65.

² Larenz, K.(1958).*Lehrbuch des Schuldrechts*.V.1.Berlin and Munich: C.H.Beck, p. 33.

‘the case of the tomatoes’, judged in Rio Grande do Sul, a state in the south of Brazil, in 1991.¹

During the harvest of 1987/1988, farmers received seeds of a tomato sauce manufacturer and cultivated them, relying that their production would be purchased. The manufacturer did not purchase the production, the farmer was not able to sell his production to anyone else, and went to court claiming compensation for damages.

During the lawsuit, it was evidenced that: (i) there was a relation between the company, which contacted the farmers through intermediaries; (ii) this relation had years of habituality, solidifying the customary practice.

Therefore, it was shown that the farmers relied on the company's course of action, as a result of all years of preparation for the cultivation of seeds; thus, they were not prepared for a future deluded expectation.

We will add here the peculiarities approached by the Professor Martins-Costa:

‘The industrializing tomatoes company (CICA) claimed, in its defense, that it had not made any commitment to acquire the production, having only donate seeds to a few producers in the region - among them was not the plaintiff – and it was a donation made by extraction of invoice. At the harvest time, the defendant failed to purchase the product because it would not exercise the activity of tomatoes processing industry, due to changes in its industrial policy [...] It was decided that there was a procedure, by its regularity and habituation, which shall give rise to the formation of a "web of workers" [...] Thus, the judge held that the fact of a non-existence of a written contract only reveals the habituality of the behavior and confidence between the involved parties [...] The precontractual liability will directly protect the confidence that both parties are negotiating according to the good faith, protecting both of them [...] It is evidenced, with particular relevance, the concern for the defense of social values of legal certainty and legal commerce facility’².

Thus, the decision took into account: (i) the existence of the company's relationship with the producers; (ii) the habitude of the procedure in previous years; (iii) the customary practice established for that situation; and (iv) the circumstance in which there is not a written contract promising to buy and sell between the parties.

In conclusion, evaluating the evidence it was verified that, ‘*the requirement of the proof should be appropriate to the circumstances of the transaction and personal conditions of the parties*’³.

¹ Martins-Costa, J. H. (1999). *The objective good faith in Private Law: system and science in the obligational process*. São Paulo: Journal of the Courts. [In Portuguese].

² Martins-Costa, J. H. (1999). *The objective good faith in Private Law: The objective good faith in Private Law: system and science in the obligational process*. São Paulo: Journal of the Courts. [In Portuguese], p. 474-475.

³ Martins-Costa, J. H. (1999). *The objective good faith in Private Law: system and science in the obligational process*. São Paulo: Journal of the Courts. [In Portuguese], p. 477.

Based on this case, Judith Martins-Costa highlights the effect of subversion caused by the objective good faith:

'Due to the choice of the institute of the precontractual liability, a real case quite not solved in Brazilian Law, we can notice that the binding between good faith and the understanding of the obligational relationship as a dynamic process enables the dogmatic reconstruction of legal institutions in evidence to adjust them to the social needs [...] The equation proposed in the German literature is that the precontractual relation = relation of trust'¹.

In this vein, the judicial decision repealed the fact that farmers do not have concrete evidences to prove the deluded expectation and, therefore, the judicial decision remains imbued with consideration of the personal qualifications of the parties, the economic and social ambience, in favour of the material truth of the facts.

The same rationale can be devised in a judgment by the Court of Sergipe², a state in the northeast of Brazil. In this case, the defendant had promised that he would rent the property of the plaintiff, but it passed seventeen months without the execution of the settlement.

And because of the reliance of the plaintiff on this promise, the plaintiff rejected proposals to purchase her property, leaving it to the disposal of the defendant. In the bargain, the defendant had based her desistance on a reason at least questionable, reporting that the property was not a place to install an aerial. The Court argued that the judicial relief was necessary because of the moral manners, which are not only required during the contractual phase.

Therefore, the conduct of the defendant had clearly caused damages to the plaintiff, demonstrating the decision that:

'What is required is that the parties, even in this precontractual phase, proceed with a loyal and honest posture, refined with the objective good faith principle, existing the obligation of indemnification, due to the breach of the confidence and non-execution of the loyalty, transparency, information, cooperation and trust duties; duties which rule all the negotiation phases, even those arising from the social contact. This has been called as the precontractual liability'³.

¹ Martins-Costa, J. H. (1999). *The objective good faith in Private Law: system and science in the obligational process*. São Paulo: Journal of the Courts. [In Portuguese], p. 477.

² Brazil. Court of the State of Sergipe, Second Civil Chamber, Appeal n. 1669/2010.J. 25 August 2010. [In Portuguese]. Available at: <http://www.tjse.jus.br/tjnet/jurisprudencia/relatorio.wsp?tmp.numprocesso=2010203897&tmp.numacordao=20108701> [05 May 2012].

³ Brazil. Court of the State of Sergipe, Second Civil Chamber, Appeal n. 1669/2010.J. 25 August 2010. [In Portuguese]. Available at: <http://www.tjse.jus.br/tjnet/jurisprudencia/relatorio.wsp?tmp.numprocesso=2010203897&tmp.numacordao=20108701> [05 May 2012].

Additionally, about the incidence of the objective good faith, it is delineated as a general clause, being applied even before or after the contract enforcement.

Conclusion

By approaching the social contact theory and other legal institutes that derive therefrom, such as *culpa in contrahendo*, precontractual liability and objective good faith principle, we refer to the expansion of the legal protection of the parties.

The social contact theory shows us not only the possibility to be an anticipation of the objective good faith, as proposed by Betti, and not being just one of the demonstrations of *culpa in contrahendo*. This theory emerges from the bosom of the society and safeguards the society itself, becoming a tool for seeking fairness in judicial decisions involving obligations.

In this way, it should be analyzed in conjunction with the statement of intent, because there are cases in which when the social contact and the statement of intent are acting in the same tone, the expectation will be even greater, and therefore, more protection and diligence will be required.

There are also cases, in which the social contact evidences a prevalence of the typical social behavior, because the actions of one of the parties that are socially projected create a binding force, a link that generates legally protected interests on the other party. Such interests are protected even against the statement of intent because the promisee is entitled to rely on the behavior, in spite of the declaration.

After all, in our contemporary society of intense changes, it is justifiable that we have the incidence of parameters that give us security and predictability for the customary practice, and it is reasonable to increase the possibilities of compromising of one party to another.

As we have noticed, the *German Civil Code*¹, has an institute (*culpa in contrahendo*) expressly established for precontractual negotiations, an abstract concept which runs through several legal systems. Such rule is not expressly provided for the Brazilian legal system. It shows a gap in our legal system, which is supplied by an indeterminate concept of objective good faith that guides the *Brazilian Civil Code*².

That is the reason why we have demonstrated the leading cases above: these constitute the evidence that the application not only of the objective good faith principle, but in conjugation with the social contact and *culpa in contrahendo* have the effect to expand the rule of the protection of the individuals, not in a specific context, the contractual phase, but in all other contexts in which a relevant social contact is identified.

¹ Germany. *German Civil Code*. Ausfertigungsdatum: 18.08.1896. 'Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 27. Juli 2011 (BGBl. I S. 1600) geändert worden ist'. Available at: <http://www.gesetze-im-internet.de/bgb/> [05 May 2012].

² Brazil. *Law no. 10.406 of January, 10, 2002*. Establish the Brazilian Civil Code. Available at: http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm [05 May 2012].