

OPINION

From: Associate professor Dr. Silvia Stoyanova Tsoneva, New Bulgarian University, field of higher education 3. Social, economic and legal sciences, specialisation 3.6. Law (Civil and Family law)

Re: doctoral thesis for the award of the academic and scientific degree of ‘doctor’ in Civil and Family law at the University of Plovdiv “Paisii Hilendarski”.

Author of the doctoral thesis: Yordan Nikolaev Pangev

Title of the doctoral thesis: Unfair terms in contracts

Supervisor: assoc. prof. Dr. Krasimir Mitev

Basis for submitting this opinion: member of the academic jury pursuant to order no. Rd-22-1439/21 July 2026 of the rector of the University of Plovdiv “Paisii Hilendarski” for the defence of a doctoral thesis for the award of the academic and scientific degree of “doctor” in the scientific speciality “Civil and Family law”, professional field 3.6. Law, area of higher education 3. Social, economic and legal sciences

1. Information about the PhD candidate

The PhD candidate, Yordan Pangev, was born on 13 March 1993. He graduated Law at the University of Plovdiv “Paisii Hilendarski”. He undertook his doctoral studies as a full-time doctoral student at the Department of Civil Law Sciences within the Faculty of Law at Paisii Hilendarski University of Plovdiv. Since 2022, he has been a part-time lecturer at the Faculty of Law of Paisii Hilendarski University of Plovdiv, where he teaches seminars in Civil Law.

2. General description and assessment of the thesis

The topic of the presented dissertation is "Unfair terms in Contracts". The work is 220 pages long. Structurally, it includes an introduction, three chapters and a conclusion. At the end of the work, a complete bibliography of the literature used is attached, which includes 113 titles in Bulgarian and 73 in foreign languages - English, French, Italian and Spanish. The number of footnotes is 876.

Structurally, each chapter is organized in separate paragraphs. The paragraphs contain separate thematically structured titles and subtitles, indicated by Arabic numerals.

The topic of the study is relevant and appropriate for dissertation research in view of the lack of an independent comprehensive study of unfair terms in our country, the enormous importance of the issue under consideration for the public relations it affects, the need to clarify and develop civil law theory in the field of unfair terms, the great practical and applied value of the study in view of the impressive volume of accumulated case law on the topic of the Bulgarian courts and the CJEU.

The topic of unfair terms is complex due to the intersections of Directive 93/13 at the European level, the significant differences in the approaches of national legislations to the control of the content of contracts, the developing case law of the Court of Justice of the European Union. The research and comparative activity of the study is further complicated by the need to recognize and take into account the differences and nuances in national regulations regarding some basic legal institutions such as the invalidity of transactions, for example, as well as the need to reflect the intervention of various criteria in the regulation of unfair terms, such as a requirement for unilaterally drafted clauses by one party to the contract or the absence of such a requirement, the presence of a restriction regarding the quality of the entities that are parties to the contract or the absence of such a restriction, the presence of a requirement for good faith or the absence of such a prerequisite, covering only the non-essential content of the contracts or the absence of such a restriction, etc.

Structurally, the work is organized into three chapters - the essence of unfair terms, types of unfair terms and consequences of the use of unfair terms in contract. This structure, largely inductive - from the general concept of unfair terms to the types of unfair terms, is legislatively set and is optimal in view of the goals set by the dissertation. It allows for a good logical construction of the study and a consistent development of the topic with reaching and presenting a final thesis.

The goals and objectives clearly set at the very beginning and, above all, the formulation of a hypothesis for the thesis of the study are to be pointed out. The stated goal is to justify the need for legislative changes by clarifying the essence of unfair terms and analyzing the regulatory framework. The proposed main thesis is to remove the institute of unfair terms from the CPA, and all contracts whose content is unilaterally determined by one of the contractors to receive a common regulation, while maintaining the high level of protection of consumers, who are the weaker party in their relations with professionals.

The research methods used - legal-dogmatic, historical, critical-analytical, comparative law and teleological - are appropriately chosen and successfully applied throughout the study.

The literature used is sufficiently voluminous and representative. It covers the most important authoritative and current scientific works on the topic in our country and abroad, and serious efforts have been made to cover a wide range of legislation in several foreign languages.

The overall assessment of the presented dissertation work is that it has the character of a complete and comprehensive legal study with great relevance and important theoretical and practical-applied value. The essay demonstrates a high level of methodical and in-depth scientific research and the ability to present it in a clear and well-structured academic style.

The excellent assessment of the dissertation requires highlighting the qualities of the doctoral student demonstrated through the dissertation work in relation to: mastery of the scientific apparatus; high level of knowledge of the general theory of law, the general part of civil law, the law of obligations, commercial law, civil process; ability to synthesize and conceptualize the topic; ability to conduct in-depth and comprehensive academic research based on a large number of Bulgarian and foreign legal works and case law; ability to polemicize and critically analyze with legal arguments and substantiated arguments; conscientious work with the sources used, correct presentation of the opinions of other authors and conscientious citation. Separately, it should be emphasized as a merit of the work the placement of the researched issues in a practical and concrete context and the search for the logic and understanding of their social and economic dimensions, especially with a view

to examining them through the prism of the principles of effectiveness, proportionality and deterrent effect of the means of protection against unfair terms in the practice of the CJEU.

The work is important because it makes accessible to Bulgarian legal science the achievements and views of foreign legislation and the CJEU on the issue of unfair terms.

3. Review of the dissertation and the obtained scientific and applied scientific results

The dissertation begins with an introduction that outlines the subject, objectives and method of research. It performs a preparatory function, making the work more focused and systematically organized.

Chapter one entitled “Essence of Unfair terms” begins with an examination of the theories of contract and the principle of autonomy of the will. The clarification of the principle of autonomy of the will is followed by tracing its projections in the principles of contractual freedom, the binding force of the contract and the relative effect of the contract. It is assumed that contractual justice should be added to these three dimensions. Two aspects of contractual justice are distinguished – procedural and substantive. Substantive justice is associated with the content of the contract and, above all, with the requirement for equivalence of the performances. Although it is accepted that the criterion of equivalence is subjective, it is pointed out that it is not excluded in certain cases to foresee legal consequences in case of violation of objective equivalence.

Insofar as unfair terms are determined unilaterally by one party, and the other is limited to accepting them or not, without having a real possibility to influence their content, a connection is established between the institute of unfair terms and the principle of freedom of contract. However, there is also a restriction in relation to the party that draws up the terms, which arises from the law - they must be formulated in a way that does not contradict the requirement of good faith and does not lead to a significant imbalance between rights and obligations. From this point of view, a combination of the principle of freedom of contract and the principle of contractual fairness is established in the case of unfair terms.

Next, the dissertation examines the concept of standard terms contracts. After presenting the main characteristics of general terms and conditions under Bulgarian, German and Dutch law, it is concluded that general terms and conditions contracts should be considered as a set of abstractly formulated clauses governing all or part of the contractual content, which are intended to be used for the conclusion of multiple agreements of the same type by a given entity.

Next, the regulation of general terms and conditions contracts in the OCA, CA and CPA is examined. In order to protect consumers, especially in cases of contracts concluded electronically, *de lege ferenda* it is proposed to provide that general terms and conditions are not binding on the consumer when they are not transmitted to him when the contract is concluded.

In order to better protect consumers and systematize the legal framework, it is proposed that the rules for concluding, amending and interpreting general terms and conditions should be concentrated in a single regulatory act - the OCA.

After clarifying the above fundamental issues and concepts, we proceed to a detailed examination of the characteristics of an unfair terms - 1) it must not be individually negotiated; 2) it must be concluded in violation of the principle of good faith; 3) it must create a significant inequality between the rights and obligations of the parties; 4) it must be

concluded to the detriment of the party that agreed to the clause.

The requirement that the clause must not be individually negotiated is defined as key and *de lege ferenda* is proposed to find a place in the legal definition of Art. 143, para. 1 of the Consumer Protection Act.

Regarding the second characteristic of unfair terms - that they must be concluded in contradiction with the requirement of good faith, it is assumed that good faith under Art. 143, para. 1 of the Consumer Protection Act should be understood as a requirement for certain behavior on the part of the professional before concluding the contract. In view of this, it is associated with good faith in pre-contractual relations under Art. 12 of the Obligations and Contracts Act. It is assumed that good faith requires the professional to take into account the interests of the consumer and to assess, acting in good faith and fairly, whether he can reasonably expect that the consumer will agree to a given arrangement in individual negotiations. This assessment must be made in relation to the average consumer.

It is assumed that the assessment of whether the clause is in conflict with the requirement of good faith largely coincides with the requirement of a significant imbalance between the rights and obligations of the parties. Therefore, *de lege ferenda* it is proposed that the conflict of the clause with the requirement of good faith be left out as an element of inequality.

The main thesis of the dissertation is that the regulation of unfair terms should find a place in the Obligations and Contracts Act and become an institute of the law of obligations regardless of the status of the parties to the contract. The proposal is to eliminate the requirement of good faith in this regulation. However, if it remains, it is proposed that the assessment of good faith be made in relation to a reasonable person.

The third feature of unfair terms - significant inequality between the rights and obligations of the parties, is defined as an unjustified or unnecessary lack of reciprocity, lack of counter-performance, or disproportion between rights and obligations. It is emphasized that inequality is not only an economic, but also a legal imbalance between the rights and obligations of the parties. The assessment is at the time of conclusion of the contract and covers all its clauses, including the terms of other contracts, when they represent a vital unity with it.

The fourth feature of unfair terms - the inequality being to the detriment of the consumer, is interpreted as in favor of which of the contracting parties the imbalance between rights and obligations is.

The subjects to which the rules on unfair terms apply are examined. *De lege ferenda*, the unification of the terms "trader" and "supplier" with the general concept of "professional" is proposed.

A comparison and distinction is made between unfair terms and similar legal institutions such as abuse of law, transactions concluded in extreme necessity and clearly disadvantageous conditions, transactions contrary to good morals and surprising clauses.

Chapter II is entitled "Types of unfair terms". It is dedicated to lists of unfair clauses and provides a classification of clauses. This chapter shows the ability of the doctoral student to work in concrete terms and context with an understanding of the essence of the institution under consideration and its manifestations.

The benefits and disadvantages of lists of unfair terms are analyzed in detail and with justification. The legislative approach of combining general and casuistic regulation is carefully analyzed and the legislative policy towards unfair terms in both paragraphs of Art.

143 of the CPA is traced.

The characteristics of the so-called "white", "grey" and "black" lists are clarified. It is concluded that after the amendments to the CPA of 2019, the list under Art. 143, para. 2 of the CPA is in the "black" category. De lege ferenda, it is proposed that some of the clauses that violate the transparency requirement be separated into a separate "white" list.

A classification of unfair terms into six groups is proposed. This has significant didactic and practical benefits. The first group includes clauses related to the conclusion of the contract; in the second group - clauses concerning the performance of the contract; in the third group - clauses related to non-performance; in the fourth - clauses concerning the termination or continuation of the contract; in the fifth - clauses affecting procedural rights; in the sixth - clauses not falling into the previous groups.

It is particularly useful to present and consider the list of unfair clauses under the CLAUDETTE project, which is relevant for the general terms and conditions used in the online space.

Chapter III "Consequences of the inclusion of unfair terms in a contract" devotes considerable attention to the requirement of Art. 6, § 1 of Directive 93/13 that unfair clauses in contracts between consumers and sellers or suppliers are not binding. The decisions of the various European jurisdictions to rule unfair clauses as null, ineffective, unwritten, unenforceable, etc. have been followed.

The nullity of the unfair terms regulated in our country is analyzed in view of the practice of the CJEU, according to which consumers can declare that they wish to benefit from the unfair terms in the contracts. Assuming that the regulation of unfair clauses consists of public order norms, this practice of the CJEU, which allows the remediation of unfair clauses, is subject to criticism. However, if it is to be taken into account, it is proposed to provide for a pending invalidity of unfair terms, which would better reflect the possibility of confirming the unfair term with a unilateral declaration of will of one of the parties to the contract.

Next, the paper examines the prerequisites for partial nullity of unfair terms according to Art. 146, para. 5 of the CPA. The CJEU case law is analyzed in detail, according to which the national court cannot replace established unfair terms with dispositive provisions of national law, unless the removal of the unfair term would lead to the invalidity of the contract in its entirety and would expose the consumer to particularly adverse consequences. This practice is criticized with the argument that this does not achieve the desired certainty and clarity in the relations between the parties, and additionally, the non-application of the dispositive rules may create a significant imbalance, this time to the detriment of the professional.

In the event that the unfair clause leads to the nullity of the contract in its entirety and there are no dispositive provisions to preserve its validity, it is considered appropriate to allow the court to convert the void contract. This is considered particularly appropriate in the case of consumer credit contracts or real estate credit contracts, where the nullity of the contract places consumers in an extremely disadvantageous position, as they have to repay the entire principal amount in one lump sum. Therefore, it is proposed that the court convert the void contracts into a consumer loan contract and repay the principal amount in accordance with the terms of the repayment plan.

Next, the issues regarding the possibility of consumers to protect themselves against unfair terms when enforcement proceedings are initiated against them are examined. It is assumed that in this hypothesis, the consumer should have the opportunity to defend himself

against unfair terms in contracts if two prerequisites are met - the defective terms were the reason for initiating enforcement and the issue of their unfairness was not explicitly addressed in the proceedings preceding the enforcement process.

The dissertation also examines the issues regarding the limitation periods for declaring the unfairness of a contractual clause and for returning what was given under such a clause. The practice of the CJEU on this issue is examined in detail. It is concluded that the limitation period for returning what was given by a consumer under an unfair clause should start to run from the entry into force of the decision declaring its unfair nature, but this cannot lead to a period exceeding 10 years from the moment when the property transfer was carried out.

4. Assessment of scientific and applied scientific contributions

A number of contributions can be highlighted in the dissertation work, among which the following deserve special attention:

- 1) a comprehensive independent analytical study of unfair clauses;
- 2) a critical and comprehensive analysis of the practice of the CJEU in the matter of unfair clauses;
- 3) a proposal for consolidating the regulation of general conditions in the Obligations and Contracts Act;
- 4) the proposal for a uniform regulation of unfair clauses in the Obligations and Contracts Act, applicable to all unilaterally drawn up contracts regardless of the quality of the parties;
- 5) a proposal for a legal definition of unfair clauses, which would include a requirement that the clause not be individually negotiated and to eliminate the sign of contradiction with the requirements of good faith;
- 6) clarification of the nature of the list under Art. 143, para. 2 of the Consumer Protection Act and proposals for changes to it;
- 7) classification of types of unfair clauses;
- 8) many other proposals de lege ferenda.

5. Evaluation of publications on the dissertation

For the purposes of this procedure, 3 publications related to the topic of the dissertation work have been submitted, namely:

1. Unfair terms and abuse of law. – In: Collection 70 years of the Law of Obligations and Contracts. Plovdiv: Sibi, UP "Paisiy Hilendarski", 2022;
2. Comparative law notes on unfair terms. – In: Collection of reports from the Scientific Conference "Law in the XXI Century - Challenges and Prospects". Plovdiv: UP "Paisiy Hilendarski", 2023;
3. Does consumer law provide special protection for minors and underage consumers? – Studia Iuris, No. 2, 2024.

The aforementioned articles prove the ability of the dissertation candidate to conduct significant academic legal research and publications in the form of scientific articles.

6. Evaluation of the dissertation abstract

The abstract submitted by the dissertation candidate corresponds to the content of the dissertation. In a clear and synthesized form, it presents the entire content of the dissertation work by chapters and sections, giving a complete and precise idea of the researched problems and the conclusions reached.

7. Critical notes, recommendations and questions

Within this point, I will allow myself to give a few notes that are not in the nature of criticism, but may possibly serve as guidelines and recommendations to the doctoral student for possible clarifications or additions in a future publication of the dissertation work or subsequent scientific publications on the topic of unfair clauses.

1. It would be particularly useful if the numerous proposals made *de lege ferenda* were accompanied by specifically formulated draft texts of legal provisions.

2. Although the Draft Common Framework of Reference DCFR is mentioned and included in the dissertation, I believe that it would be useful to pay a little more attention to it, since in the area of unfair terms it offers a more detailed and differentiated regulation than that of the Principles of European Contract Law (Book II, Chapter 9, Section 4 – Art. II.–9:403 – II.–9:410).

3. The position taken in the dissertation regarding the requirement of contradiction with good faith, and more precisely that it should be eliminated as a feature of unfair terms, is completely acceptable as a final conclusion and is supported by legislative solutions in a number of European countries. It seems to me, however, that at a theoretical level the analysis could be refined and supplemented. The need for clarification arises from the fact that in the dissertation the redundant nature of the requirement for contradiction with good faith is justified by two different arguments, which are related to different meanings of the term "good faith". On the one hand, it is assumed that good faith under Art. 143, para. 1 of the Consumer Protection Act is related to the behavior of the professional when negotiating and concluding contracts and as such is regulated by Art. 12 of the Obligations and Contracts Act and does not need to be contained in another separate norm. On the other hand, it is assumed that the requirement for good faith should be dropped, because the assessment of whether the agreement is in contradiction with the requirement for good faith is largely identified with the significant imbalance between the rights and obligations of the parties, i.e. with another sign of unfair clauses. From this point of view, it would be good to make some clarification in the reasoning part of the statement on this point.

Additionally, one could take a position on the two known comparative approaches to good faith in cases where it is present in the definition of unfair clauses. In one version, good faith is a separate and independent feature of unfair clauses along with the imbalance of rights and obligations under the contract. This is the approach of the current OCA. In the second version, good faith is again present in the definition of unfair clauses, but not as an independent feature, but as a criterion for assessing the imbalance and as a criterion to what extent this imbalance is justified and permissible. In this case, we are not talking cumulatively about a contradiction of the requirement of good faith and a significant imbalance, but about a significant imbalance in contradiction with the requirement of good faith. This is the approach of § 307 BGB, and the German model is the basis of Directive 13/93/EEC and deserves to be studied more carefully.

Taking into account and supplementing the above could enrich the work and make the position taken in the dissertation on this issue more convincing and justified.

4. Regarding the considered possibility of a consumer credit contract that is void due to unfair causes being converted by the court into a consumer loan contract under Art. 240 of the Contracts and Obligations Act, I believe that it should be discussed to what extent Art. 23 of the Consumer Credit Act does not constitute a special provision governing the consequences of the invalidity of the contract.

5. I recommend that the analysis of the beginning of the limitation period for the consumer's restitution claim be supplemented by examining the same issue in the case of the professional's restitution claim. The examination of the potentially existing asymmetry and the search for its causes has important practical significance and is relevant in view of the Judgment of the Court of Justice of the EU of 2 July 2026 in Joined Cases C-261/25 and C-262/25, Ścierbek and Drózdziak, which held that Directive 93/13 does not preclude national case-law according to which the limitation period for the trader's claim against the consumer for the return of the goods delivered under a contract declared void due to unfair terms begins to run from the moment when the consumer first challenged the binding nature of those terms and the contract before the trader.

1. arose after the submission of the dissertation, namely the preliminary inquiry made to the CJEU whether Directive 93/13/EEC is applicable to the contracts under Art. 234 of the Obligations and Contracts Act between trainees and hospitals and, accordingly, whether the penalty clause in case of failure to fulfill the obligation of trainees to work in a hospital for 5 years after acquiring a specialty can be considered unfair.

The above considerations are not in the nature of critical remarks, but rather proposals for additional refinement and inclusion at the discretion of the doctoral student.

8. Conclusion

The dissertation is a completed scientific work on a current topic with high theoretical and scientific-applied value. Based on this scientific work, as well as the submitted publications, I believe that the doctoral candidate Yordan Nikolaev Pangev possesses in-depth theoretical knowledge in the scientific specialty "Civil and Family Law" and abilities for independent scientific legal research. The documents submitted during the procedure clearly show that the minimum national requirements under Art. 2b, para. 2 and 3 and Art. 6, para. 3 of the Act on the Development of the Academic Staff in the Republic of Bulgaria for the award of the educational and qualification degree "Doctor" to Yordan Nikolaev Pangev have been met.

In view of the above, I express my entirely positive assessment of the dissertation submitted for defense and propose to the Scientific Jury to award the dissertation candidate Yordan Nikolaev Pangev the educational and scientific degree "Doctor" in the scientific specialty "Civil and Family Law", Professional Direction "3.6. Law".

Sofia
August 30, 2026

Signature:
/Assoc. Prof. Dr. Silviya Tsoneva/