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CONCEPTUAL UNDERSTANDING OF THE PRINCIPLE OF GOOD CONSCIENCE AS A LEGAL CONCEPT AND GENERAL PRINCIPLE OF LAW

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ABSTRACT

The article conducts a comprehensive analysis of the theoretical and legislative approaches to understanding the essence of the principle of good faith within civil law. It critically examines how the principle of good faith, along with the presumption of good faith, is codified in civil legislation without a clear definition of its meaning. The discussion highlights that good faith, as a legal category, remains inadequately defined and lacks a consistent interpretation in both scientific literature and judicial practice. The principle of good faith is positively assessed for its role in ensuring the stability and social orientation of legislation. The article distinguishes between the principles of justice, good faith, and reasonableness, emphasizing that these are separate yet independent principles underpinning civil law and its legislative framework. The significance of good faith in the mechanism of legal regulation of civil legal relations is thoroughly explored, underlining its role in fostering trust and predictability in legal transactions.

Special attention is given to understanding good faith as an evaluative concept, necessitating consideration from both objective and subjective perspectives. Objectively, an individual's behavior must align with generally accepted standards of good faith behavior, which are either established by law or derived from judicial practice. Subjectively, the concept reflects an individual's internal conviction that their behavior is legitimate and does not infringe upon the rights and interests of others.

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The article also analyzes specific provisions in civil legislation that impose a duty on participants in civil relations to act in good faith, providing partial insights into the principle's content. Through a detailed examination of scientific literature, Supreme Court practices, and civil law provisions, the article argues for the legislative inclusion of clarifications regarding "good faith" and "good faith behavior." Such clarifications should outline at least an approximate composition of these categories, facilitating a clearer understanding and application.
Furthermore, the article underscores the law-making role of judicial bodies in interpreting and expanding the application of the principle of good faith. It observes trends in judicial practice that indicate a broader application of this principle, reflecting its evolving importance in civil law.
In conclusion, the article posits that a well-defined principle of good faith is essential for the coherent and equitable regulation of civil legal relations. By providing legislative clarity and supporting judicial interpretation, the principle of good faith can significantly enhance the fairness and reliability of civil law.
Keywords: Law, Principle, Good Faith, Civil Law, Civil Legislation, Civil-Law Relations.

COMPREENSÃO CONCEITUAL DO PRINCÍPIO DA BOA CONSCIÊNCIA COMO CONCEITO JURÍDICO E PRINCÍPIO GERAL DO DIREITO

RESUMO

O artigo faz uma análise abrangente das abordagens teóricas e legislativas para entender a essência do princípio da boa-fé no direito civil. Ele examina criticamente como o princípio da boa-fé, juntamente com a presunção de boa-fé, é codificado na legislação civil sem uma definição clara de seu significado. A discussão destaca que a boa-fé, como uma categoria jurídica, permanece inadequadamente definida e carece de uma interpretação consistente tanto na literatura científica quanto na prática judicial.
O princípio da boa-fé é avaliado positivamente por sua função de garantir a estabilidade e a orientação social da legislação. O artigo faz distinção entre os princípios de justiça, boa-fé e razoabilidade, enfatizando que esses são princípios separados, porém independentes, que sustentam o direito civil e sua estrutura legislativa. A importância da boa-fé no mecanismo de regulamentação legal das relações jurídicas civis é minuciosamente explorada, destacando seu papel na promoção da confiança e da previsibilidade nas transações jurídicas.
É dada atenção especial à compreensão da boa-fé como um conceito avaliativo, que exige a consideração tanto de perspectivas objetivas quanto subjetivas. Objetivamente, o comportamento de um indivíduo deve se alinhar aos padrões geralmente aceitos de comportamento de boa-fé, que são estabelecidos por lei ou derivados da prática judicial. Subjetivamente, o conceito reflete a convicção interna de um indivíduo de que seu comportamento é legítimo e não infringe os direitos e interesses de outros.
O artigo também analisa disposições específicas da legislação civil que impõem aos participantes das relações civis o dever de agir de boa-fé, fornecendo percepções parciais sobre o conteúdo do princípio. Por meio de um exame detalhado da literatura científica, das práticas da Suprema Corte e das disposições da lei civil, o artigo defende a inclusão legislativa de esclarecimentos sobre "boa-fé" e "comportamento de boa-fé". Tais esclarecimentos devem delinear pelo menos uma composição aproximada dessas categorias, facilitando uma compreensão e aplicação mais claras.
Além disso, o artigo ressalta o papel de legislador dos órgãos judiciais na interpretação e expansão da aplicação do princípio da boa-fé. Ele observa tendências na prática judicial que indicam uma aplicação mais ampla desse princípio, refletindo sua importância crescente no direito civil.
Em conclusão, o artigo postula que um princípio bem definido de boa-fé é essencial para a regulamentação coerente e equitativa das relações jurídicas civis. Ao proporcionar clareza legislativa e apoiar a interpretação judicial, o princípio da boa-fé pode aumentar significativamente a justiça e a confiabilidade do direito civil.

Palavras-chave: Direito, Princípio, Boa Fé, Direito Civil, Legislação Civil, Relações de Direito Civil.

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1 INTRODUCTION

In the modern civil legislation of many countries, the principle of good faith is one of the most important principles. At one time, it was written about the role and importance of good faith in Roman law that good faith gives the owner as much as the truth to the extent that the law does not prevent it (Pastushok, G.I.,2016). Recent studies of civil law are characterized by an increasing attention to the fundamental concepts that constitute the basic theoretical and methodological categories of branch disciplines. One of these concepts is the concept of good faith. Good faith is currently perceived as a standard of honest behavior that has developed in society, which can be demanded from each of its members and which must be guided by the court. At the same time, the content and definition of the principle of good faith as a criterion for assessing the legality of actions is insufficiently studied in civil law, and is interpreted differently by scholars. Traditionally, conscientiousness is considered as a good conscience, identified with moral standards. And it is considered a positively-undefined term, which leads to the emergence of a number of debatable issues and controversial provisions on the subject of compliance with its legal norms and standards for distinguishing bona fide and dishonest behavior of participants in civil legal relations.

That is why there is a need for further scientific research of this legal category. After all, the principle of good faith is almost the most important category of civil law, which affects the legal regulation of social relations and determines the nature of the behavior of individuals from the point of view of the need for them to conscientiously exercise their rights and fulfill their duties, respect the rights and interests of other persons, the morality of society, concern for own rights and interests, as well as the rights and interests of other participants in order to prevent their violation, to establish the possibility of protecting the violated civil right (Rotan, V. G. (Ed.).,2010).

The purpose of the work is a systematic analysis of modern trends in interpretation, normative formalization, and practical application of the principle of good faith in the science of civil law, legislation, and judicial practice. The tasks of the article are to reveal the normative content of the principle of good faith, to analyze it and to establish the content in the norms of civil legislation; identification of problems of implementation of the specified principle in rule-making activity, judicial practice and determination of directions for overcoming them; provision of proposals aimed at the interpretation of legislation.

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A review of the literature shows that at all stages of the development of civil science, civil law principles were the subject of research by scientists, but no consensus has yet been reached regarding the understanding of their content. Today, as before, there are many proposed definitions, with differences in views on its functional role and place in the system of private law. Such scientists as V.I. Borisova, A.S. Dovgert, O.O. Kot, N.S. Kuznetsova, R.A. Maidanyk, V.D. Primak, M.O. Stefanchuk, and others. It is worth mentioning some Ukrainian scientists and their works, namely D.G. Pavlenka "The principle of good faith in contractual obligations" (2008) regarding the understanding of the legal nature of this category and its place in the system of civil law, understanding the functions of the principle of good faith and their implementation in the dynamics of contractual obligations, O.V. Basaya "General principles (principles) of the civil legislation of Ukraine" (2014) in the part of the formation of the foundations of the civilist theory about the principles of the civil legislation of Ukraine, Yu.A. Tobot "The principle of justice, reasonableness, good faith in civil law" (2011) regarding the process of implementing the requirements of the principle of justice, good faith and reasonableness in absolute and relational legal relations, Yu.V. Tsyukalo "Principles of the implementation of civil rights" (2013) regarding the definition of special regularities of the functioning of the principles of the implementation of subjective civil rights and S.V. Galkevich "Principles of justice, good faith, reasonableness of tortious liability in civil law » (2021) in the part of the study of conceptual approaches to the normative consolidation and practical application of the principle of good faith in relation to tortious liability. However, a number of problematic points are still controversial and require clarification. We will try to answer some of them and support the discussion in the scientific community.

2 METHODS

The methodology of the article consists of general scientific methods: dialectical, historical, comparative, system-structural, analysis. With the help of the dialectical method, the formation and development of the idea of good faith and the norms of law formalizing this principle in law are investigated. The historical method was used to study the concept of good faith, starting with Roman private law. With the help of the comparative method, the peculiarities of the requirements of good faith, which are fixed in the civil law of many countries of the continental and general legal systems, in international legal acts, have been revealed. At the same time, the analysis of the

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doctrine and court materials, which contain the established practice of applying the principle of good faith, as well as the analysis of the judicial practice that has developed in Ukraine and other countries of the world, is of great importance for the research. The method of system-structural analysis was used to establish the legal nature and place of the category of good faith in the system of principles of civil law and general principles of civil legislation. The structural-functional method made it possible to find out the components and functional purpose of the principle of good faith. The method of specific sociological research was used in the study of judicial practice and the identification of the law enforcement significance of the principle of good faith. The results of the dogmatic (logical) analysis were used in the formulation of conclusions and proposals in the article, taking into account the requirements for certainty, consistency, consistency and validity of judgments within the framework of general theoretical and civil law constructions.

3 RESULTS AND DISCUSSIONS

At the current stage of the development of civil law, there is a tendency to perceive legal phenomena through the prism of moral categories. Indeed, ensuring the rule of law in the field of civil-legal relations is not possible without taking into account the moral and ethical essence of individual legal phenomena. Among them, special attention should be paid to the principle of good faith, the determining role of which is fixed at the level of legislation in clause 6 of article 3 of the Civil Code of Ukraine (hereinafter - CCU). The principle of good faith, as a moral imperative, is important for the construction and functioning of legal mechanisms for the protection and protection of civil rights and interests. Moreover, in specific legal situations, it is a sufficient mechanism for guaranteeing the implementation of the principle of the rule of law in its essential, material, dimension - primarily through maintaining a fair balance of interests of interested parties, ensuring legal certainty and availability of effective means of legal protection. In confirmation of the above, the provisions of the civil legislation on bona fide ownership, acquisition statute of limitations, prior use of the invention, on changing or terminating the contract of accession, etc. should be mentioned.

At the same time, law cannot and should not replace morality. However, it is quite capable of enshrining legal means capable of transforming moral norms into their own legal prescriptions. What happened due to the establishment of certain universally binding moral and legal criteria (guidelines) of lawful behavior and the determination of

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specific legal consequences of compliance, or, on the contrary, violation of moral requirements, in relation to individual legal situations. Therefore, at the legislative level, there should be a full approval of the principle of good faith in terms of defining: a) key criteria (standards) of good faith behavior that are objectified externally; b) legal qualification of the subjective side of a person's behavior as one of the conditions for changing his legal status; c) effective means of preventing abuse of rights.

In civil law, the category "good faith" is enshrined as the basic principle of civil legislation in Art. 3 of the CCU, and are quite widely used in regulatory acts and judicial practice. However, despite this, there is no definition of its concept and content in the civil law and legislation of Ukraine (Prokhorova , Y., 2022). Which gives rise to many controversies in the scientific literature. Yes, some scientists believe that good faith is a principle of civil law, others refute this position. Some researchers consider it as a limit to the exercise of rights, others prove the fallacy of such an approach. Therefore, the question is natural, what exactly is the content of the principle of "good faith"?

This principle originates from the time of Ancient Rome[3], especially the concept of good faith (bona fides), which was a kind of reference point of contract law, a regulator of private relations, especially with regard to determining the degree of severity of guilt. Roman praetors were authorized to resolve disputes that went beyond the inflexible, archaic civil (quirite) law, guided by the principle of bona fides (Pastushok, G.I.,2016). Judges at that time could use it as a certain control and addition to the content of legal relations when interpreting contracts. At that time, good faith was almost equated with care, conscience and prudence of the parties to the obligation. So, in the context of the storage agreement, they tried to define this category. But they argued that when someone is not careful to the extent that the nature of people requires it, then he is recognized as acting to the detriment of another ... because the actions of someone who takes less care (with respect to the things entrusted to him for safekeeping) than with regard to of his things (D. 16.3.32). The principle of good faith is most widely applied in the institutions of good faith possession (bonae fidei posses-sion) and contracts of good faith (bonae fidei contractus). To determine the mechanism of legal protection of bona fide ownership in Roman private law, such concepts as bonae fidei possessor and bonae fidei emptor were used. In the future, the concept of bona fides grew and currently in most modern legal systems, good faith is a fundamental principle of private law (Spasibo-Fateeva, I.V. (Ed.).,2021).

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The influence of Roman private law on the modern civil law of almost every country is so great that it cannot be reduced to a certain number of definite articles. This applies to both the general provisions of the law and the status of persons, statute of limitations, property and obligation rights, certain types of contracts, inheritance law, etc. As at that time, as now, good faith is a determining criterion for the legality of the conduct of participants in civil-law relations. Analysis of the content of the provisions of the CCU (for example, Part 5 of Article 12, Article 13, Part 3 of Article 23, Article 330, Clause 3 of Article 509, etc.) allows us to assert that with the help of these principles, the legislator establishes the limits exercise of civil rights of individuals, preventing abuse of the right. Persons must act without harming another person, enter into transactions without using the principles of deception, violence or abuse of trust. In fact, the content of the principle of good faith, as a subjective-objective category, is fixed in the legislation.

The principle of good faith is an integral part of the entire civil law of the continental family, as a set of separate national legal systems. The process of adoption of international legal acts determines the unification of the approach to the principle of good faith, which acquires the features of a general and universal transnational regulator of civil-law relations in Europe. Where the main models of legislative consolidation of the principle of good faith in the civil law of continental European countries are the German, French and Dutch models. German doctrine and jurisprudence mainly consider good faith as a general regulator and corrector of the contract, and sometimes also of the law. In French law and doctrine, the concept of good faith, in turn, is linked to the prohibition of abuse of rights. The concept of good faith of participants in civil legal relations is embodied in the Central Committee of the Netherlands in the concept of "justice and reasonableness".

In Germany, the law establishes the highest ethical principle of treu und glauben ("sincerity and faith"), which applies both to the performance and to the formation of a contract. §242 of the German Civil Code (BGB) establishes the obligation to perform contracts in good faith. According to §157, the interpretation of the contract must be carried out taking into account good faith activities. In addition, §138 contains the rule that any legal act contrary to accepted standards of good behavior is illegal. Also void is any legal act by which a person takes advantage of another person's need, weakness, or inexperience to compel that person to promise or agree to give him or a third person, in exchange for what is given, a property interest in excess of the value of what which is provided to such an extent, these property interests are shockingly

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disproportionate to what is given" (Rotan, V. G. (Ed.).,2010). In practice, however, German judges cannot administer justice on the basis of § 242 alone. This clause is not a legal basis on which to act and has no direct legal force. In German law, the principle of good faith is not a general autonomous legal basis. In general, there are two approaches to understanding good faith: in its subjective sense (Guter Glauben) and in the objective sense (Treu und Glauben).

To date, the principle of good faith in France is enshrined as one of the general principles of contract law on the basis of Resolution No. 2016-131 "On the Law of Contracts, General Provisions and Evidence of Obligations" adopted on February 10, 2016 by the Government of France. The text of the French Civil Code indicates good faith: in Art. 1133, item 4 of Art. 1134 (agreements must be executed in good faith) and Art. 1135 (agreements bind not only what is expressed in them, but also all the consequences that justice, custom or law associate with this obligation, according to its nature). In relation to negotiation relations and the execution of the contract, the principle of good faith is applied in two aspects: the duty of cooperation (the most favorable terms of the contracts and the provision of full information during the conclusion of the contract) and the duty of loyalty (the use of appropriate means (the parties must act together to achieve common goals, specified in the contract, and avoid creating difficulties for their counterparties) and achieving a result (the parties during the conclusion and execution of the contract must act with thoroughness and due diligence characteristic of the "parental family") (Picod, Y., Terré, F., Simler, R., & Laquette, Y., 1996).

In the United States of America, this principle is enshrined in the Uniform Commercial Code, which provides that every contract or obligation establishes a duty of good faith in its performance or observance (§ 1-304 ECC). The modern law of the United Kingdom has never had a general norm that would indicate the obligation of the parties to act in good faith (Bakalinska, O.O., 2011). At the same time, the principle of good faith (uberrimae fidei) is established for certain legal relationships (insurance, fiduciary). Courts proceed from the fact that the doctrine of good faith is too complex to understand and further formal consolidation and do not recognize good faith as a type of open norm. Courts should apply the principle of good faith when considering a particular case, preferring to deal with each specific case separately. In the doctrine, there are also discussions about the application of good faith as a general norm.

The category of good faith itself is a positively undefined concept designed to assess the psychological (moral) side of the behavior of subjects of civil legal relations. Such

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concepts are often found in the norms of civil law and are traditionally considered to be evaluative concepts, the distinguishing feature of which is the absence of their clear legal definition, which forces theoreticians and practitioners to evaluate them independently. And, accordingly, depend on the legal context of the normative act and the national legal culture. Of course, legal science strives for certainty, but is it necessary to do so at all. In general, positive law is characterized by "zones of uncertainty" that are inherent in any legal system. The legal system is a dynamic phenomenon that is constantly developing, therefore it is impossible to give "absolute certainty" to all legal phenomena. Currently, legal norms are able to provide only limited certainty, accordingly, absolute legal certainty may not exist. Otherwise, law, legislation and society would slow down in their development. Therefore, a certain legal uncertainty still has the right to exist.

The abstractness and unspecificity of the content of such concepts make it possible to take into account all local conditions, peculiarities of specific situations, socio-political situation, psychological characteristics of persons to whom the rule of law applies, as well as a number of points that are not reflected in the law, and makes the evaluative concept a specific tool individual regulation (Kronivets, T., Yakovenko, O., Tymoshenko, Y., Ilnytskyi, M., Iasechko, S., & Iasechko, M., 2023). Despite the fact that it is not always possible to apply clear and categorical norms of law to various relationships. The concept of "good faith" refers precisely to such qualitative evaluative concepts that express properties, signs of general phenomena depending on the value orientation of the legislator, without indicating the degree of conformity of this value orientation.

It is quite difficult to formulate a universal understanding of the content of this principle in view of the moral-ethical nature, subjective-objective nature and multifunctional essence in the legal regulation of civil legal relations. It is also worth considering that a wrong interpretation of the principle may in the future make it impossible to properly apply the civil law norm, due to its "bad faith". Looking at a certain evaluability of the specified category, this can lead to subjectivism in law enforcement activities (Halkevich, S.V., 2021), certain uncertainty and danger of judicial arbitrariness. However, the court must determine the approach to understanding the content of good faith. Which can serve as a fundamental, universal and optimal basis for modeling a decision on every civil case (Borisova, V.I., 2018).

The category of "good faith" in the civil legislation of Ukraine is applied as a general legal principle (Article 3 of the CCU) or has a clear connection to individual civil legal

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relations (Articles 330, 344 of the CCU), and affects the exercise of civil rights and enforcement responsibilities Good faith and bad faith have legal significance in cases specifically specified in the law. And it ensures a balance between the maximum permissible freedom of realization of private (individual) interests and observance of public (state-societal) interests (ensuring national security, protection of life and health of people, environmental protection, etc.). In fact, the principle of good faith is a general legal regulator of the behavior of individuals as participants in civil legal relations. Because detailed regulation by civil legislation of individual actions of a person for all possible cases and features in certain circumstances is practically impossible (Limongi, R., 2024).

In cases where the law makes the protection of rights dependent on whether these rights were exercised reasonably and in good faith, the reasonableness of actions and good faith of the participants in the civil transaction are assumed. Yes, Part 5 of Art. 12 of the CCU stipulates that when the law establishes the legal consequences of a person's dishonest or unreasonable exercise of his right, it is considered that the person's behavior is in good faith and reasonable, unless otherwise determined by the court. The analysis of this norm gives grounds for asserting that it is precisely the presumption, not the principle, that we are talking about. At the same time, the question arises whether the principle of law can be formulated in the form of a legal presumption? Can there be a category of good faith in the form of principles and presumption at the same time?

Presumption is an assumption based on probability (Kuznetsova, N.S., 2003). The basis of which is the repetition of certain situations. When something systematically happens, it can be assumed that under similar conditions it will happen again this time. That is, the conclusion is probable, not reliable. Therefore, presumptions have a probable, prognostic character. Therefore, a presumption is only a probable assumption that can be refuted, while a principle of law is an indisputable, general, universal guiding principle, characterized by the essence and purpose of law. The principles cannot be violated, just as they cannot be overturned or disproved in a court case. Thus, legal presumptions and principles of law are independent legal phenomena that cannot be confused. At the same time, there is no direct prohibition in the legislation on the existence of the same legal phenomena in the form of principle and presumption. Therefore, there can be a category of good faith in the form of a principle and a presumption at the same time. But it should be taken into account that good faith and reasonableness as a presumption is applied when the law makes the

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exercise of civil rights dependent on whether a person's behavior was reasonable and in good faith (clause 5 of Article 12 of the CCU). Therefore, good faith applies only to certain legal situations and is not universal in nature. Instead, the principle of good faith has a wider scope, that is, it is addressed not only to the legislative, judicial and executive bodies of the state, which must be guided by it in their own activities, but also to all subjects of civil legal relations.

The principle of good faith permeates almost the entire system of civil legal relations (Primak, V.D., 2008) and is one of the key guarantees of the implementation of the general legal principle of the rule of law in the entire field of civil relations (Kot, O.O., 2017). In the CCU, the category "good faith" is used as a moral (psychological) characteristic of the subject or his behavior in Art. Art. 3, 12, 13, 39, 92, 212, 330, 344, 387, 388, 389, 390, 400, 470, 480, 484, 500, 507, 509, 1215 CCU. This term is also used in other regulatory acts: the Merchant Shipping Code of Ukraine, the Land Code, the Code of Ukraine on Bankruptcy Procedures, the Law "On the Protection of Consumer Rights", "On Joint-Stock Companies", "On Land Leasing", "On the Protection of Rights to Inventions and utility models", "On the protection of rights to industrial designs", etc.

At the same time, there is no unity of views regarding the interpretation as the very definition of the principle of good faith among scientists. Although it is emphasized that in modern private law, good faith is one of the most important principles. Regarding the relationship between the categories of justice, good faith, reasonableness, the following was expressed in the doctrine: that the principle of reasonableness is one of the aspects of the principle of good faith; that reasonableness and conscientiousness are synonymous; that good faith and reasonableness are components of justice (Tobota, Yu.A., 2011).; that good faith, reasonableness and justice are the only principles of Ukrainian civil law, consisting of three interrelated components At the same time, there is a point of view that reasonableness, good faith and justice are separate civil law principles (Bodnar, T., 2005). At the same time, it is noted that good faith is an original, regulatory and guiding principle expressed in mandatory law (Pavlenko, D., 2006) and is a separate, independent principle. Of course, the categories of justice, good faith and reasonableness are interrelated, but they cannot be considered components of a single principle. First, in the norms of the Central Committee of Ukraine, in particular, in Art. Art. 23, 92, 330, 509, 627 these categories are applied not only together, but also each separately or in a certain ratio. That is, in some cases the CCU applies all three terms simultaneously (Articles 3, 509), in others

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- two, for example, good faith and reasonableness (Article 92), reasonableness and justice (Article 627), in others - only one , as a rule, reasonableness (art. art. 564, 619, 749) (Pavlenko, D., 2006). The legislator still assumes the possibility of applying the specified categories as independent principles. Judicial practice also shares this position, and has repeatedly emphasized the separate application of these categories (Bodnar, T., 2005), (Kondratyev, R.I., 2007). Undoubtedly, justice, good faith and reasonableness are necessary when assessing the legality of the behavior of participants in civil legal relations, although they may not be enshrined in law together. It cannot be denied that good faith, reasonableness and justice are interrelated concepts.

We believe that when interpreting the content of the "good faith" category, not only the legal content but also its moral nature should be taken into account. Although this does not mean the identity of the concepts (Iasechko S., Zaitsev O., Kozhevnykova V., Melnyk K., Kulchii O., 2020). Good faith, as a civil law principle, is provided with a very specific pragmatic meaning, which is extremely important for the stability of civil turnover, as it establishes a guideline (standard) for the behavior of any of its participants. In fact, this is a state of honesty, conscience, decency. But it involves faithfulness to obligations, respect for the rights of other subjects, the obligation to compare one's own and others' interests (Bodnar, T., 2005).

Regarding the content of the principle of good faith in the science of civil law, there are different approaches. Some authors perceive good faith as conscientious and honest behavior of subjects in binding legal relations" (Pavlenko, D., 2006), (Maidanyk, R. A., 2002) or as one of the means of certain limitation of the principle of freedom of contract and control of contract performance by the parties (Berveno, S.M.,2006) or the objective compliance of a person's actions with the standards of behavior in the relevant trade sector (objective concept) (Berveno, S.M., 2006). As an objective category, N.S. Kuznetsova defines it, where good faith in the most general terms is actual honesty and compliance with reasonable standards of honest business conduct (Kuznetsova, N.S., 2014). Others perceive good faith as a subjective category and believe that good faith is the desire to conscientiously protect civil rights and ensure the fulfillment of civil duties (Babych, I.G., 2005), since the desire is a willful trait and depends on the subjects of civil legal relations.

As a compromise point of view, there is also the concept of good faith in the objective-subjective sense. Where the subjective meaning is the subject's awareness of his own conscientiousness and honesty in the exercise of rights and fulfillment of

[Received/Recebido: Janeiro 02, 2024; Accepted/Aceito Março 04, 2024]

duties, and in the objective sense it is a general legal principle that requires conscientious and honest behavior of subjects in the performance of their legal duties ties and the exercise of one's subjective rights (Tobota, Yu.A., 2011). Sometimes it is claimed that, in the subjective sense, good faith is an assessment of a person's behavior in accordance with the norms of morality formed in society, respect for the rights of other participants in legal relations (Bakalinska, O.O., 2011). Or the objective side of good faith means that the subject's actions must meet the objective generally accepted standards of good faith expressed in the rules of business turnover, and its subjective side reflects his internal attitude towards his actions as legitimate and the awareness that such actions do not violate the rights and interests of other persons (Pavlenko, D.G., 2008).

The category of "good faith" is quite widely used in the international and judicial practice of Ukraine. The principle of good faith is also applied by the European Court of Human Rights, referring to ECtHR decisions, such as in the cases of 07.8.1986 "Lingens v. Austria" and 01.21.1999 "Fressot and Roir v. France", on the protection of dignity, honor and business reputation. The court made conclusions about the journalist's duty to adhere to the standards of professional ethics and act in good faith. That is, before making any information public, he must make sure that there are grounds for disseminating such information. Otherwise, such actions are in bad faith (Sobreira Filho, E. F.; Leite, F. P. A.; Martins, J. A. M., 2022).

The Draft Common Frame of Reference (DCFR) contains the provision that good faith is a mental attitude characterized by honesty and the absence of information that specific circumstances are not true. According to Article 1:103: Book 1 DCFR good faith and honest business conduct means a standard of behavior characterized by honesty, openness and respect for the interests of the other party to the contract and other relations. Good faith and honest business practice do not correspond to contradictory statements or behavior of the other party [35]. DCFR clearly follows several criteria of good faith, namely honesty, openness, respect for the interests of the other party, consistent behavior.

The content of the "good faith" category is partially revealed by the provisions of Art. 13 of the Central Committee of Ukraine, so when exercising rights, persons are obliged to refrain from actions that could violate the rights of other persons (Part 2); actions of a person committed with the intention of harming another person, as well as abuse of rights in other forms, are not allowed (part 3); a person must adhere to the moral principles of society (Part 4). That is, individuals must exercise their rights in strict

[Received/Recebido: Janeiro 02, 2024; Accepted/Aceito Março 04, 2024]

accordance with their content, scope and purpose, and refrain from actions that may violate rights or cause harm to another person. As the Supreme Court explains, good faith in the civil law regulation of relations should be considered as the compliance of the real behavior of the participants of such relations with the requirements of general social ideas about honor and conscience. So, in order to be in good faith, the actions and deeds of the participants in civil relations must be carried out in such a way as to evoke a favorable assessment from the side of public morality, in particular in the aspect of compliance of the applied means of legal regulation with the goals set before it. And, on the contrary, the implementation of legal regulation of civil relations will be unconscionable if the social consciousness rejects it as not meeting the declared purpose (Iasechko, S., 2023). The exercise of subjective civil rights must take place in strict accordance with the principles of legality of their exercise of subjective civil rights, autonomy of will, principles of reasonableness and good faith. Their totality is mandatory for application in the exercise of all subjective civil rights without exception. That is, the actions of participants in civil legal relations must meet the standard of behavior characterized by honesty, openness and respect for the interests of the other party to the contract or the corresponding legal relationship (Bodnar, T., 2005).

Good faith (paragraph 6 of article 3 of the CCU) is a certain standard of behavior characterized by honesty, openness and respect for the interests of the other party to the contract or relevant legal relationship. Relying on the principle of good faith, the Grand Chamber of the Supreme Court in the decision dated 05.06.2018 in case No. 338/180/17 applied the doctrine of venire contra factum proprium (prohibition of contradictory behavior), which is based on the Roman maxim - "non concedit venire contra factum proprium" (no one can act contrary to his previous behavior). The court directly points to Article I.-1:103 DCFR, which states the rule of bad faith conduct of a person as inconsistent with a party's prior statements or conduct, provided that the other party acting to his detriment reasonably relies on them. In the Resolution of the Supreme Court dated 04/10/2019 in case No. 390/34/17[36], the doctrine of venire contra factum proprium was already disclosed in more detail. But a definition of behavior contrary to good faith is provided. So, if a person who has the right to challenge a document (for example, a certificate of the right to inheritance) or a legal fact (in particular, a deed, a contract) has expressed directly or by his behavior made it clear that he will not exercise his right to challenge, then such a person is bound by his decision and has no right to change it later. An attempt by a person to subsequently exercise the right to challenge will contradict the previous behavior of such a person

[Received/Recebido: Janeiro 02, 2024; Accepted/Aceito Março 04, 2024]

and should lead to the termination of the said right. The specified legal positions of the court reflect the ideas contained in the provisions of the DCFR and are based on the doctrine of Roman law (bona fides).

It can be stated that the principle of good faith is also one of the means of preventing the parties from abusing their rights. The main purpose of which is seen as providing judges with greater opportunities to find out in full the factual circumstances of the case and, finally, to establish the objective truth. Accordingly, it is worth noting the intensification of the application of the principle of good faith in the resolution of legal disputes. In addition, the courts interpret the principle of good faith quite broadly, based on the specific circumstances of the case, but they also found their own approach to defining the essence and content of the category "good faith" and the moral and legal criteria of lawful (good faith) behavior of participants in civil legal relations. It should be noted that in court decisions, the principle of good faith, taking into account the requirements for uniformity and stability of judicial practice, was applied not only to specific legal relationships, but also to similar or similar ones (Iasechko, S., 2023). At this time, there is already an established practice of the courts regarding the understanding of "good faith", which is expressed in the official position of the Supreme Court, and in fact a new rule of law has been created, although it is not peculiar to the Ukrainian legal system. Where the elements of conscientious behavior of a person are: honesty, conscientiousness, openness, care, trust, non-contradiction, showing a certain level of prudence, respect and respect for the rights and interests of the other party to the relevant civil legal relationship (Iasechko, S., 2021). That is, good faith implies such behavior of the participants of civil legal relations, which they would like if other participants of such relations carried out similar or the same behavior towards them (Pereira , L. de M.; Gewehr , M. A.; Alves , M. F., 2020).

The correctness of our conclusion confirms the application of the category "good faith" in the legislation. Yes, the analysis of Art. 39, 212, 319, 330, 344 of the Central Criminal Code, leads to the conclusion that the behavior of a person is conscientious in the sense that he acts with care and caution, without the intention of harming another person, and also does not allow frivolity (self-confidence) and negligence regarding possible damage. The content of Article 388 of the Civil Code emphasizes that a bona fide acquirer is a person who did not know and could not know that the property was acquired from a person who did not have the right to alienate it under a retaliatory contract. According to the provisions of Part 3 of Art. 92 of the CCU, such behavior of a member of a general partnership who, without the consent of other members, does

[Received/Recebido: Janeiro 02, 2024; Accepted/Aceito Março 04, 2024]

not commit transactions on his own behalf and in his own interests or in the interests of other persons, which is homogeneous with those that are the subject of the partnership's activity, can be recognized as good faith. According to Part 1 of Art. 237 of the CCU is good faith behavior when a representative who acts in accordance with his powers and does not exceed them, that is, fulfills his duties conscientiously, shows care and shows a certain level of prudence about the rights and interests of the person he represents. The owner cannot use the right of ownership to the detriment of the rights, freedoms and dignity of citizens, public interests, to worsen the ecological situation and natural qualities of the land (Part 5 of Article 319 of the CCU). A certain standard of behavior is established for a bona fide owner, which consists in the fact that the owner, exercising his right of ownership, must respect the rights and legitimate interests of other persons.

A brief review of individual opinions of scientists and judicial practice regarding the content and understanding of the category of good faith only confirms the relevance of the chosen topic and allows you to form your own opinion. Of course, certain "requirements", "rules", "standard" of behavior of subjects of civil legal relations are of crucial importance for determining the content of the category of good faith. Indeed, these standards affect the behavior of participants in the civil-law turnover and determine the limits of the exercise of rights and the performance of duties. However, it also depends on the subject of civil legal relations whether he will comply with such standards (criteria, rules) in whole or in part. In addition, the principle of good faith is manifested when the court evaluates the actions of a person aimed at the exercise of civil rights and the performance of duties. And if the parties, in the event of a disputed situation, where the qualification of the actions of one of the parties as being in good faith is crucial, do not go to court? Should it then be considered that there is no dispute, and will the person's behavior, under such circumstances, be considered in good faith? Therefore, every person should be aware of his own behavior and its compliance with certain standards (requirements, rules) and, accordingly, strive for honesty, the need to respect the rights and legitimate interests of other participants in legal relations, take care of their observance, and behave conscientiously and responsibly. Namely, good faith characterizes the behavior of a person in civil affairs, his perception of his actions and their consequences (Iasechko, S., Zaitsev, O., Pokusa, F., Saienko, V., & Harashchuk, I., 2022). Because the category of good faith arises on the border of will, expression of will and legal awareness and is inherent to any natural person who observes the legal norms established in society. It is by being guided by good faith that

[Received/Recebido: Janeiro 02, 2024; Accepted/Aceito Março 04, 2024]

a person refrains from committing illegal actions, and therefore it is necessary to include the category of good faith among the signs of lawful behavior of a natural person (Stefanchuk, M. O., 2015).

At the same time, there may be a danger when the subjective behavior of each participant in civil legal relations will be decisive, which is unacceptable. Because each person has his own understanding of honesty, conscientiousness, respect, concern for the interests of others, prudence regarding the exercise of rights, the performance of duties or possible harm. Over time, this can lead to numerous disputes. In this case, how should the court act when evaluating a person's behavior for compliance with the principle of good faith? If with this approach there will be no standard of behavior of an "ordinary person" at all. Accordingly, such a subjective understanding based on the ideas or will of an individual about good faith is not consistent with the recognition of good faith as a general basis of civil legislation. Just as the behavior of a person with a reasonably necessary degree of honesty, reliability and taking into account the interests of other participants in legal relations should be expected (anticipated), good faith should be perceived as a principle of exercising subjective civil rights.

Therefore, it is correct to understand the essence of "good faith" as a subjective-objective category. Where subjective garbage consists in a separate case of objective perception of "good faith" and manifests itself in the onset of certain legal consequences and it is enough to establish that the participant in civil relations "was aware or not aware", "knew or not", "could have foreseen or not could" his behavior to conform to certain established standards. Objective good faith is an abstract but conceptual model of behavior established in legislation or formed by judicial practice as a general standard or criterion that is applied every time taking into account the specific circumstances of the case. This is the standard honest, responsible and constructive behavior expected from an ordinary (mediocre) participant in civil legal relations in similar (typical) circumstances. The court also has the option, if necessary, to adjust the standard or criterion (requirement, rule) provided by law, the formal application of which without taking into account the specific circumstances of the case would lead to an unfair and, therefore, illegal decision.

4 CONCLUSIONS

It is absolutely impossible to provide a single, unambiguous and comprehensive definition of "good faith", since this is an evaluative category and its application in law

[Received/Recebido: Janeiro 02, 2024; Accepted/Aceito Março 04, 2024]

enforcement practice is not easy. However, it is still necessary to enshrine clarification in the legislation, indicating at least the approximate composition of a person's conscientious behavior (honesty, conscientiousness, openness, care, trust, non-contradiction, showing a certain level of prudence, etc.). After all, the creation of clear legal norms is one of the aspects of ensuring the effectiveness of legal regulation of social relations. Its practical implementation depends on the clarity of the wording of the legal norm. This will avoid many mistakes in its enforcement. We emphasize that there must be a legally defined standard (model) of conscientious behavior of a person, as a set of actions characterized by the manifestation of honesty, conscientiousness, openness, care, trust, non-contradiction, showing a certain level of prudence, respect and respect for the rights and interests of other participants in certain civil legal relations.

In our opinion, it is necessary to support the point of view regarding the understanding of "good faith" as a subjective-objective category, but with certain additions. The objective side means that the behavior (actions or inaction) of a person must meet the objective generally accepted standards (criteria, requirements, rules) of good faith behavior, which are characteristic of all civil legal relations established in legal norms, customs, rules of business turnover or formed by judicial practice as a general standard or criterion (requirement, rule) and is applied each time taking into account the specific circumstances of the case. Accordingly, the subjective side reflects the internal attitude (perception) of a person towards his behavior (actions or inaction) as lawful and the awareness that such actions do not violate the rights and interests of other persons. That is, a person must exercise his rights and fulfill his duties in strict accordance with their content, scope, purpose and established certain standard (requirements, rules).

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