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Features of the Application of the Principle of Good Faith in EU Law

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ABSTRACT

The article analyzes the principle of good faith in the legal framework of the European Union (EU), emphasizing its multifaceted nature as both an ethical and legal cornerstone that integrates private and public law. Originating in Roman law as bona fides, it evolved into a fundamental standard. In private law, this principle is enshrined in the Principles of European Contract Law (PECL, Art. 1:201) and is used by the Court of Justice of the EU (CJEU) to protect weaker parties, for example, in Directive 93/13/EEC on unfair contract terms, balancing freedom of contract. In public law, good faith is inextricably linked to the principle of sincere cooperation (Art. 4(3) TEU), obliging Member States and EU institutions to work loyally toward the Union's objectives, fostering mutual trust. The study examines the interaction of good faith with other key EU principles, such as the rule of law, proportionality, and trust. In public law, it complements the rule of law, particularly in the context of candidate countries (e.g., the Western Balkans), and ensures the proportionality of EU measures. This synergy promotes institutional trust, crucial for initiatives like Next Generation EU. Despite this, the main challenge remains the lack of a clear normative definition of the principle. This leads to inconsistent interpretations across Member States' diverse legal traditions. In private law, it creates conflicts with freedom of contract, and in public law, its application is complicated by political sensitivities, such as sanctions for rule of law violations. The article highlights the need for a clearer framework for the uniform application of good faith. The author suggests avenues for future research, including developing a clearer definition to harmonize private law and studying the principle's application to new challenges, such as the digital economy and artificial intelligence. An analysis of good faith in EU enlargement is also proposed. The principle of good faith remains a vital tool for promoting justice, trust, and integration within the EU's legal framework.

KEYWORDS

principle of good faith, EU law, Roman law, sincere cooperation, contract law, rule of law, case law.

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СОЦІАЛЬНИЙ РОЗВИТОК: економіко-правові проблеми

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Особливості застосування принципу добросовісності в праві ЄС

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СТАТТЯ

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АНОТАЦІЯ

Стаття аналізує принцип добросовісності в правовій базі ЄС, підкреслюючи його багатогранну природу як етичного та правового наріжного каменя, що поєднує приватне і публічне право. Виникнувши в римському праві як bona fides, він еволюціонував у фундаментальний стандарт. У приватному праві цей принцип закріплений у Принципах європейського договірного права (PECL, ст. 1:201) та використовується Судом ЄС (СЄС) для захисту слабших сторін, наприклад, у Директиві 93/13/ЄЕС про несправедливі договірні умови, балансуючи свободу договору. У публічному праві добросовісність нерозривно пов'язана з принципом чесної співпраці (ст. 4(3) Договору про ЄС), зобов'язуючи держави-члени та інституції лояльно працювати для досягнення цілей Союзу, сприяючи взаємній довірі. Дослідження вивчає взаємодію добросовісності з іншими ключовими принципами ЄС, такими як верховенство права, пропорційність та довіра. У публічному праві вона доповнює верховенство права, зокрема в контексті країн-кандидатів (наприклад, Західні Балкани), та забезпечує пропорційність заходів ЄС. Ця синергія сприяє інституційній довірі, що важливо для таких ініціатив, як Next Generation EU. Попри це, головною проблемою залишається відсутність чіткого нормативного визначення принципу. Це призводить до невідповідних тлумачень у різних правових традиціях держав-членів. У приватному праві це створює конфлікти зі свободою договору, а в публічному – ускладнює застосування через політичні делікатності, наприклад, при санкціях за порушення верховенства права. Стаття наголошує на необхідності чіткішої системи для однакового застосування добросовісності. Автор пропонує напрямки для майбутніх досліджень, включаючи розробку чіткішого визначення для гармонізації приватного права та вивчення застосування принципу до нових викликів, як-от цифрова економіка та штучний інтелект. Також пропонується аналіз ролі добросовісності в процесі розширення ЄС. Принцип добросовісності залишається життєво важливим інструментом для сприяння справедливості, довірі та інтеграції в рамках правової бази ЄС.

КЛЮЧОВІ СЛОВА

принцип добросовісності, право ЄС, римське право, щира співпраця, договірне право, верховенство права, судова практика.

1. Introduction

The principle of good faith, which permeates legal systems from antiquity to the present, occupies a central place in European Union (EU) law, acting not only as an ethical guide but also as a legal instrument that ensures harmony between individual interests and the common goals of integration. In the context of EU law, good faith is of particular importance because, on the one hand, it contributes to the implementation of the principle of sincere cooperation between the Member States and the institutions of the Union. On the other hand, it serves as a basis for the regulation of private law relations, particularly in contract law [1]. In fact, the versatility of this principle, its ability to adapt to various legal contexts, makes it the object of close attention of both scientists and practitioners.

The problem of applying the principle of good faith in EU law is relevant for several reasons. Namely, in the process of European integration, when member states transfer part of their sovereignty to supranational institutions, good faith becomes the key to effective interaction based on trust and mutual respect. Also, in private law, where the harmonization of national legal systems remains a difficult task, good faith is a universal standard that allows balancing the interests of the parties in contractual relations, while taking into account the cultural and legal differences of the Member States [2]. In today's environment, when the EU faces challenges related to economic crises, climate change, or political instability, the principle of good faith acquires a new meaning as a tool for ensuring the stability and legitimacy of regulatory regimes [3].

From a practical point of view, the relevance of the problem is increased by the ambiguity of the interpretation of good faith in various areas of EU law. For example, if in contract law this principle is clearly enshrined in documents such as the Principles of European Contract Law (PECL), then in the context of interinstitutional cooperation, its application often depends on judicial interpretations [4]. This uncertainty raises the question: how exactly can good faith be effectively applied in different legal contexts without losing its universality? (Perhaps this is where the key lies to understanding its uniqueness as a principle that unites public and private law.) Thus, the study of the peculiarities of the application of the principle of good faith in EU law is not only theoretical, but also practical, because it is aimed at improving legal regulation, ensuring justice and strengthening trust in European institutions.

The scientific significance of the problem lies in the need to systematize knowledge about good faith as a multifaceted principle that affects various aspects of EU law. Despite numerous studies devoted to this issue, there is a lack of a comprehensive analysis that would combine the historical origins of the principle, its normative consolidation and interaction with other principles of EU law, such as proportionality or the rule of law [5]. Therefore, this article is designed to fill this gap by offering a thorough understanding of the role of good faith in the EU legal system and outlining the prospects for its further development.

2. Literature Review

The problems of good faith in EU law were previously studied by G. De Baere, T. Roes, M. Hesselink, H. Collins, S. Reinhold, R. Zimmermann, S. Whittaker, S. Djajić, K. Verhoest, M. Maggetti, E. Guaschino, J. S. Schumacher. Weinen, F. Mitch, N. Lee, E. Morrow, A. Hodjai, P. Leino-Sandberg, M. Ruffert, D. Bush, O. Lando, J. S. Schumacher. Cartwright, A. Kok, K. Turner, R. Kinley, M. Kutarjar, J. de Bohr, C. Figueres, however, the issues of the systematic application of the principle and its interaction with other principles of EU law remain insufficiently covered, which determines the focus of this article.

3. Problem Statement

The purpose of the article is to investigate the peculiarities of the application of the principle of good faith in the law of the European Union. At the same time, we carefully take into account the historical background, normative consolidation and intertwining with other legal principles.

Understanding the versatility of good faith (which combines ethical and legal planes), we do not limit ourselves to disclosing its content in the context of EU law. It is also important for us to outline the practical implications for institutional cooperation and private law relations.

4. Methods and Materials

The methodological basis of this research is a comprehensive approach that combines general scientific and special legal methods of cognition. The central method is the formal-legal (dogmatic) analysis, which is applied to study the normative entrenchment of the principle of good faith in the EU legal framework. The materials for this analysis were primary and secondary sources of EU law. To uncover the evolution of the concept, the historical-legal method was used. This method allowed for tracing the genesis of the principle from its origins in Roman law (bona fides), where it regulated contractual and property disputes, through its transformation in medieval canon law and subsequent codifications, to its modern perception as a universal standard in EU law. An important component of the research is case-law analysis. The materials included decisions of the Court of Justice of the European Union (CJEU), which play a key role in interpreting good faith and ensuring a balance between contractual freedom and societal interests. Using systemic analysis, the dynamic interaction and interconnection of the principle of good faith with other fundamental principles of EU law were examined. Specifically, its connection with the rule of law (in the context of EU enlargement to the Western Balkans), proportionality, freedom of contract, and solidarity was analyzed.

5. Results and Discussion

Bona fides – this is how the principle of good faith is called in the Latin tradition – is one of the cornerstones of European legal culture. Its roots go back to the depths of Roman law, where good faith was not just an ethical category, but also a legal measure for regulating relations between the parties.

This was especially evident in contractual and property disputes. We can mention actio bonae fidei – these lawsuits allowed judges to take into account all the circumstances of the case, guided by the principle of justice. Thanks to this, conflicts were resolved flexibly, especially where the formal application of the law did not give a satisfactory result.

Scholars note: it was this approach that later became the basis for the development of the concept of good faith in the civil law of continental legal systems, primarily in the law of obligations. In ancient Rome, good faith was also associated with trust (fides), a prerequisite for concluding agreements and fulfilling obligations. This is how the moral and legal basis of social relations was formed.

Over time, the principle of bona fides has changed significantly, but, interestingly, it has not lost its universality. It has perfectly adapted to the new legal realities. In the Middle Ages, the principle found its place in canon law – here the emphasis was on the ethical aspect of good, faithful behavior. And later it was reflected in the codifications of civil law (at least the German BGB or the French Code Civil can be mentioned), which significantly influenced modern EU law.

It should be noted that in the context of European integration, the principle of good faith has sounded in a new way in the process of deepening European integration at the present stage. It ceased to be just a standard of private law relations and turned into an instrument for ensuring cooperation between the Member States and the institutions of the Union [6]. Thus, the development of the principle of good faith has a long way, from an ethical maxim to a universal legal principle that plays a key role in the EU legal system, organically combining historical aspects and modern challenges.

The principle of good faith not only regulates the conduct of the parties in contractual relations, but also serves as the basis for the implementation of sincere cooperation enshrined in Article 4(3) of the Treaty on European Union. As the researchers note, in private law, this principle is a universal standard. On the one hand, it adapts the rules to the different legal traditions of the Member States, and on the other hand, it also contributes to the harmonization of contract law [7], ultimately, of the entire private law.

In public law, good faith is associated with the loyalty of member states to the objectives of the Union. The latter is manifested in their cooperation with the EU institutions and the fulfillment of obligations under European law. Thus, good faith in EU law is a kind of integral category that covers both ethical and legal aspects and plays the role of a kind of cement in the legal system of the Union.

The sources in which the principle of good faith is enshrined in EU law are diverse. This only confirms the versatility and flexibility of the principle [8]. In the field of private law, the key document is the Principles of European Contract Law (PECL), in particular Article 1:201. In it, good faith is defined as a standard of conduct of the parties in contractual relations, which is based on honesty and fairness.

Although this document is not legally binding, it serves as a direction for the harmonization of contract law in Europe, influencing national legal systems and judicial practice. For example, in countries with a continental legal tradition (Germany, France), good faith has long been enshrined in civil codes. This facilitates its integration into European law through initiatives such as PECL.

In public law, good faith is enshrined in primary EU law, first of all in the aforementioned Article 4(3) of the Treaty on European Union. It obliges Member States and institutions of the Union to cooperate in a spirit of sincere loyalty. This norm mustn't be just declarative – it has a completely practical application. For example, in cases related to the implementation of EU directives or regulations by member states.

The case law of the European Court of Justice (CJEU) also significantly affects the formation of the content of the principle of good faith. In many judgments, especially those related to consumer protection or termination of contracts, the CJEU interprets good faith as a principle that strikes a balance between freedom of contract and the protection of the weaker party.

For example, cases concerning unfair terms in consumer contracts (Directive 93/13/EEC). Here, the principle of good faith is used as a criterion for assessing the fairness of contractual provisions. This clearly demonstrates its practical significance in protecting the rights of citizens.

In public law, judicial decisions, such as cases of breach by Member States of their obligations, emphasize the role of good faith in ensuring the effective functioning of the Union. For example, if we look at initiatives aimed at strengthening the rule of law in the Western Balkans, we can see that here, good faith is seen as a necessary condition for the integration of candidate countries into the EU.

It should be emphasized separately that good faith in EU law does not exist in isolation, but instead closely interacts with other norms and values [9]. In particular, in private law, it complements the principles of freedom of contract and justice. And in public law, there are principles of solidarity and proportionality.

Such interaction allows good faith to adapt to different social and legal contexts – from the circulation of finance to the environment. It is important that both here and there it becomes the basis for trust and cooperation between European partners. At the same time, as the researchers rightly note, the lack of a clear definition of good faith in EU regulations partially complicates its application (we add that this also affects the relative frequency of recourse to this principle). This seems to be especially true for situations where national legal traditions differ significantly, and reaching a consensus of a certain level is necessary (for example, in the context of the regionalization of the modern economy).

Thus, good faith in EU law is a legal principle enshrined in various sources (from primary legislation to judicial practice) and which plays a leading role in ensuring the fairness, trust and efficiency of the Union's legal system.

The principle of good faith in the law of the European Union does not exist as if in a vacuum. It operates in a complex system of interrelated legal principles, which together form the unique legal architecture of the Union. The ability to coexist harmoniously with other principles (including the rule of law, protection of human rights, as well as proportionality, freedom of contract, and solidarity) makes good faith not just an auxiliary tool, but a fundamental principle that ensures the integrity and effectiveness of the EU legal system.

In this context, the interaction of good faith with other principles is extremely important. Understanding this aspect can not only adapt good faith to different legal areas, but also strengthen the effect of other norms [10]. Here, it seems, there is a kind of synergistic effect that contributes to the achievement of the goals of European integration.

In considering this interaction, it is necessary to pay attention in particular to its manifestation in public and private law, as well as to how it affects the balance between individual interests and the general objectives of the Union.

Thus, in public law, good faith is strongly linked to the principle of sincere cooperation enshrined in Article 4(3) of the Treaty on European Union. This principle obliges the Member States and institutions of the Union to act together in order to achieve the objectives of the EU.

According to the researchers, good faith in this context acts as an ethical and legal basis for the loyalty of Member States to the European project [11]. This is manifested in the timely implementation of directives, regulations, or judgments of the Court of Justice of the EU.

For example, in cases of breach by Member States of their obligations, the Court of Justice of the EU often refers to good faith as a criterion for assessing their conduct. He emphasizes that sincere

cooperation is impossible without conscientious performance of duties. This interaction is strengthened by the principle of solidarity, which requires Member States to jointly take responsibility for challenges such as, in particular, economic crises, migration flows, etc. In this case, good faith acts as a tool to ensure that solidarity does not remain only a declarative value, but will have a practical implementation.

For example, within the framework of initiatives such as Next Generation EU, where Member States cooperate for economic recovery, the faithful implementation of commitments is the key to the success of this entire project.

6. Conclusions

The above study of the peculiarities of the application of the principle of good faith in EU law allows us to draw the following conclusions.

The principle of good faith in EU law is not just an ethical guideline, but rather a universal legal principle that has deep roots in Roman law. Therefore, it is also a kind of bridge between the historical legal heritage and the modern challenges of European integration.

A characteristic feature of good faith in EU law is its versatility. In public law, it serves as the basis for the principle of sincere cooperation, and in private law, it provides a balance between freedom of contract and justice. It is this flexibility and adaptability that allow this principle to function effectively in a variety of legal contexts.

Good faith in EU law is enshrined in various sources – from founding treaties to judicial practice, which has a precedential nature. This underlines its universality and its extraordinary importance for the legal system of the Union.

The principle of good faith interacts closely with other principles of EU law, such as the rule of law, proportionality, solidarity, freedom of contract, etc. This interaction creates a synergistic effect, strengthening the effect of each principle and, last but not least, contributing to the achievement of the common goals of European integration.

At the same time, attention should be paid to the problems associated with the application of the principle of good faith. Among them is the lack of a single definition, which can lead to ambiguous interpretation, especially in the context of different legal traditions of the Member States. The issue of the limits of the application of good faith in EU regulatory regimes, in particular in the areas of economic and financial regulation, remains relevant. Obviously, the application should be based on clear criteria that combine flexibility with the possibility of legal foresight.

From a practical point of view, there is every reason to say that the principle of good faith has significant potential for improving legal regulation in the EU. It can serve as a tool for the harmonisation of national legislation, especially in the field of private law, and for ensuring effective cooperation between Member States and Union institutions.

Finally, the interaction of good faith with other legal concepts, such as trust, legitimacy, and efficiency, which is (especially) relevant in the context of EU jurisprudence and the reform of the Union's institutions, obviously needs a deeper study.

The principle of good faith, of course, remains one of the cornerstones of the European legal culture; therefore, its consistent implementation in the national legal system is one of the priority tasks facing the national political and legal system.

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