

## Using the Principle of Good Faith to Interpret Contracts with Particular Situation to Iraqi Law

**Massooma Ghali Flayyih Al kinani**

Ph.D Student in Private Law, , Faculty of Law and Political Science, Ferdowsi University of Mashhad, Mashhad, Iran .  
[Kenani.ma131@gmail.com](mailto:Kenani.ma131@gmail.com)

**Abdulla Khodabakhshi**

Assistant Professor, Department of Private law, Faculty of Law and Political Science, Ferdowsi University of Mashhad, Mashhad, Iran.  
[Dr-khodabakhshi@um.ac.ir](mailto:Dr-khodabakhshi@um.ac.ir)

**Mohammad Abedi**

Assistant Professor , Department of Private law, Faculty of Law and Political Science, Ferdowsi University of Mashhad, Mashhad, Iran.  
[Dr.m.abdedi@um.ac.ir](mailto:Dr.m.abdedi@um.ac.ir)

**Reza Maboudi Nishaburi**

Assistant Professor , Department of Private law, Faculty of Law and Political Science, Ferdowsi University of Mashhad, Mashhad, Iran  
[maboui@um.ac.ir](mailto:maboui@um.ac.ir)

### Abstract

One of the most hotly debated subjects in the legal community is good faith, which is a crucial defense in European contract law. Although it is a widely acknowledged idea, there is no agreement on how important good faith is in today's civil contractual responsibilities. This essay's goal is to explore the good faith principle, elucidating its meaning and describing how it is reflected in Iraqi law.

Good faith is discussed in terms of both its subjective and objective implications. The objective meaning of good faith is seen as a way to preserve moral contractual connections and lessen potential disparities brought on by the doctrine of party autonomy. According to the subjective definition, good faith might relate to situations when a person acts with trust that what they are doing is legal or when a third party is seeking protection. This essay also aims to examine the notion of good faith from the perspective of Iraqi law. It is considered that Albania's theory is not particularly sophisticated. It should be emphasized that legal precedent varies and that whether good faith may be removed from a contract is still up for dispute.

**Keywords:** good faith, application, definition, contract law, arbitration.

### The Good Faith Principle's Definition

The "good faith stream" that permeates the civil law systems of European Union member states and is highly likely to enter English law provided the impetus for implementing such a concept. Any legal system inside the European Union, but not alone, now confronts practical issues emerging from the broad idea of good faith since the introduction of the Directive against unfair terms in consumer contracts (Saleh,2013). Significantly, Whittaker and Zimmermann have emphasized, among other things, that "the parties must behave in line with good faith and fair treatment in exercising their rights and carrying out their obligations." Good

faith currently lacks a generally agreed-upon definition of a term with roots in Roman law. It is safe to say that good faith is a vague notion, which appears to be the focus of the epithets applied to it. It is said to be a standard, a concept (crucial), a rule, an obligation, a code of behavior, a foundational provision of an unwritten law, and a generic clause. Accordingly to MacCormick (2005), it is often said in the theory that good faith is an open standard, a contested norm that cannot be decided in an abstract but relies on the specifics of the situation to which it relates and should be determined via concretization.

Nowicki and Fayyad, Hayajneh (2022), the phrases "good faith" and "subjective good faith" are used interchangeably despite the lack of precise meaning. In a subjective sense, it refers to a lack of legal knowledge or the inability to recognize an unlawful act or situation. When used in a positive context, personal good faith refers to a party's false belief that something is legal when it is illegal. The most frequent example covered by all existing civil legislation is when someone makes a good faith transaction. The term "good faith" has an objective definition that designates a standard of conduct that the parties are expected to uphold. The party's autonomy concept is seen in this second perspective as a tactic for preserving moral contractual relationships and reducing possible injustices.

A closer examination reveals that the opinion is less unclear than it seems. It is widely acknowledged that an all-encompassing good faith provision is not a rule, or at least not one that is equal to other authorities in a code. It differs in different directions in that neither the circumstances to which it applies nor the consequences it establishes in terms of the law can be established beforehand. Therefore, good faith is often seen as an ambiguous standard whose meaning relies on the specifics of the situation in which it should be implemented and which should be concretized( Al-Hilu, 2022; Toje, A,2005 & Robins, P. 1993). Most attorneys practicing in systems where good faith is valued generally agree that these conceptual modifications are unimportant. In reality, what counts is how the courts use the concept of good faith; in other words, how it functions serves as the finest example of the character of good faith(Simon,2009).

### **Interpretation of the Good Faith Principle in Iraqi Law**

The good faith doctrine is not as developed in Iraqi law as in other nations. "A person who, based on a legal action for the transfer of ownership, has obtained towards a good faith reward a movable good, even if the alienator was not available to him," states Article 166 of the Iraqi Civil Code. However, even in good faith, the winner does not become the owner of the good when it is stolen. The winner becomes the owner of coins and securities in the leasing company, even if these have been stolen or lost to the owner or public legal person(Lubina,2009).

Arthur, P. (2009)the following requirements do not apply to movables listed in public records. Property is acquitted of the other's rights over the item if these rights are not derived from the title and the trust of the winner. Although, as indicated, the article mentioned above does not fall within the purview of contract law, it still represents a typical example of subjective trust.

While Articles 674, 675, and 682 of the Civil Code sanction trust in contract law, more specifically, Article 674 states: "The parties during the negotiation of the contract drafting should behave in good faith to each other. The party who knew or ought to know the cause of the contract's invalidity and did not disclose it to the other party is liable to reimburse the damage suffered by the latter because he believed without fault in the contract's validity" (Bird,2009).

Movables listed in public records are exempt from the rules mentioned above. The property is exempt from claims if the other's rights are not derived from the winner's title and trust. The article mentioned above is a typical example of confidence in its subjective definition, even if it does not directly fall within the purview of contract law, as stated (Al-Tamimi,2022).

In light of those above, we conclude that, although insufficient, the legislative framework is considered objective and subjective, and even its functions are highlighted (e.g., the interpretive function article 682). It is relevant to both the pre-and post-contract phases. It should be underlined that good faith is a topic seldom discussed in domestic theology.

Although there are not many legal rulings involving good faith, we highlight some of the more significant ones here: The United Colleges of the Supreme Court utilized the phrase "economic and moral factors"—terms that presuppose good faith—to restrict contractual freedom in Unifying Decision No. 932, dated 22.06.2000. The Supreme Court has explicitly referred to good faith as a principle<sup>36</sup> and a legal requirement in a few other rulings. The significance of this ruling rests in that it acts as a "foundation" upon which good faith is developed as a concept in and of itself (Crowe & Jedličková,2018).

### **Application of Good Faith in Real Life**

Martinez (2002) throughout the 20th century, the good faith concept was quite successful in many European legal systems. Over the last several decades, the good faith clause has increasingly been used in more situations in the majority of nations. In many scenarios, the application space has also expanded significantly. It is used practically every aspect of contract law and sometimes outside it in different systems. By examining how good faith is used, certain instances are addressed in the following sections.

### **Application of Contract Law's Good Faith Principle.**

- A. **Validity** - A breach of the exemplary faith commitment may render a contract void. Before the legislative regulations were established, for instance, the general secrecy provision may be used to invalidate the standard requirements in many systems. Even today, the basis for determining whether a term is fair is frequently good faith. Additionally, a breach of the pre-contractual responsibility to disclose, based on trust, may result in the contract being void for fraud or mistake. In several other circumstances, a conviction could reduce the invalidity.
- B. **Non-compliance**- On the one hand, many legal systems rely part of the remedies for contract non-performance on good faith. On the other hand, the use of a vehicle may be restricted by good faith; in this case, it is sufficient to note that under many systems, a party is not permitted to cancel the agreement or limit its performance to a little mistake made by the other party. It is frequently viewed as an exception to the broad freedom to depend on good faith or not.
- C. **Interpretation** - Based on the interpretive function of good faith, good faith often plays a significant role in contractual performance. There are legal provisions for those above in many systems. <sup>40</sup> In several other systems, the courts set down the duties of a good faith translator. Good faith is frequently the foundation of interpretation techniques, primarily objective ones. A specific function of good faith also serves as its complementary function in addition to accurate interpretation. In the event that a

contract is silent on a potential issue, the "gap" in the agreement is filled by relying on the complementing role of good faith. The interpretation role is authorized under Article 68241 of the Iraqi Civil Code(Hill,2003).

### **Rejecting a good faith internal system**

Iliquini-Cinelli and Hutchison (2016), the courts have created several new rules and doctrines based on good faith, even when they first seem to have nothing in common, as the practice has revealed. As part of the substance of a good faith rule, all of these rules are often related to confidentiality sub-rules. However, it makes little sense to connect these new regulations to the specifics of good faith if good faith is not a norm and if its functions are part of a judge's legal responsibilities. When courts use the broad principle of good faith as their legal foundation, reasonable faith regulations don't have anything particular that sets them apart from other rules. In particular, as Schmidt correctly notes, the standards of good faith are no longer just, equitable, or morally superior to different standards. As a result, the theory and principles of good faith are not internally coherent.

It's a common misconception that good faith norms must inevitably or often be more altruistic, indicating solidarity and acting as a check on the autonomy principle. This isn't always the case, however. True, it's intriguing to inquire what the exceptions are to the norm. Most civil rules, particularly those in the 19th century, are exclusively founded on the concept of autonomy.

As a consequence, the issues of solidarity served as the inspiration for the majority of concretizations, additions, and corrections. However, since modern private law is always rooted in solidarity courts, it may choose to move autonomously, concretize, augment, and rectify these norms based on good faith. The idea of good faith highlights the flaws in a legal system that the courts believe is appropriate to strengthen and improve. In this way, the Roman law's honorarium and the ancient English laws' definition of good faith are incredibly similar. I believe it was a belated response to acknowledge equity as a distinct system via legislation. These days, good faith conduct might be seen as a modern honorarium or civil law equity (Luhmann2013; Martinez 2003& Simon 2009).

Many nations will soon have a practical requirement to do away with the internal good faith system. Many good faith instances won't make things easier to handle. However, in any scenario where law enforcement tasks will be regarded as good faith functions, this number will unavoidably keep rising. The difference between code regulations and rules said to be in good faith will come under scrutiny from an increasing number of attorneys. Therefore, it is possible (and perhaps desirable) that good faith will experience the same outcome that fairness in honorarium did: the difference will cease to be justified and, as a result, lose its effectiveness (Greinert, de Vries, Erdmann,2015).

However, the denial of an internal good faith system does not imply that the century-long efforts of the legal theory were in vain. First and foremost, academics needed to develop the laws or doctrines followed when the general good faith provision was invoked (Lerner,1993). Second, many of the internal good faith system's components may have been immediately included in the code system, notably in the general provisions and contract law in the content chapter (e.g., the obligation to be faithful, to protect, to cooperate, to inform). This applies to every doctrine, not just the laws. This is particularly notable in nations that have adopted a new code, where numerous principles, such as culpa in contrahendo, that were embraced in good faith by the prior regulations have been substituted in the current code. It would be significantly more natural for these legal

systems to include trust laws under a "good faith concretization" section if good faith were to really be the norm.

### **As a Guideline for Interpreting Contracts, Good Faith**

Summers (1968) states that all of the laws about commercial transactions include the premise that a contract should be read in line with the concept of good faith. It has been developed explicitly inside *lex mercatoria* to the point that it is now one of its fundamental ideas. The obligation for good faith derives directly from several international arbitration rulings, establishing a "general concept of the good faith" under which agreements shall be carried out in good faith.

In arbitration court, the explanation in good faith is viewed as an additional method that favors the interpretation of the parties' true purpose rather than a literal reading; in other words, in cases of the performance of the contested clause, the terms of the contracts must be interpreted in their context, taking into account the contract as a whole, to bring the parties' real purpose. It is necessary to use the good faith standard when interpreting a phrase that sparks debate (Taylor, 2022). A party's bad faith is used against them if they assert that they would personally profit from the strict application of the law and the terms of the contract.

According to Wang, Zheng, and Zhao (2022), Good faith has a special place in endeavors by the world and European communities to codify doctrine. He points out, among other things, that Mr. Ole Lando's description best exemplifies this "The principles of European Contract Law and UNIDROIT Principles attach great importance to the notion of good faith under the influence of particular laws, notably German, Dutch, and American legislation. Every one of these legal papers supports good faith as a general principle that holds true throughout the whole of a contract." With this more senior position, the good faith role is changed from one of the translators to one of the contract content expanders.

"Where the parties to a contract have not agreed with regard to a word which is relevant for a determination of their rights and responsibilities, a term which is acceptable in the circumstances should be given," reads Article 4.8 of the UNIDROIT Principles. According to the second paragraph of the article, consideration should be given to, among other things, the following: (a) the parties' intentions; (b) the nature and purpose of the contract; (c) good faith and fair dealing; and (d) reasonableness (Farnsworth, 1995).

The phrase, which at least somewhat resembles equity, is reminiscent of Article 1135 of the French Civil Code, which states that agreements are enforceable "not only for the terms contained therein, but also for any consequences based on equity, tradition, or status." As a result, European contract law principles adhere to the French heritage and do not distinguish between formal agreements and agreements reached with consent (formal principles of equality and good faith were not recognized in the old law). Today, good faith continues to govern the interpretation, even in the case of a formal, signed contract (Ibrahim, 2015).

Good faith is a tool that influences the contract's terms and a guide for evaluating the parties' intentions. Judges appear willing to utilize good faith as a reasonable interpretation rate as the basis of the duty, reinforced by many scholars and various international documents. Still, they are hesitant to go beyond merely defining the parties' intentions (Letsas, 2010).

## Conclusion

The epithets used to describe good faith appear to reflect the ambiguity of the idea. It is an open norm, a controversial standard that cannot be decided in an abstract but relies on the specifics of the situation to which it applies and should be determined via concretization.

Despite the absence of a definition, the terms "objective trust" and "subjective trust" are used interchangeably: A lack of understanding or the inability to perceive an occurrence or truth as being illegal are examples of trust in a subjective sense.

A code-based clause is not necessary if the judge's position as a rule-maker in a legal system is fully acknowledged. A good faith provision would be required to guarantee that the judge may make new regulations, particularly for a new continental code where the ECJ and other courts may need significant powers if there are still questions about the court's authority. It would be more suitable to openly authorize that the court may interpret, augment, and corroborate the code as required, contrary to particular academics' beliefs that the phrase of good faith should be used for the sake of tradition.

The good faith theory is not well established in Albania. However, there have been some disputes concerning it. This necessitates conversations between attorneys and academics and the evolution of judicial practice.

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