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## THE PRINCIPLE OF GOOD FAITH IN THE PERFORMANCE OF CIVIL CONTRACTS

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**Abstract:** *THE PRINCIPLE OF GOOD FAITH REPRESENTS ONE OF THE FUNDAMENTAL PILLARS OF CONTEMPORARY CIVIL LAW, WITH TRANSVERSAL APPLICABILITY THROUGHOUT ALL STAGES OF CONTRACTUAL RELATIONS—FROM THE NEGOTIATION OF AGREEMENTS TO THE PERFORMANCE OF CONTRACTUAL OBLIGATIONS. THIS PAPER AIMS TO PROVIDE AN IN-DEPTH ANALYSIS OF THIS PRINCIPLE, HIGHLIGHTING BOTH DOCTRINAL DEVELOPMENTS AND JUDICIAL APPLICATIONS THAT HAVE SHAPED ITS UNDERSTANDING IN THE CURRENT CONTEXT. ADDITIONALLY, THE RESEARCH EXAMINES THE INTERACTION BETWEEN GOOD FAITH AND OTHER FUNDAMENTAL CONCEPTS, SUCH AS EQUITY, CONTRACTUAL LOYALTY, AND THE ABUSE OF RIGHTS, EMPHASIZING BOTH ITS NORMATIVE ROLE AND ITS LIMITATIONS IN JURISPRUDENCE. FURTHERMORE, THE PAPER PROPOSES A COMPARATIVE ANALYSIS BETWEEN THE CIVIL CODE OF 1865 AND THE NEW CIVIL CODE OF 2011, WITH A FOCUS ON THE REGULATIONS REGARDING GOOD FAITH IN THE PERFORMANCE OF CONTRACTS, AS OUTLINED IN ARTICLE 1170. THROUGH THIS COMPARISON, THE SIGNIFICANT LEGAL IMPACT THAT THE NEW REGULATIONS HAVE ON THE SECURITY OF CONTRACTUAL RELATIONS AND THE ENTIRE NORMATIVE FRAMEWORK OF CIVIL OBLIGATIONS IS HIGHLIGHTED. IN CONCLUSION, IT IS ARGUED THAT GOOD FAITH, ALTHOUGH STRONGLY INFLUENCED BY SOCIAL AND MORAL REQUIREMENTS, REMAINS AN ESSENTIAL CONCEPT IN MAINTAINING CONTRACTUAL BALANCE, PROVIDING A SOLID FRAMEWORK FOR RESOLVING DISPUTES ARISING FROM NON-PERFORMANCE OR DEFECTIVE PERFORMANCE OF CONTRACTUAL OBLIGATIONS.*

**Keywords:** *GOOD FAITH, PERFORMANCE OF OBLIGATIONS, CASE LAW, CIVIL CONTRACTS, CIVIL CODE*

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## INTRODUCTION

The principle of good faith in civil law represents a constant in the development of the theory of obligations and forms the foundation of contractual relations, with a dual significance – both as a moral code of conduct and as an objective legal requirement. The origins of this principle can be traced back to Roman law, where *bona fides* was established as an essential instrument for ensuring loyalty and mutual trust between contracting parties. In the modern era, good faith has maintained its relevance, evolving in line with social and economic needs, becoming a key criterion for the interpretation and application of contractual clauses, as well as for assessing the behavior of the parties involved.

The Romanian Civil Code, both in its 1865 form and in the revised version of 2011, enshrines this principle as a cornerstone of the law of obligations. Article 1170 of the current Civil Code reaffirms the necessity of observing good faith at all stages of the contract—from negotiation to its conclusion and execution—imposing a standard of legal conduct that cannot be limited by contrary agreements. In this context, the principle of good faith plays a crucial role in balancing the rights and obligations of the parties, protecting them from abuses, and ensuring the fair interpretation of ambiguous or incomplete clauses.

In both doctrine and case law, good faith is recognized as a mandatory legal requirement, although its applicability has sparked numerous controversies. (Stănescu, 2008, p.76) Judicial practice has highlighted multiple cases where good faith has been invoked both to justify the non-performance of contractual obligations and to sanction abusive or deceitful behavior. These interpretive divergences, between the contractor's loyalty and the protection of contractual equity, have highlighted a complex legal issue, whose theoretical and practical framework requires a deep and thorough analysis.

The purpose of this paper is to explore the application of the principle of good faith in the performance of civil contracts, offering a comparative perspective between doctrinal and case law developments, as well as recent regulations in Romanian and European law. We will also analyze the limits of this principle, focusing on cases where its invocation may lead to abuses or misinterpretations, and evaluate how good faith contributes to the equity and security of legal relationships.

## MAIN BODY

### I. Fundamental Theories Regarding Good Faith

In specialized literature, good faith has been interpreted from various theoretical perspectives, generating several schools of thought, the most important of which are the derogatory theory, the tripartite theory, and the bipartite theory.

#### a. The Derogatory Theory from Strict Law

According to this theory, good faith represents a derogation from the strict application of legal norms, intervening in exceptional situations to temper the rigidity of formal law. This concept holds that, in principle, the rules of "*strict law*" govern legal relations, while good faith functions as a corrective mechanism, aimed at preserving equity in cases where a literal application of the law would result in unjust outcomes. This theory has been criticized for excessively limiting the role of good faith, reducing it to a remedy in extreme situations without recognizing its constant role in the performance of contracts.



### b. The Tripartite Theory

One of the most influential doctrinal approaches, the tripartite theory asserts that good faith fulfills three essential functions within contractual relationships: loyalty, equity, and mistaken belief.

- **Loyalty:** Good faith imposes an obligation of loyalty on the parties at all stages of the contract. This requires not only compliance with the obligations assumed but also the avoidance of any behavior that could harm the other party. Romanian and comparative case law has confirmed that good faith, viewed as loyalty, intervenes not only at the moment of the contract's conclusion but also during its execution, preventing abusive or manipulative behavior.

- **Equity:** In this sense, good faith acts as a legal corrective, intervening where the strict application of a rule would create an imbalance between the rights and obligations of the parties. Equity is not merely a moral concept but a norm with direct legal effects, designed to ensure that the parties do not abuse their contractual rights to the detriment of the other party.

- **Mistaken Belief:** According to this aspect, good faith may also involve the sincere but mistaken belief of one party regarding their rights or obligations. In such cases, good faith can be invoked to protect the party acting under an erroneous yet sincere belief, thus avoiding the application of sanctions that would result from a strict interpretation of the law.

### a. The Bipartite Theory

The bipartite theory reduces good faith to two major aspects: objective good faith and subjective good faith.

- **Objective good faith** is synonymous with loyalty and the fulfillment of commitments in a manner consistent with general standards of conduct. It refers to the correct and diligent behavior that a person acting in good faith demonstrates in the performance of contractual obligations, excluding any intention to deceive the other party. This objective standard is particularly important in contract law, ensuring an appropriate model of behavior for all parties involved in a legal relationship. According to R. Vouin's observation, this dimension of good faith grants the judge the prerogative not only to temper the formal rigidity of the contract but also to adapt its provisions to new or unforeseen circumstances, thus ensuring a fair and dynamic application of the contract. (Vouin, 1939, p.34)
- **Subjective good faith**, on the other hand, refers to the sincere but mistaken belief of one party that their actions are in accordance with the law and their contractual obligations. This subjective dimension plays an essential role in evaluating situations where a party acted based on a misunderstanding of the circumstances, but without bad faith or the intent to deceive.

### b. The Theory of the Unity of the Concept of Good Faith

In the doctrine, it has been argued that "*the notion of good faith is both complex and unique*," due to the fact that it encompasses multiple dimensions of human behavior and closely relates law to fields such as psychology and, especially, morality. (Grophe, 1928, p.15) Thus, good faith presents



itself as a dynamic, "*comprehensive and living*" notion that transcends strict legal norms, incorporating fundamental psychological concepts, such as sincere intention and the legitimate belief of the parties. This characteristic transforms good faith from a mere moral principle into an essential pillar of the law, conferring it not only an ethical function but also an undeniable legal value, regulating contractual behavior and decisively contributing to ensuring equity in legal relations.

## II. Legal Regulations

The principle of good faith has undergone significant evolution within Romanian civil law, both in the old Civil Code and in the current Civil Code. Initially, regulated by a definition strictly related to the possession of real estate, good faith was described in Article 1898 (1) of the old Civil Code as the belief of the possessor that "the person from whom he acquired the property had all the qualities required by law to be able to transfer ownership." Although relevant in the context of property rights, this approach was limited and did not reflect the complexity of modern contractual legal relations.

Beyond this minimalist definition, the legislator did not provide clear criteria for assessing good faith in all legal relationships, leaving the courts the task of interpreting this concept based on the circumstances of each case. This lack of clarity allowed for a variety of subjective interpretations, and the effects were felt in judicial practice, where the need for predictability and consistency was often undermined. (Floare, 2014)

With the adoption of the Civil Code in 2011, the regulation of good faith was expanded and formalized, both through general definitions and specific norms that impose the obligation to act in good faith throughout the entire contractual relationship. Thus, Articles 14, 1170, and 1183 of the current Civil Code impose a clear obligation on the parties to act with honesty and loyalty, not only in the performance of contracts but also in the pre-contractual stage, thereby consolidating the principle as a standard of legal conduct in all phases of legal relations.

Article 14 of the Civil Code states that "*any natural or legal person must exercise their rights and fulfill their civil obligations in good faith, in accordance with public order and good morals.*" This norm reflects a general standard of conduct but, similar to the regulations in the old Civil Code, leaves the practical interpretation of good faith to the discretion of the courts, without providing objective criteria for evaluating the parties' behavior. This vagueness can lead to a variable application of the norm, allowing courts to consider the circumstances of each case individually while not providing a predictable and clear framework for evaluation.

Article 1170 goes further, imposing on the parties the obligation to act in good faith throughout the duration of the contractual relationship, including both the negotiation phase and the execution of the contract. This regulation establishes the imperative nature of good faith at all contractual stages, thus preventing abuses that could arise during negotiations or in the interpretation and execution of contractual clauses.

Through Article 1183, a specific regulation is added for the pre-contractual stage, which states that "*the party engaging in negotiations is obliged to respect the requirements of good faith.*" This serves as a necessary complement to the previous articles, emphasizing that good faith must be present not only in the contractual relationship itself but also when negotiating the contractual terms, preventing bad faith behaviors that could harm the future contract.

However, one aspect that continues to be criticized in doctrine and has been reflected in jurisprudence is the fact that the legislator has not clearly defined the sanctions for violating this obligation of good faith. (Urs, 2015, p. 51) Although there are general provisions regarding abuse of



rights and contractual liability, it is the courts that, through their interpretations, must establish the limits and consequences of bad faith behavior.

Therefore, the concept of good faith, although regulated more clearly in the current Civil Code, remains largely dependent on jurisprudential interpretations and its application in concrete cases. This allows for the necessary flexibility in assessing the behavior of the parties in contractual relationships but also leaves room for potential uncertainties, especially in cases where the norms are applied in a more subjective manner.

### **III. The Role of Good Faith in Comparative Legal Systems**

The principle of good faith is recognized as an essential standard in contractual legal relations across numerous legal systems. While the legislation of each state may provide different formulations of this concept, its essence remains the same: good faith involves acting with loyalty, honesty, and respect for the legitimate interests of the other parties involved in legal relations.

In the context of Romania, as discussed earlier, Article 14 of the Civil Code enshrines the general obligation of good faith, applicable in all phases of legal relations. Similarly, in other jurisdictions, this principle is present in comparable forms. For example, the French Civil Code, in Article 1134, mandates the performance of contracts in good faith, while the German Civil Code (BGB), through Section 242, stipulates that the debtor must fulfill their obligations in accordance with good faith and customary practices. This extension of the principle's applicability in Germany is complemented by Section 157 BGB, which requires that the interpretation of contracts is also conducted in light of good faith, underscoring the role of this principle not only in fulfilling obligations but also in interpreting contractual clauses. (Leupertz, 2016)

It is important to note that, although the formulations in the French Civil Code and BGB do not explicitly refer to a "general principle of good faith," jurisprudence has expanded the meaning and application of this concept across multiple domains of civil law. The same phenomenon can be observed in other countries, such as Moldova, Ukraine, Russia, the Netherlands, and Kazakhstan, where good faith has been established not only in contractual relationships but also as a general principle for the protection of civil rights.

In the Civil Code of the Republic of Moldova, for example, the addition of the phrase "*protection of good faith*" in Article 1 underscores the importance of this principle not only in contractual relations but also in the exercise of civil rights and obligations. Similarly, the Civil Code of the Russian Federation, in Article 1 alin. (3), enshrines the obligation of participants in civil relations to act in good faith in all aspects related to the establishment, exercise, and protection of civil rights. Thus, we can observe a comparative approach across different legal systems that recognize good faith as a central element of legal equity and contractual loyalty.

### **IV. The Importance and Role of Good Faith in Contractual Relations**

As highlighted in the previous sections, good faith is of utmost importance in ensuring a fair balance between parties and maintaining mutual trust in contractual relationships. In Romanian law, this obligation is enshrined in Article 117, which imposes good faith in both the pre-contractual stage and during the performance of the contract.

In contractual relations, good faith is not limited to the proper execution of obligations; it also encompasses a series of behavioral standards relating to loyalty, transparency, and cooperation. These are essential for maintaining a climate of trust and stability in legal relations, thereby contributing to the avoidance of conflicts and the equitable interpretation of contractual clauses. For example, Article 1272 of the Civil Code reflects the function of supplementing contracts based on



good faith, allowing courts to interpret and complete contracts fairly, in accordance with reasonable standards of conduct.

### **V. Negotiating and Forming Contracts in Light of the Principle of Good Faith**

The current Civil Code enshrines the principles of contractual freedom and good faith as fundamental elements in contract formation. Contractual freedom, defined as the ability of parties to choose their contractual partners and negotiate the content of the contract, is limited by law, public order, and good morals, as stipulated in Article 11 of the Civil Code. In this context, good faith plays an essential role, imposing a standard of honest and loyal behavior between parties during negotiations and in forming the agreement of wills. (Hristache, 2012)

According to Article 1183 of the Civil Code, parties are obligated to respect the requirements of good faith during negotiations. This means that they must act sincerely, provide accurate and complete information, and not distort or conceal relevant facts concerning the future contract. Thus, good faith becomes a protective mechanism against abuses of rights, preventing manipulative or deceptive behaviors that could affect contractual balance.

The negotiation process can be conducted in two main ways: through detailed negotiation of all contractual clauses or by unreserved acceptance of a contracting offer, as per Article 1182 (1) of the Civil Code. In both cases, good faith is particularly important, ensuring that the parties act transparently and in line with mutual expectations. Additionally, good faith entails respecting agreements on the essential elements of the contract, even if certain less important details may be established later. (Baias, 2021)

Another significant aspect is the prevention of bad faith negotiations, regulated by Article 1183 (3) of the Civil Code. This provision penalizes situations in which a party initiates or continues negotiations without a genuine intention to contract, causing harm to the other party. In such cases, the party acting contrary to good faith may be required to compensate for the damage incurred, including expenses incurred during negotiations or the forfeiture of other favorable offers.

Regarding the formation of the agreement of wills, contracts must comply with the validity conditions set forth by law, ensuring that consent is given freely and without defects that could affect the contract's validity, such as deceit or coercion. Good faith requires parties to avoid any pressure or deceit in the process of forming consent, thus protecting the integrity of contractual will.

Negotiation, from the perspective of good faith, does not exclude flexibility but imposes a high level of loyalty and transparency. Parties are obliged to reach a consensus on the essential elements of the contract, and in situations where they cannot agree on secondary clauses, the court may intervene to complete the contract, taking into account its nature and the parties' intentions, according to Article 1182 (2) of the Civil Code.

Good faith in the negotiation and formation of contracts ensures not only the stability of legal relations but also the protection of parties against potential contractual imbalances. The rigorous application of this principle facilitates the establishment of contractual relationships based on trust and loyalty, thereby laying the foundation for a predictable and equitable legal climate.

### **VI. Performance of Contracts**

The concept of contract performance refers to the fulfillment of the obligations owed according to the parties' agreement. This is manifested in various ways, including the transfer of a real right, the provision of a service, the execution of work, or the payment of sums of money. In



legal terminology, voluntary performance is referred to as "payment," regardless of the nature of the obligation arising from the contract.

Obligations can be performed in two main ways: voluntary performance (direct or in kind) and enforced performance. According to Article 1469 of the Civil Code, voluntary performance is preferred, representing a form of fulfilling the obligation willingly. Conversely, enforced performance refers to the achievement of the obligation through the force of public authority, as outlined in Articles 1527 and 1530 of the Civil Code. This can be done either through direct performance in kind or indirectly, through compensation.

Direct performance of obligations generally occurs voluntarily. However, if the debtor refuses to fulfill the obligation willingly, the creditor has the right to request performance in kind through the competent authorities. This option ensures the protection of the creditor and guarantees that contractual obligations are met.

On the other hand, indirect performance becomes relevant when direct performance is not possible or no longer interests the creditor. In these situations, the creditor may seek damages to compensate for the harm suffered due to the debtor's culpable non-performance of the obligation. It is important to emphasize that, in cases of fortuitous impossibility, the obligation is extinguished, and the creditor cannot claim compensation. (Boila, 2023, p.89)

Good faith in contract performance is essential, as the parties are obliged to fulfill not only the obligations stipulated in the contract but also those arising from legal norms, local customs, equity, or commercial practices. This means that during the performance of contracts, each party must act with integrity and fairness, respecting the established terms and conditions.

Good faith also imposes an active cooperation between the parties in achieving the contractual objectives. Thus, each party must perform their obligations adequately and on time, avoiding abusive or obstructive behaviors. For example, a debtor facing difficulties in fulfilling the obligation should communicate openly with the creditor, seeking solutions to mitigate the negative impact of delays. (Dogaru, 2019, p.90)

## CONCLUSIONS

The analysis of the principle of good faith in civil law highlights its fundamental role as a pillar of contractual relationships, combining aspects of a moral nature with objective legal requirements. As demonstrated in this article, good faith is not merely a simple norm of conduct, but an imperative requirement that governs all stages of the contract—from negotiations to formation, and, crucially, to execution.

The Romanian Civil Code, both in its 1865 version and in the updated 2011 version, enshrines this principle as a central element of the law of obligations. In particular, Article 1170 emphasizes that the parties must act in good faith not only in contractual relationships but also in the pre-contractual phase, thus establishing a standard of loyalty and honesty essential for preventing abuses and ensuring an equitable interpretation of contractual clauses. This approach reflects not only a legal regulation but also an adaptation of the law to the complexity of contemporary economic and social relations.

The fundamental theories discussed—the derogatory theory, the tripartite theory, and the bipartite theory—demonstrate the diversity and complexity of the conception regarding good faith, each being relevant in the specific context of contractual relationships. In particular, the tripartite theory, by identifying its functions of loyalty, equity, and erroneous persuasion, highlights the



dynamic nature of good faith, underscoring its active role in protecting the balance between contracting parties.

Moreover, the comparative perspective on good faith reveals the importance of this principle in multiple legal systems, including the civil codes of France, Germany, and various jurisdictions in Eastern Europe. This universality of good faith as a regulatory principle reflects its recognition as a global standard of conduct, indispensable for ensuring stability and predictability in contractual relationships.

In conclusion, good faith constitutes not only a legal norm but also an essential ethical principle that enhances social cohesion and trust in commercial relationships. Adhering to this principle is imperative not only for protecting the individual interests of the parties but also for strengthening the integrity of the legal system as a whole. In a continually evolving legal world, deepening research into the applicability and limits of good faith proves to be a necessary endeavor, thus contributing to the development of judicial practices that respond to contemporary challenges.





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