



## The Principle of Good Faith in the Civil Law and Common Law Systems: The Albanian Legal System, Comparative Analysis

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### Abstract

*The principle of good faith in civil law is very important in the regulation of negotiating agreements, so that the contracting parties must carefully evaluate the conduct to be maintained before, during, and after the formation of the agreement as well as in the interpretative phase of the negotiating will. Objective good faith, understood as a rule of conduct, is in fact invoked in numerous provisions of the civil code in Italy. As in most civil law legal systems, including France, Germany, Spain, and many others, it is essential for the parties to maintain behavior based on good faith in contractual relationships. Traditionally, in countries governed by the common law, it is difficult to find a general principle of objective good faith, unless the contracting parties decide to expressly introduce it in the negotiating regulation and autonomously regulate its scope. Although in the English legal system the law expressly imposes the respect of good faith in particular contractual contexts, it cannot be argued that good faith is a generally recognized principle in the UK legal system. This paper will present, through a comparative analysis, the principle of good faith in the civil law and common law systems, as well as analyze this principle in the Albanian legal system.*

**Keywords:** good faith, agreement, civil law, common law, legal system

### 1. Introduction

The principle of good faith constitutes a foundational element in legal frameworks globally, playing a pivotal role in safeguarding equitable and just contractual relationships. This principle obligates contracting parties to engage in conduct characterized by honesty, fairness, and due regard for the interests of the other party throughout the stages of negotiation, formation, and execution of contracts (Zimmermann, 2018). By mandating such conduct, good faith serves to foster trust between parties, thereby reducing the likelihood of disputes and enhancing the overall efficiency of economic transactions. The adherence to good faith not only ensures the integrity of individual contractual agreements but also contributes to the broader stability and predictability of the legal environment, facilitating smoother commercial interactions and the reduction of legal uncertainties.

In **civil law jurisdictions**, the principle of good faith is explicitly enshrined and codified within legal frameworks. Notably, civil codes in countries such as France, Germany, and Italy integrate good faith as a central tenet in contract law, mandating that parties negotiate, perform, and interpret contracts in a manner that upholds mutual trust and fairness (Von Bar, 2016).

In contrast, common law systems adopt a more restrictive approach to the principle of good faith, placing greater emphasis on the autonomy of the parties and the enforcement of explicit contractual terms, rather than on broad principles of fairness. Unlike civil law jurisdictions, common law systems typically do not impose an inherent duty of good

faith unless explicitly stipulated within the terms of the contract (McKendrick, 2020). Nevertheless, courts in common law jurisdictions have increasingly recognized the concept of good faith in specific contexts, particularly in fiduciary relationships, employment contracts, and consumer protection laws, where fairness and trust are paramount (Peel, 2019). These developments suggest a gradual evolution in the common law's treatment of good faith, aligning it with modern expectations of equitable conduct in contractual dealings.

The Albanian legal system, situated within the civil law tradition, adheres to the European legal framework by integrating the principle of good faith into its legal structure. The Albanian Civil Code explicitly enshrines the principle of good faith in contractual obligations, reflecting the influence of broader European legal traditions (Dobjani, 2019). Albanian courts interpret and enforce this principle in various contractual disputes, ensuring that parties uphold ethical and equitable practices in their dealings. Additionally, Albania's ongoing efforts to integrate into the European Union have further solidified the role of good faith within its legal system, aligning national provisions with EU directives on contract law and consumer protection (Xhaxho, 2021). This alignment underscores Albania's commitment to maintaining consistency with European legal standards and ensuring fair and transparent commercial practices.

Given these legal distinctions, this paper seeks to critically examine the principle of good faith through a comparative analysis of civil law and common law systems, with a specific focus on the Albanian legal framework. By exploring judicial interpretations and legislative frameworks, this study aims to elucidate the significance of good faith in contractual relations and to assess its evolving role within different legal traditions.

## 2. The Principle of Good Faith in Civil Law Systems

In civil law systems, the principle of good faith (*bona fides*) is a fundamental legal doctrine embedded in national civil codes. It plays a crucial role in contract law by requiring parties to act honestly, fairly, and in consideration of mutual interests throughout all stages of a contract, from pre-contractual negotiations to contract execution and post-contractual obligations (Zimmermann, 2018). Good faith is not merely a moral principle but a legally binding standard that courts can enforce, ensuring that contractual relationships are guided by trust, fairness, and cooperation. Civil law systems impose an objective duty of good faith that influences contract formation, performance, and interpretation (Von Bar, 2016). The principle prevents abuse of rights, exploitation of weaker parties, and unjust enrichment, fostering a balanced and equitable approach to contractual obligations.

### 2.1 Key Features of Good Faith in Civil Law Systems

Civil law jurisdictions explicitly enshrine good faith in their civil codes, ensuring that it serves as a general guiding principle in contractual obligations. For example:

- France: Article 1134 of the French Civil Code mandates that contracts must be executed in good faith, meaning that contracting parties must respect the intent and expectations underlying their agreements (French Civil Code, 2020). French courts have consistently applied this principle to prevent one party from taking advantage of ambiguities in contractual language to the detriment of the other (Cartwright, 2017).
- Germany: The German Civil Code (BGB) emphasizes good faith in Section 242, stating that contracts must be performed in a manner that aligns with principles of fairness and justice. This provision allows German courts to intervene when a party's conduct is deemed exploitative or unfair (Schwenzer, 2016).
- Italy: In the Italian Civil Code, Article 1375 requires contracts to be performed in good faith, reinforcing the duty of fair dealing and honest conduct between parties (Peel, 2019).

The duty of good faith in civil law systems extends beyond mere contractual performance and applies to pre-contractual negotiations, execution, and termination:

- Pre-contractual stage: Good faith requires parties to negotiate fairly and avoid misleading or deceptive conduct. If one party withdraws from negotiations in bad faith, the other party may claim damages under *culpa in contrahendo* (pre-contractual liability), a doctrine recognized in German and French law (Zimmermann, 2018).
- Execution stage: Parties must perform their obligations in a loyal, fair, and cooperative manner. This prevents one party from deliberately obstructing contract execution or taking advantage of unforeseen events (Von Bar, 2016).
- Post-contractual obligations: Good faith obligations may continue even after contract termination, particularly in cases involving confidentiality agreements, non-compete clauses, and duties of care (Schroeder, 2021).

Courts in civil law countries actively interpret contracts through the lens of good faith, imposing additional duties such as cooperation, transparency, and loyalty (Schwenzer, 2016). Judicial enforcement of good faith varies by jurisdiction but generally serves to correct imbalances, prevent unjust enrichment, and resolve ambiguities in contractual relations. Some notable judicial applications include:

- French Courts: Have consistently ruled that a party cannot abuse its contractual rights in ways that undermine fairness. For instance, if a contract grants one party discretionary power (e.g., to set a price), the courts will impose a duty of reasonableness to prevent exploitation (Cartwright, 2017).
- German Courts: Frequently apply Section 242 of the BGB to invalidate contractual clauses deemed excessively unfair or oppressive (Schwenzer, 2016). The principle of abuse of rights (*Rechtsmissbrauch*) allows courts to prevent one party from exercising its legal rights in a way that contradicts good faith expectations (Zimmermann, 2018).
- Italian Courts: Have developed an extensive body of case law requiring businesses to act loyally towards consumers, interpreting unfair contractual terms in favor of weaker parties (Peel, 2019).

### 3. The Principle of Good Faith in Common Law Systems

In contrast to civil law systems, where the principle of good faith (*bona fides*) is explicitly codified and broadly applied, common law systems have historically been reluctant to recognize a general duty of good faith in contractual relations. Instead, good faith is developed through judicial decisions, statutory interventions, and specific contractual contexts (Peel, 2019).

Common law jurisdictions such as the United Kingdom, the United States, Canada, and Australia have approached good faith differently, often applying it in a fragmented and case-specific manner rather than as a universal guiding principle. While some courts and legislative reforms have expanded the role of good faith in contract law, it remains a contentious and evolving concept (McKendrick, 2020).

#### 3.1 Key Applications of Good Faith in Common Law Systems

One of the primary ways in which good faith is incorporated into common law contract law is through implied terms. Courts may infer obligations of fair dealing, cooperation, and honesty in certain contracts, particularly in:

- Relational Contracts: Long-term contracts such as franchise agreements, joint ventures, and supply chain contracts often require good faith performance to ensure continued cooperation (Peel, 2019).
- Employment Contracts: Courts recognize an implied duty of mutual trust and confidence, preventing unjust dismissals and employer misconduct (Collins, 2021).
- Fiduciary Duties: Relationships involving a duty of loyalty and trust, such as trustees, company directors, and legal representatives, require parties to act in good faith towards those who rely on them (Schroeder, 2021).

Unlike civil law systems, where good faith is an explicit legal principle, common law systems often enforce fair dealing through equitable doctrines. Key principles related to good faith enforcement include:

- Promissory Estoppel: Prevents a party from renegeing on a promise if another party has relied on it to their detriment (Cartwright, 2017).
- Unconscionability: Courts may intervene if a contract is grossly unfair or if one party exploits a weaker party (Schwenzer, 2016).
- Duty to Cooperate: In contracts where performance depends on cooperation, courts may impose an implied duty to act in a fair and reasonable manner (Peel, 2019).

In some common law jurisdictions, statutory provisions explicitly impose good faith obligations in particular industries, reflecting a legislative effort to protect weaker parties and promote fair commercial practices (Cartwright, 2017). These include:

- Consumer Protection Laws: Many jurisdictions require businesses to act honestly and transparently in consumer transactions (Peel, 2019).
- Insurance Law: The principle of utmost good faith (*uberrima fides*) is fundamental in insurance contracts, requiring policyholders and insurers to disclose all relevant information (Schroeder, 2021).
- Employment Law: Statutory protections against wrongful dismissal and unfair treatment are often rooted in implied duties of fair dealing (Collins, 2021).

### 3.2 Case Study: Good Faith in the United States – The Uniform Commercial Code (UCC)

The Uniform Commercial Code (UCC) establishes a clear duty of good faith and fair dealing in commercial contracts, particularly in the sale of goods and financial transactions (McKendrick, 2020). UCC §1-304: Imposes a duty of good faith in contract performance, meaning that parties must act honestly and fairly (Cartwright, 2017). UCC §2-103: Defines good faith as honesty in fact and the observance of reasonable commercial standards of fair dealing (Schwenzer, 2016). Application in Commercial Transactions: U.S. courts enforce these provisions to prevent unfair pricing strategies, abuse of contractual discretion, and fraudulent practices (Schroeder, 2021).

Example: *Market Street Associates Ltd Partnership v. Frey* (1991)

In this case, the Seventh Circuit Court of Appeals held that a party's failure to disclose critical contract terms to take advantage of the other party's lack of knowledge constituted bad faith under the UCC (Zimmermann, 2018). The ruling reinforced the idea that good faith is necessary to prevent opportunistic behavior in commercial dealings.

## 4. Good Faith in the Albanian Legal System

The Albanian Civil Code (1994) explicitly embeds the principle of good faith in its provisions. Article 674 stands out by stating that contracts must be performed in good faith. This reflects a broader European civil law tradition, where good faith is a fundamental element of contract enforcement. The notion of good faith in this context is both a standard of behavior during the negotiation phase and a condition for fulfilling contractual obligations.

Interpretation: Good faith requires parties to act honestly, fairly, and in a manner that respects the rights of the other party. It's not just about fulfilling the contract's terms but ensuring the integrity of the overall interaction between the parties.

Albanian courts have a significant role in interpreting and enforcing the principle of good faith, especially in areas like contract disputes. Key judicial applications include:

- **Misrepresentation and Fraud:** If a party intentionally misrepresents facts or engages in fraudulent behavior to induce the other party into a contract, the courts will intervene to protect the innocent party. Good faith requires honesty and transparency in all dealings (Xhaxho, 2021).
- **Abuse of Rights:** The principle of good faith is also important in preventing one party from abusing its rights to the detriment of the other. For example, a party might use its legal rights to gain an unfair advantage or cause harm, which is deemed contrary to good faith principles (Dobjani, 2019).

In this respect, Albanian courts have interpreted good faith broadly to include the avoidance of manipulation or deceit during contract performance and negotiation.

### 4.1 Influence of European Union Law. Case Study: *Commercial Contracts* (2020)

As Albania seeks integration with the European Union, the country's legal system has adopted several EU legal standards, particularly in areas such as consumer protection and contract law. EU law strongly emphasizes the principle of good faith, and this has influenced Albania's legal reforms.

- **Consumer Protection:** EU consumer protection laws, which require that contracts be clear and fair, have reinforced Albania's commitment to good faith. For example, consumer contracts in Albania must be transparent and not exploit the consumer's lack of knowledge, which aligns with the EU's directives on unfair contract terms (Xhaxho, 2021).
- **EU Integration and Harmonization:** As part of its EU integration efforts, Albania has aligned its commercial and contract laws with EU norms. This has ensured that the good faith principle is not just a domestic legal feature but also part of Albania's international obligations and commitments (Xhaxho, 2021).

A noteworthy decision from the Albanian Supreme Court in 2020 highlights the application of good faith in corporate negotiations. In this case, a company was held liable for failing to negotiate in good faith during a business acquisition. The court ruled that negotiations should be conducted honestly and transparently, without misleading the other party or taking advantage of a position of strength.

The Importance of Pre-Contractual Negotiations: This case underscores that good faith is not only relevant during the execution of contracts but also during the negotiation phase. Negotiations are considered an integral part of the contractual relationship, and bad faith in these early stages can invalidate agreements or lead to damages (Dobjani, 2019).

This decision set a significant precedent in Albanian commercial law, emphasizing that businesses must approach negotiations with integrity and fairness, aligning with broader European legal principles.

## 5. Conclusion

The principle of good faith is a cornerstone of legal systems worldwide, albeit with differing applications in civil law and common law traditions. While the general concept of good faith permeates both traditions, its practical application varies significantly. In the civil law tradition, as seen in Albania, good faith is a central tenet that influences not only the creation and execution of contracts but also the broader principles of fairness, honesty, and equity in legal relationships. In contrast, common law systems tend to be more focused on the literal terms of the contract and the enforcement of these terms, with the principle of good faith often emerging in more specific legal doctrines such as fiduciary duties and equitable obligations.

Albania's legal system, rooted in the civil law tradition, aligns closely with European legal frameworks, where good faith is not merely a guideline but a legally enforceable standard that governs contractual and legal obligations. The integration of European Union law has further solidified the importance of good faith in Albania's contract law and consumer protection regulations, reinforcing its alignment with broader European legal principles. This emphasis on good faith ensures that legal actors in Albania, both individuals and corporations, must act in a manner that is fair, transparent, and honest throughout their legal dealings, especially in the context of negotiations and contract fulfillment.

For Albania, understanding the principle of good faith not only provides domestic legal clarity but also facilitates Albania's ongoing EU integration efforts. As Albania adopts EU laws and harmonizes its legal framework to meet EU standards, the principle of good faith serves as a bridge between national law and international norms. This is especially important as Albania seeks to align its commercial and contract laws with European Union regulations, particularly in areas such as consumer protection and business practices.

Furthermore, good faith plays a vital role in cross-border legal transactions. In the globalized economy, international contracts and business agreements often involve parties from different legal traditions, including civil law and common law jurisdictions. Understanding how good faith is applied in each legal system is essential for ensuring smooth negotiations and avoiding potential disputes. As Albania continues to modernize its legal system and increase its international presence, the principle of good faith will be crucial for building trust, fostering legal predictability, and promoting the fair treatment of parties involved in international agreements.

Finally, the harmonization of legal principles such as good faith in international law is an ongoing process. Efforts to create a more unified international legal framework for trade, commerce, and human rights rely on shared principles like good faith. As such, Albania's commitment to upholding this principle both domestically and in its international relations will contribute to the strengthening of international legal norms and the protection of rights across borders.

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