

## PRINCIPLES OF FAIRNESS IN THE REGULATION OF CONTRACTS AND LIABILITIES OF THE PARTIES

Khayriddin Nuriddinov

Phd Student at Tashkent State University of Law

Republic of Uzbekistan, Tashkent

E-mail: khayriddinnuriddinov@gmail.com

### Abstract:

The article is devoted to the analysis of the principles of justice in the regulation of contractual relations and liability of the parties in civil law. The evolution of civil law is considered, with an emphasis on the transition from liberal-individualistic to socialized approaches, which is due to the need to protect weak parties in contractual relations. In the context of freedom of contract, which remains the main principle, the author identifies the risks of dominance of strong parties and suggests using justice mechanisms to restore balance. International experience and practice of applying the principle of justice in the legal systems of different countries, including the Republic of Uzbekistan, are also examined. The article suggests ways to improve legal mechanisms and judicial control to ensure justice in contractual relations.

**Keywords:** Justice, contractual relations, freedom of contract, protection of the weaker party, judicial control, entrepreneurial activity.

### Introduction

The evolution of civil law is inevitably accompanied by a change in its fundamental principles. One of the key trends of our time is the transition from liberal-individualistic to socialized approaches, where the emphasis shifts to protecting weak parties in contractual relations. This is especially relevant in the context of the growing complexity of market relations and the increasing risk of imbalance of interests of the parties. The principle of freedom of contract, which forms the basis of civil circulation, remains fundamental.

However, the implementation of this principle in its classical liberal understanding can lead to the dominance of the strong parties dictating the terms of the contract. This makes it necessary to supplement freedom of contract with mechanisms of justice aimed at protecting the weak party and restoring the balance of interests. In the legal systems of many countries, there are increasingly more rules aimed at reviewing unfair terms of contracts, introducing restrictions on their use and judicial control over compliance with the principles of good faith.

Fairness in contractual liability covers a wide range of issues - from restoring the property balance to imposing sanctions for breach of obligations. International experience confirms that fairness as a fundamental category of law helps to strengthen trust in business turnover and the sustainability of economic ties. The relevance of this topic lies in the need to find a balance between the stability of contractual obligations and flexibility that allows for the consideration of the individual interests of the parties. The introduction of the principle of fairness into contractual relations not only solves the problems of social protection, but also stimulates the development of equal cooperation within the framework of civil turnover.



This study aims to analyze the principle of fairness in contractual liability, its application in the legal systems of different countries and the possibility of improving the legislative mechanisms that ensure its implementation.

Today, the principle of freedom of contract is the most important element of civil law and plays a central role in entrepreneurial activity. It provides businesses with unique opportunities to adapt to market conditions, independently regulate obligations and find the most effective models of interaction. However, as a powerful tool, freedom of contract has both positive and negative aspects that must be taken into account.

On the one hand, freedom of contract provides entrepreneurs with flexibility in forming the terms of agreements. This allows them to take into account the specifics of the business, the needs of partners and the specifics of the industry. Thanks to freedom of contract, entrepreneurs can develop innovative models of interaction, introduce unique forms of payment or cooperation, which stimulates business development and competitiveness. For example, an individual approach to contracts helps small and medium businesses survive in the conditions of tough competition, offering clients and partners the most convenient conditions. In addition, freedom of contract promotes international integration, allowing entrepreneurs to take into account the differences in legal systems when working with foreign partners.

However, freedom of contract also has negative aspects. In conditions of unequal bargaining power, it can be used by strong parties to impose conditions that limit the rights and freedoms of weaker participants. For example, large companies often include conditions in standard contracts that are burdensome for small businesses. This may concern excessive penalties for failure to fulfill obligations, unfair payment terms, or strict requirements for the delivery of goods. In such situations, freedom of contract becomes an instrument of dominance, which leads to an imbalance of interests between the parties and reduces trust in the legal system.

Article 21 of the Constitution of the Republic of Uzbekistan enshrines the right of every person to the free development of his personality, establishing that no one can be imposed with an obligation not provided for by law without his consent, and the implementation of rights and freedoms must be carried out within a framework that does not violate the legitimate interests of other persons, society and the state <sup>1</sup>.

This constitutional principle is fundamental for regulating contractual relations, where fairness is a key element aimed at ensuring a balance of interests of the parties, reasonableness and proportionality of their responsibility, as well as preventing abuse by the strong party to the contract. Restriction of freedom of contractual obligations is allowed only within the limits provided by law and for the purpose of protecting the constitutional system, public order, public health, public morality, rights and freedoms of others.

K. Zweigert and H. Koetz noted that "It is now generally accepted that the free play of economic forces no longer automatically leads to balance and harmony, but, on the contrary, is fraught with the establishment of economic dominance of some over others<sup>2</sup>."

In addition, freedom of contract can become a source of legal disputes if the terms of the

<sup>1</sup> Constitution of the Republic of Uzbekistan (National Legislation Database, 01.05.2023, No. 03/23/837/0241).

<sup>2</sup> Zweigert K. Ketz H. Comparative private law: In 2 volumes. - Volume 1. Fundamentals. Volume 2. Contract. Unjust enrichment. Tort / Translated from German. - Moscow: International Relations, 2010. - P. 328.



agreement are unclearly formulated or contradict the law. Abuses of freedom of contract often lead to the inclusion of clearly unfair terms, which requires court intervention. For example, in the practice of the CIS and European countries, courts increasingly invalidate terms that violate good faith and fairness in order to restore the balance between the parties.

D. Bagdanov noted in his work, “the consistent implementation of the principle of freedom of contract in its liberal-individualistic interpretation leads to one result - the strong becomes even stronger, and the weak even weaker. This will be a dictate of brute force elevated to law, and the law will become a territory of violence.”

In this statement, D. Bogdanov touches upon an important problem related to the liberal-individualistic interpretation of the principle of freedom of contract. He points to the danger that excessive freedom of contractual relations, not limited by external regulators, can lead to the strengthening of the positions of stronger market participants at the expense of weaker ones. This can actually create conditions for the implementation of the rights and interests of more powerful entities, which, in turn, turns the law into an instrument of pressure, not justice. This statement highlights the problem of inequality in market relations, where without proper legal guarantees and protection of weak parties, the principle of freedom of contract can lead to dominance of economically strong participants, ignoring the rights of more vulnerable parties. It also calls into question the fairness of legal relations, since the law in this context begins to serve as an instrument that reinforces inequality, rather than regulating relations on the principles of equality and fairness.

To minimise risks and preserve the positive aspects of freedom of contract, a balance must be struck between its implementation and the principles of good faith and fairness. Judicial review of standard contracts, strengthening the protection of weak parties and limiting the possibility of including unfair terms are important steps in this direction.

Based on foreign experience, one of the closest legal systems for the Republic of Uzbekistan and Russian judicial practice is beginning to develop. Thus, in paragraph 9 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 14.03.2014 No. 16 “On freedom of contract and its limits”<sup>3</sup> provides that if, when concluding a contract, unfair standard terms of the contract are imposed on the weaker party, then, at its request, the court has the right to change or terminate such a contract on the basis of paragraph 2 of Article 428 of the Civil Code of the Russian Federation. The weaker party to the contract has the right to declare the inadmissibility of the application of unfair contractual terms on the basis of Article 10 of the Civil Code of the Russian Federation or the invalidity of such terms under Article 169 of the Civil Code of the Russian Federation.

The Law of the Republic of Uzbekistan “On the contractual and legal basis of the activities of economic entities”<sup>4</sup> regulates contractual relations in the sphere of entrepreneurship and economic activity in Uzbekistan. It is based on the principles of freedom of contract, equality of the parties and good faith, which allows economic entities to independently determine the terms of agreements, but in compliance with the norms provided by law.

The principle of freedom of contract enshrined in this law allows the parties to freely choose the

<sup>3</sup>[https://www.consultant.ru/document/cons\\_doc\\_LAW\\_161322/](https://www.consultant.ru/document/cons_doc_LAW_161322/)

<sup>4</sup>Law of the Republic of Uzbekistan “On the contractual and legal basis for the activities of economic entities”, dated 29.08.1998 No. 670-I, No. 03/24/911/0142.



form and terms of their obligations. However, as in other legal systems, this principle has limitations. The contracts concluded must not contradict the current legislation, and their terms cannot violate the rights of the parties, for example, excessively burden one of the parties or violate the general principles of good faith and reasonableness.

Naturally, the problem of judicial interventionism in a contract is difficult to resolve, since it is aimed at establishing a balance between such fundamental ideas and values as the stability of a contract and its fairness. However, the literature points to the inevitability of delegating authority to assess the fairness of contractual terms to the courts. The absence of an alternative to retrospective (ex post) restriction of contractual freedom by the courts, supplementing a certain set of obvious imperative ex ante restrictions, to one degree or another, are recognized in most modern legal systems<sup>5</sup>. This predetermines the need to include in the Civil Code of the Russian Federation norms that directly allow the possibility of judicial control over the fairness of contractual terms. As B.N. Kashnikov metaphorically pointed out in this regard, "the concept of justice resembles a crystal that in each era and even for each researcher turns its own specific facet, while the other facets remain in the shadows"<sup>6</sup>. Freedom of contract remains a powerful tool for entrepreneurs, capable of promoting business development and strengthening market turnover. However, its use requires clear restrictions and supplements with protection mechanisms in order to avoid abuse and ensure equality of the parties. This approach creates a stable and fair legal environment that serves the interests of all participants in civil turnover.

In Western legal doctrine and law enforcement practice, the emphasis on two aspects of contract fairness-procedural and substantive-reflects a comprehensive approach to assessing contractual relations. Procedural fairness focuses on the process of concluding a contract, including an analysis of preparation, negotiations, and the balance of power between the parties. This aspect emphasizes the importance of honesty and openness during negotiations, which can prevent abuse of rights and manipulation by stronger participants.

Substantive (or real) justice focuses on the terms of the agreement itself, assessing them from the perspective of fairness and equality of the parties. This is especially important in the context of protecting the weaker party from disadvantageous and unfair terms that may be imposed through excessive use of contractual freedom.

The problem of procedural unfairness, which is emphasized by Western legal systems, emphasizes the need for judicial intervention when the contracting process has been improperly organized, which could affect the free will of the parties. This helps prevent contracts based on coercion, manipulation or lack of information. This approach helps to balance the interests of the parties, ensuring not only legality but also fairness in legal relations.

It should be noted that in modern doctrine and law enforcement practice, the question of the need for greater consideration of the material aspect of contractual fairness and the admission of interference in the contract regardless of the establishment of procedural injustice is increasingly being raised.

Article 326 of the Civil Code of the Republic of Uzbekistan<sup>7</sup>, which regulates the reduction of

<sup>5</sup> Karapetov A.G., Saveliev A.I. Freedom of contract and its limits. Limits of freedom to determine the terms of a contract in foreign and Russian law. - M.: Statut, 2012. - P. 284.

<sup>6</sup> Kashnikov B.N., Aristotle's Concept of General Justice: An Experience of Reconstruction // Ethical Thought. Issue 2. - M.: Institute of Philosophy of the Russian Academy of Sciences, 2001. - P. 107.

<sup>7</sup> Civil Code of the Republic of Uzbekistan, Part 1, 05.06.2024, No. 03/24/931/0402.





penalties, reflects the principle of fairness in contractual obligations. This rule stipulates that the court may reduce the penalty if it is clearly disproportionate to the consequences of the breach of the obligation. This approach is aimed at avoiding situations where fines or penalties become excessive and unfair for the debtor, which may lead to the destruction of his financial stability.

The principle of proportionality and consideration of the interests of both parties to the contract - the debtor and the creditor - is key in this article. A judicial assessment of such factors as the degree of fulfillment of the obligation and the property status of the parties allows for a more accurate and fair determination of the amount of the penalty, which will correspond to the actual consequences of the breach of the obligation.

At the same time, it is important to note that this provision gives courts flexibility in decision-making, which can prevent abuses by creditors seeking unreasonably high compensation for minor breaches of obligations. Reducing the penalty depending on the specific circumstances allows for a balance to be struck between the interests of the parties, ensuring that sanctions remain adequate and fair.

The main disadvantage of Article 326 of the Civil Code of the Republic of Uzbekistan is the possibility of uncertainty and subjectivity in the court's decision-making. Since the article gives the court the right to reduce the penalty based on factors such as the degree of fulfillment of the obligation, the financial position of the parties and the interests of the creditor, this creates a risk of different interpretations of these factors in different judicial acts. This may lead to legal uncertainty and unpredictability for the parties to the contract, since each situation may be considered differently depending on the subjective assessment of the court. There is also a possibility that in some cases the courts will interfere too much with contractual relations, which may weaken the role of freedom of contract. As a result, the parties may be less confident in compliance with the terms of the agreement if the court has the discretion to adjust the penalty, even if it was agreed in advance and reflected the real degree of risk for the creditor. This may reduce confidence in the legal system and worsen the business climate, since entrepreneurs may fear the instability of contractual terms.

The non-equivalence in the counter-provisions of the counterparties in itself may serve as the basis for assessing the contractual terms for their compliance with social standards of justice. It is interesting that in domestic law enforcement practice there are examples of court decisions aimed at maintaining justice in situations where only the fact of unfairness of the contract in relation to the material criterion has been established. Article 326 of the Civil Code of the Republic of Uzbekistan reflects precisely the application of the principle of justice according to material criteria.

Thus, domestic courts are able to partially ensure contractual fairness, even in the presence of only material injustice between the contracting parties. However, judges do not have enough such tools, especially in economic courts. Due to the fact that domestic civilistics has not yet developed a consistent concept of contractual fairness, its criteria and clear mechanisms, naturally, courts are often inconsistent in applying the ideas of fairness.

The principle of fairness in contractual relations and liability of the parties is an important element of the modern legal system aimed at creating more balanced mechanisms that protect the interests of all participants in civil turnover. In the context of the growing complexity of market relations and increasing risks of imbalance of interests of the parties, the emphasis on protecting weak



participants is becoming especially relevant. Fairness in the context of contractual obligations helps prevent the dominance of strong parties and helps restore balance, which in turn strengthens trust in the legal system and improves the business climate. However, despite the positive changes, in practice, the implementation of the principle of fairness faces a number of difficulties, primarily due to the uncertainty and possible subjectivity of court decisions. The intervention of judicial bodies in contractual terms aimed at maintaining fairness must take into account the balance between the stability of the contract and the flexibility of legal mechanisms. This requires clear regulation and the development of clear criteria for the application of the principle of fairness in judicial practice.

In order to further improve the legal regulation of contractual relations in the Republic of Uzbekistan, it is necessary to develop clearer and more specific mechanisms for applying the principle of fairness in contractual obligations, which will be able to ensure uniformity and predictability of court decisions. Such an approach will help strengthen judicial control over compliance with good faith and fairness in contracts, especially in the context of protecting weak parties from unfair conditions. In addition, it is necessary to continue developing the theory of contractual fairness in domestic civil law to improve law enforcement practice and ensure effective judicial control. Strengthening the use of the principle of fairness in contractual relations should be aimed at creating a legal system that will promote equality of the parties and strengthen stability in business and entrepreneurial relations between business entities, and will also serve as an effective tool in the development of the economy and entrepreneurship in the country.

## References

1. Constitution of the Republic of Uzbekistan, National Database of Legislation, 01.05.2023, No. 03/23/837/0241;
2. Civil Code of the Republic of Uzbekistan, dated 05.06.2024, National Legislation Database, No. 03/24/931/0402;
3. Law of the Republic of Uzbekistan "On the contractual and legal basis for the activities of economic entities", dated August 29, 1998, National Legislation Database, No. 670-I, No. 03/24/911/0142;
4. Zweigert K. Ketz H. Comparative private law: In 2 volumes. - Volume 1. Fundamentals. Volume 2. Contract. Unjust enrichment. Tort / Translated from German. - Moscow: International Relations, 2010. - P. 328;
5. Resolutions of the Plenum of the Supreme Arbitration Court of the Russian Federation of 14.03.2014 No. 16 "On freedom of contract and its limits";
6. Kostikova A. V. , The principle of fairness in the interpretation of a business contract // Bulletin of St. Petersburg University. Law. - 2012. - No. 4. - P. 42-52;
7. Karapetyan A.G., Saveliev A.I. Freedom of contract and its limits. Limits of freedom to determine the terms of a contract in foreign and Russian law. - M.: Statut, 2012. - P. 284;
8. Kashnikov B.N., Aristotle's Concept of General Justice: An Experience of Reconstruction // Ethical Thought. Issue 2. - M.: Institute of Philosophy of the Russian Academy of Sciences, 2001. - P. 107.

