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UNFAIR TERMS IN COMMERCIAL CONTRACTS: RESEARCH FINDINGS

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Abstract
The article examines unfair terms in commercial (B2B) contracts as an independent civil-law phenomenon that cannot be reduced to the doctrine of unconscionable transactions. It is argued that the prevailing focus on administrative, regulatory, and competition-law remedies addresses only the external dimension of the problem while leaving its private-law essence–namely, the structural inequality of bargaining power between contracting parties –ф – without an adequate legal response. Drawing on a comparative legal analysis and the author's empirical research, the study substantiates the propositions that the "weaker party" in B2B relations is an integrative, contextual category and that the appropriate legal consequence is the partial invalidity of an unfair term while the contract as a whole is preserved. As a result, the author proposes a coherent package of amendments to the civil legislation of the Republic of Uzbekistan.

Keywords: unfair terms, commercial contract, freedom of contract, weaker party, good faith, digital platforms, superior bargaining power, partial invalidity, contract of adhesion, civil-law protection.

This study presents comprehensive research devoted to the problem of unfair terms in commercial contracts. The research covers the theoretical, comparative-

legal, and practical dimensions of the legal regulation of unfair contractual terms, an analysis of the category of the weaker party in commercial relations, foreign experience in countering contractual unfairness, and the specific features of applying the relevant mechanisms in the digital economy. On the basis of its findings, the study formulates scholarly grounded conclusions and proposals aimed at improving the civil legislation of the Republic of Uzbekistan and at enhancing the effectiveness of legal protection for participants in commercial relations.

The crux of the matter is that national civil legislation contains no legal definition of "unfair terms," no criteria for identifying them, and no prescribed legal consequences. Attempts to fill this gap by analogy with the doctrine of the unconscionable transaction (Article 123 of the Civil Code of the Republic of Uzbekistan) are methodologically untenable: an unconscionable transaction presupposes a coincidence of grave circumstances and the exploitation of extreme need, whereas unfair terms arise from the objective structural inequality of the parties–the absence of equivalent alternatives, the asymmetry of bargaining power, and the imposition of standard forms not open to negotiation.[1] The formal legality of such terms does not preclude their legal defectiveness, since they contravene the fundamental principles of private law–fairness, good faith, reasonableness, and equality of the parties.

The principle of fairness is treated in this work not as a synonym for good faith but as an independent corrective principle of contract law. The principle of the legal equality of the parties operates as an abstract premise: no subject of civil

[1]Civil Code of the Republic of Uzbekistan (Part One): approved by Law of the Republic of Uzbekistan No. 163-I of 21 December 1995, as amended on 27 February 2024. URL: https://lex.uz/docs/111181 (accessed: 24 June 2026).

law is entitled to dictate terms to another.[2] Yet this formula alone does not restore substantive balance in a situation where one of the parties is systematically in a structurally weaker position. As A. G. Karapetov rightly observes, interference with the sphere of contractual autonomy is justified only where the unfairness of a term reaches a degree at which the moral imperative of removing the imbalance outweighs the intrinsic value of freedom.[3] Such threshold reasoning sets a workable boundary between permissible contractual inequality and that which calls for legal correction.

The central doctrinal result of the work is the reconstruction of the category of the "weaker party" in B2B relations. The weaker party is not a formal legal status but a doctrinal analytical category reflecting the actual inequality of bargaining power. It is contextual and relative in nature: a party that is strong in one legal relationship may prove weak in another. Engaging critically with the approach under which commercial entities are de jure deemed equal, it should be noted that such a conception ignores the realities of a market economy in which large entities possess an obvious advantage in resources, legal capacity, and institutional standing.[4] At the same time, neither reducing weakness to the economic factor alone nor equating it with a heightened interest in the transaction withstands scrutiny: interest in itself does not indicate weakness unless it is

[2]Commentary on the Civil Code of the Republic of Uzbekistan. Vol. 1 / ed. by Kh. R. Rakhmankulov, Sh. M. Asyanov. Tashkent: Vektor-Press, 2010. 768 p.

[3]Karapetov A. G. Main Trends in the Legal Regulation of the Termination of a Breached Contract in Foreign and Russian Civil Law: Dr. Sci. (Law) dissertation. Moscow, 2013. 480 p.

[4]Braginsky M. I., Vitryansky V. V. Contract Law. Book One: General Provisions. Moscow: Statut, 1998. 682 p.

coupled with the absence of equivalent alternatives and the inability to influence the content of the contract.[5]

In this connection, an integrative approach appears justified, under which the weaker party is determined not by formal status characteristics but through a comprehensive assessment of a combination of factors: economic position and the degree of dependence on the counterparty; command of the market and access to it; access to legal and other specialised information; the real ability to influence the formation of the terms; and professional competence and bargaining capacity.[6] It is precisely procedural unfairness–the impossibility of discussing and negotiating the terms–that serves as the key indicator of inequality in commercial contracts.[7] This approach distinguishes the weaker party from the formalised constructs of dominant and monopoly position and makes it possible to avoid the casuistry that inevitably arises when any single factor is elevated into a decisive criterion.[8]

Comparative legal analysis substantiates these propositions. Under Article 3(1) of Directive 93/13/EEC, a term is regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights

[5]Volos E. P. Features of the Weaker Party in a Civil Legal Relationship under Modern Economic and Legal Conditions // Actual Problems of Russian Law. 2022. Vol. 17, No. 9. P. 94–101.

[6]Guselnikova N. G. The Weak Subject in a Contractual Legal Relationship: Problems of Identification // Legal Studies. 2019. No. 5. DOI: 10.25136/2409-7136.2019.5.29568.

[7]Tuzhilova-Ordanskaya E. M., Fedulina E. V. Unfair Contractual Terms in the Civil Law of Russia and Foreign Countries // Juridical Bulletin of Samara University. 2020. Vol. 6, No. 1. P. 130–135.

[8]Klochkov A. A. Standard (General) Contract Terms in Commercial Practice: Legal Regulation in Russia and Foreign Countries: Cand. Sci. (Law) dissertation. Moscow, 2000. 198 p.

and obligations to the detriment of the weaker party,[9] while the Court of Justice of the EU emphasises that the aim of the mechanism is not only to eliminate individual unfair terms but to restore the actual balance between the parties.[10] German law, through § 307 BGB, subjects standard terms to systematic substantive review that takes account of both substantive disadvantage and a lack of transparency,[11] whereas Article 1171 of the French Civil Code deems a term that creates a significant imbalance in a contract of adhesion to be unwritten.[12] At the soft-law level, Article 7.1.6 of the UNIDROIT Principles precludes reliance on an exemption clause where, having regard to the purpose of the contract, its use would lead to manifest unfairness.[13] All these models converge on a single technique–targeted intervention that removes the unfair term while keeping the contract in force–which secures protection of the weaker party without undermining the stability of civil commerce.

The most original part of the study concerns the digital economy. Marketplaces, aggregators, and online services often fail to reach the quantitative thresholds of a dominant position; nevertheless, the institutional dependence of business users on their infrastructure, control over access to the user base, and the algorithmic

[9]Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts // Official Journal of the European Communities. 1993. L 95. P. 29–34.

[10]Judgment of the Court (First Chamber) of 14 March 2013, Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa), Case C-415/11, ECLI:EU:C:2013:164.

[11]German Civil Code (Bürgerliches Gesetzbuch – BGB). Official version. URL: https://www.gesetze-im-internet.de/bgb/BJNR001950896.html.

[12]French Civil Code (Code civil). Official version. URL: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721.

[13]UNIDROIT Principles of International Commercial Contracts 2016, Art. 7.1.6. URL: https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016/.

distribution of economically significant visibility in fact enable them to determine the essential parameters of the relationship unilaterally. The classic competition-law criteria oriented towards market share are, in our view, insufficient here.

Furthermore, as regards artificial intelligence, since it possesses neither legal personality nor will, it cannot, in our view, act as an autonomous source of unfairness or as a party to a contract; being a technological instrument, it is capable only of indirectly–at the pre-contractual stage–intensifying informational asymmetry and generating excessively complex wording that hampers an informed understanding of the terms, while at the same time possessing the converse potential to serve as a means of detecting potentially unfair provisions.

The analysis of consequences yields a coherent legislative package centred on the Civil Code. First, it is proposed to supplement the Code with Article 123¹, "Invalidity of an Unfair Contractual Term," enabling the court, at the request of an interested party, to declare invalid a term that was proposed by one of the parties and was not individually negotiated and that, contrary to the principles of fairness and good faith, gives rise to a significant imbalance and is manifestly onerous; such invalidity does not affect the other provisions of the contract, provided that the contract would have been concluded even without the invalid part, and does not extend to clearly and unambiguously formulated terms concerning the subject matter and the price. Second, it is proposed to recast the fifth part of Article 9 so that the imposition on a counterparty of manifestly onerous and unfair terms is treated as a form of abuse of right. Third, amendments to the second and third parts of Article 360 grant the adhering party the right to challenge manifestly onerous terms of a contract of adhesion, subject to a proviso denying protection to a party that had a real opportunity to influence the terms but knowingly accepted them. Fourth, a new Article 363¹ enshrines a legal

definition of unfair terms, while Article 363² sets out the criteria for the weaker party.

Of particular importance is the relationship between the proposed special institution and the existing corrective mechanisms. The most telling example of targeted judicial correction is the institution of reducing a manifestly disproportionate penalty (Article 326 of the Civil Code of the Republic of Uzbekistan), which demonstrates the fundamental possibility of restoring a disturbed balance without a special construct of an "unfair term." At the same time, such universal categories–freedom of contract, good faith, reasonableness, and the prohibition of abuse of right–perform a limiting and guiding function but do not form a systematic regime for controlling contractual unfairness and therefore do not eliminate the underlying normative vacuum. In order to ensure uniformity of application, it is also proposed to draft and adopt a resolution of the Plenum of the Supreme Court "On the Practice of the Courts in Applying the Legislation on Unfair Terms in Commercial Contracts," and to enshrine the evidentiary significance of the protocol of disagreements as evidence of a party's good-faith position in the relevant disputes.

The empirical basis confirms the soundness of the reform. According to the author's online survey of 60 respondents–lawyers, entrepreneurs, and other participants in civil commerce–the overwhelming majority had encountered unfair terms, cited financial losses as the dominant consequence (93.3%), and almost unanimously (96.7%) supported the need to develop protective mechanisms.[14] At the same time, preferences are concentrated around ex post facto remedies–judicial modification, termination of the contract, and a declaration that terms are invalid–whereas preventive institutional instruments

[14]Nuriddinov Kh. A. Results of the online survey "Unfair Terms in Commercial Contracts: Perception and Protection." 60 respondents. Conducted from 1 March to 30 April 2025.

are in considerably lower demand, which attests to a structural deficit of protection at the pre-contractual stage. Accordingly, the legislative proposals are supplemented by preventive measures, including advisory assistance through citizens' self-governance bodies and a strengthening of the status of the protocol of disagreements.

In conclusion, the conception of unfair terms in commercial contracts developed in this study forms a coherent theoretical and practical foundation for improving the civil legislation of the Republic of Uzbekistan. The proposed scholarly propositions and legislative initiatives are aimed at eliminating the existing normative vacuum, ensuring a fair balance of interests among participants in commercial relations, and enhancing the effectiveness of judicial protection of the rights of business entities under contemporary economic conditions.

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