

## **O P I N I O N**

**by Grigor Naydenov Grigorov, PhD – Professor of Civil and Family Law  
at the Faculty of Law, “Paisii Hilendarski” University of Plovdiv**

On the dissertation of Yordan Nikolaev Pangev – a full-time PhD student at the Faculty of Law of “Paisii Hilendarski” University of Plovdiv – on the topic: **“Unfair Terms in Contracts”**, for the award of the educational and scientific degree of “Doctor” in the field of higher education 3. Social, Economic and Legal Sciences, Professional field 3.6. Law, PhD programme in “Civil and Family Law”.

Dear members of the Scientific jury,

By Order No. RD–22–1439 of 21 July 2026 issued by the Rector of the University of Plovdiv, I have been appointed as an internal member of the Scientific jury for the defence of the doctoral thesis of PhD student Yordan Pangev. At the first meeting of the Scientific jury, I was tasked with preparing an opinion.

### **1. Information about the PhD student.**

Yordan Pangev holds a Master’s degree in Law from the University of Plovdiv. Between 2021 and 2025, he was a full-time PhD student at the Faculty of Law, University of Plovdiv, and from 2022 to the present, he has been a part-time lecturer in civil law at the Faculty of Law, leading seminar sessions and delivering lectures on the topic of his doctoral thesis. The PhD student actively participates in national and international academic events and projects –he has taken part in a large number of academic and scientific-practical conferences, discussion forums, academic seminars and round-table discussions. He has presented a paper on the topic of his doctoral thesis at an international academic colloquium organised by the Faculty of Law at the University of Plovdiv. He has participated in a research project run by the Faculty of Law at the University of Plovdiv; and he has translated and edited academic articles. He is currently practising as a lawyer.

### **2. General description of the presented dissertation.**

This work is the first comprehensive academic study of the legal concept of unfair terms in Bulgarian civil law literature. This legal concept is relatively new in our legal system – the first legal act regulating unfair terms in contracts the Law for consumer protection and trading rules (the LCPTR) was adopted in 1999. The current legislation is the Law for consumer protection (LCP – Published in the State Gazette, issue 99 of 9 December 2005, in force from 10

June 2006), through which our legislature, in Chapter Six, has transposed the provisions of Directive 93/13/EEC on unfair terms in consumer contracts. The relevance of this academic research stems both from the need to clarify the new legal framework and from the immense practical significance of the institution – in numerous economic sectors of the market, those offering goods and services draw up contracts with consumers unilaterally and under general terms and conditions, and these terms are the main source of unfair terms for consumers.

The thesis comprises 220 pages, structured as follows: title page, table of contents, list of abbreviations, introduction, a main body comprising three chapters, conclusion and bibliography. Each chapter is divided into paragraphs, and the paragraphs into points and sub-points. The PhD student has utilised and cited 113 works on the subject in Bulgarian and 33 in foreign languages. He has analysed the case law of the CJEU, as well as the opinions of the Advocates General in cases before the CJEU, there are 876 footnotes.

The PhD student has clearly defined the subject and objectives of the research. In writing his thesis, he has employed the classical methods of legal research, primarily the historical and comparative-legal methods. He has also drawn upon the achievements of the legal doctrine – both Bulgarian and foreign – and has analysed a substantial number of court decisions – primarily those of the CJEU concerning the application of Directive 93/13/EEC. On specific issues, he has also drawn arguments from the Principles of European Contract Law.

The thesis is written in precise legal language. It is analytical rather than descriptive. In his analysis of the legal framework, the PhD student clearly sets out his arguments, he does not confine himself to presenting the various positions in legal scholarship on contentious questions concerning unfair terms in contracts, rather, after presenting them, he provides a well-reasoned justification for his own views (on pp. 21, 38, 112, 157, etc.).

### **3. Assessment of the scientific and applied scientific results obtained.**

The PhD student has achieved the objectives set for the research. Based on an analysis of the legal framework and case law (primarily that of the CJEU) concerning unfair terms in contracts, he has substantiated a number of conclusions and put forward proposals for improving the legal framework, which are of significant theoretical and practical importance.

**Chapter One** (pp. 7–85) of the dissertation examines the origins of the legal concept of unfair terms, clarifies the characteristics that define a contractual term as unfair, and distinguishes unfair terms from other legal concepts. The origins of this legal concept are linked to the restriction of the principles of contractual freedom and contractual fairness in the law of obligations when

contracts are concluded under general terms and conditions (GTC) – a restriction which gave rise to the need to provide protection for the party whose interests are threatened by the possibility that the other party to the contract might unilaterally determine its content to the detriment of the former. The PhD student clarifies the concepts of “GTC” and “unfair terms”, which are central to the thesis. He compares the general provisions governing the conclusion, amendment and interpretation of contracts under general terms and conditions in the Law on Obligations and Contracts (LOC) and the Law on Commerce (LC) with the specific provisions in the LCP, and highlights the differences in their scope with regard to the parties involved. The concept of an “unfair term” is defined as an unlawful, complex legal fact – a clause in a contract that possesses four cumulative characteristics, the content of which is analysed and clarified in detail by the PhD student. His argument that the institution of unfair terms should be regulated as a general concept in the law of obligations, regardless of the parties to the contract, deserves support. The proposal to remove the requirement that an unfair term must have been concluded in breach of the principle of good faith as a necessary characteristic of such a term is also convincingly justified (p. 42). In view of the material scope of the legislation on unfair terms, the PhD student concludes that, as a rule, the assessment of whether a term is unfair is made solely in relation to the non-essential content of the contract, but identifies exceptions to this rule, drawing on arguments from the case law of the CJEU on the interpretation of Directive 93/13/EEC and the regulation of this concept in other countries (p. 53 et seq.).

According to the provisions of Chapter Six of the LCP, unfair terms are only conceivable in contracts where one party is always a “consumer” and the other is, as a rule, a “trader”. In order to clarify the scope of the legal framework in respect of the parties involved, the PhD student clarifies the concepts of “consumer” and “trader and supplier”. By identifying the different meanings that consumer law and commercial law attribute to the term “trader”, and in view of the proposal that the concept of unfair terms should be regulated as a general provision under the law of obligations, the PhD student supports the proposal *de lege ferenda* that the terms “trader” and “supplier”, as used in the LCP, be merged and replaced with “professional”. The proposal that the institution of unfair terms should be extended to cover all parties, and not just consumers, also deserves support. In this case, when assessing whether the conduct of the party offering the GTC is in (or not in) good faith as an indicator of the presence or absence of an unfair term, the concept of a reasonable person should be taken into account, rather than that of the average consumer. I also support the proposal that the existing *de lege lata* regulation of contracts governed by general terms and conditions, which forms the basis

of the regulation on unfair terms, should be consolidated into a single piece of legislation.

**Chapter Two** (pp. 86–135) analyses the types of unfair terms and the ways in which they are regulated. The PhD student clarifies the two legislative approaches used in comparative law to address them – the casuistic and the general approaches – whilst explaining the differences between them and their respective advantages. Our legislature has adopted a combination of the casuistic and general approaches (Article 143(2) and (1) of the LCP). Through the casuistic approach, it identifies specific terms which it considers to be unfair, transposing the terms set out in the Annex to Directive 93/13/EEC. These terms give rise to an irrebuttable presumption that they are unfair. The author divides the terms set out in Article 143(2) of the LCP into six main groups (lists), analyses in detail the content of the terms in each group, and makes a proposal *de lege ferenda* regarding the wording of certain terms included in the six groups (pp. 127 and 128). Alongside the casuistic approach, in Article 143(1) of the LCP, the legislator employs a general approach by which it broadens the scope of unfair terms, setting out several characteristics, the presence of which will classify a contractual term as unfair, even if it is not among the specific terms regulated in Article 143(2) of the LCP.

**In Chapter Three** (pp. 136–202), the PhD student clarifies the consequences of including unfair terms in a contract. By using the wording in Directive 93/13/EEC that such terms are ‘not binding’, the European legislator has given the national legislator of each Member State the freedom to regulate the consequences of the inclusion of unfair terms in a contract. Our legislature has provided that the nullity of such terms constitutes the most severe consequence, offering the strongest protection to consumers. However, the nullity of the unfair terms does not entail the nullity of the entire contract if it can be enforced without them. The PhD student clarifies the advantages and disadvantages of nullity as a consequence of unfair terms under the LCP, in comparison with the consequences provided for in the laws of other EU Member States, and also clarifies the consequences of nullity, as well as the specific features of nullity under the LCP compared with the general rules of the LOC regarding the nullity of contracts. The conclusion that, when declaring *ex officio* the nullity of an unfair term, the court may declare it null only insofar as it is unfair, whilst maintaining the validity of the term in its remaining parts, deserves support. The criticism directed at the prevailing case-law of the CJEU is well-founded, according to which clauses declared null are not automatically replaced by the substantive provisions of the law, and therefore the national courts of the Member States are not entitled to fill the gaps left by the null unfair terms by applying the substantive provisions of the law. The PhD student puts forward compelling arguments which call for this case law of the CJEU to be reconsidered (pp. 158–174).

In analysing the case law of the CJEU on the application of Directive 93/13/EEC, the PhD student identifies as a key feature of the consequences of the nullity of unfair terms that the court does not immediately declare them null, so as to allow the consumer to waive the protection afforded by the rule of nullity. In this regard, the reasoning and the *de lege ferenda* proposal to amend Article 146(4) of the LCP, which would provide for the pending invalidity of unfair terms, deserve support – with such a amendment, the provision will be brought into line with the established case law of the CJEU on the interpretation of Directive 93/13/EEC (p. 174), and if the consumer wishes to make use of the unfair term (having assessed that it is in his interest), he will confirm it by expressly accepting it (pp. 149, 150 and 153).

With regard to the provision in Article 34 of the LOC concerning the bilateral restitution of what has been given on the basis of a null contract, the PhD student argues that the application of this provision could significantly prejudice the interests of the consumer. I support his proposal *de lege ferenda* to reconsider the rule on the return of what has been given by the party who proposed the unfair term, taking into account the principle that no one may derive rights from their own conduct in bad faith. In this way, the party acting in good faith will be able to retain what they have received (p. 171).

Chapter Three of the dissertation explains in detail the methods and procedures for protection against unfair terms – both under civil law (individual and collective) and under administrative law through the powers of the Commission for Consumer Protection. In this part of the dissertation, compelling arguments are put forward in support of the view that, in proceedings to determine whether terms are unfair, the court may, on its own initiative, gather evidence as to whether the terms in a contract are unfair. The detailed analysis of the problems arising from the *res judicata* effect of a court decision in cases concerning the nullity of unfair terms is also precise, particularly where the court has failed to fulfil its obligation under Article 7, (3) of the Code of Civil Procedure to monitor *ex officio* the presence of unfair terms in contracts concluded with consumers. The conclusions formulated by the PhD student and the proposals made *de lege ferenda* are convincing, resulting (in part) from the analysis of the case law of the CJEU on these issues.

**4. Assessment of scientific and applied scientific contributions.** The dissertation contains a number of scientific and applied scientific findings which make a significant contribution to the legal doctrine and to the development of legal practice. A number of these are reflected in the proposals **de lege ferenda** made to improve the provisions in Chapter Six of the LCP (on pp. 17, 42, 127, 132, 173, 191, 197, etc.), some of which were mentioned above and which I support. Alongside the numerous proposals for

improving the legal framework, the following key issues and proposals are also of particular significance:

- Clarifying the characteristics and defining the scope of unfair terms in our law;
- The proposal to remove the requirement that a term must be contrary to good faith, as a feature of unfairness;
- A detailed examination of the consequences of a term being found to be unfair and their specific features, when compared with the consequences of the contract being null under the LOC;
- The extensive case law of the CJEU on the application of Directive 93/13/EEC, which has been analysed here, is of particular significance, as it clarifies the precise content and meaning of a number of provisions in Chapter Six of the LCP. The analysis provided will assist practising lawyers in interpreting and correctly applying the provisions of Chapter Six;
- The analysis and specific features of the limitation periods applicable to a claim for the return of what has been given by a consumer on the basis of an unfair term also contribute to the development of the law.

## **5. Assessment of publications on the subject of the dissertation.**

The PhD student has three publications on the subject of the thesis, which have been incorporated into the dissertation. My assessment of this work applies in full to these publications as well.

## **6. Assessment of the abstract.**

The abstract of the doctoral thesis comprises of 32 pages. In it, the PhD student has accurately summarised the content of the dissertation.

## **7. Critical comments, recommendations and question.**

A number of critical comments may be made regarding the dissertation, the main ones being:

7.1. The title of the dissertation must state that the analysis concerns unfair terms in *consumer* contracts, taking into account the legal framework *de lege lata* set out in Chapter Six of the LCP;

7.2. A number of the PhD student's arguments are insufficiently substantiated and fail to convince the reader of their validity, in some cases, they are incorrect:

- On p. 51 et seq., he analyses the significant imbalance to the detriment of the consumer as a feature of the unfair terms. He points out that the term “damage” is a legal term, but that the provision of Article 143(1) of the LCP

attaches a different meaning to it (from the generally accepted legal meaning – my note: Gr. Gr.) without clarifying that meaning. It would be appropriate for him to specify exactly what meaning Article 143(1) of the Consumer Protection Act ascribes to the term, as clarifying this meaning is relevant to the classification of a clause as (un)fair and to its consequences;

– On p. 67 et seq., the PhD student (when comparing the meaning attributed to the concept of a „trader“ under the LC and the LCP) correctly concludes that the meaning attributed to the term in consumer law differs from that in commercial law. However, the conclusion that, in commercial law—unlike in consumer law—only those legal entities that are commercial companies or cooperatives (excluding housing cooperatives) are considered traders is unacceptable. Such a conclusion cannot be drawn from an interpretation of Article 1(2) or (3) of the LC. In paragraph 2, the legislator sets out the scope of legal entities which acquire commercial status by virtue of their legal organisational form, even if they do not meet the conditions laid down in paragraph 1 for acquiring commercial status. However, if a legal person other than a commercial company or a cooperative fulfils the statutory conditions under Article 1(1) of the LC by commencing the carrying out of transactions under Article 1(1) of the LC on a regular basis, it will acquire the status of a trader. Contrary to the PhD student’s assertion, there is no requirement under commercial law for the activity (presumably referring to the transactions under Article 1(1) of the LC) to be carried out on a permanent basis in order to acquire the status of a ‘trader’. The legal requirement is that the person must carry out the transactions as a business – for any length of time and ongoing basis, however, for them to be carried out as a business, it is not necessary for them to be carried out constantly;

– On p. 123 et seq., the author unconvincingly cites, as an example of an unfair term under Article 143(2), point 16 of the LCP, a cession or an endorsement carried out by the trader/supplier without the consumer’s consent. This conclusion conflicts with the author’s correct understanding that a mandatory prerequisite for the existence of an unfair term under Article 143(2) , point 16 of the LCP is that the trader must transfer rights **and** obligations. This prerequisite is absent in the case of cessions and endorsements, where only rights, but not obligations, are transferred. Therefore, the aforementioned provision of the LCP is inapplicable to them. The conclusion (p. 127) that in our law “*there is no specific provision governing a contract whereby one party may transfer the rights and obligations arising from a given contract*” is also incorrect, if by “specific provision” the *possibility* of concluding such a contract is meant. Such a provision exists in Article 346 of the LC concerning the sublease;

7.3. In Chapter Three, which deals with the consequences of including unfair terms in a contract, I do not consider it appropriate in § 1 to include sub-section 1.1.2. on the rectification of invalid transactions, whilst in sub-section 1.2. the general issues of the nullity of contracts under our law and its consequences are explained in detail, nor in sub-section 1.3. to distinguish nullity from similar legal concepts. These issues are general to the nullity of contracts; they do not clarify the specific characteristics of the nullity of unfair terms and are therefore unrelated to the subject matter of the dissertation.

In § 1 of Chapter Three, p. 139, whilst clarifying the concept of “invalidity”, the author assumes that, for the purposes of the thesis, the generic concept of “invalidity” will include *pending* and relatively invalid contracts. He does not clarify what he means by “contracts subject to pending invalidity”, but (from the comparison drawn between pending invalidity and a suspensive condition) it follows that, in such contracts, the occurrence of legal consequences is contingent upon the occurrence of *an additional legal fact* which does not depend on the will of the parties to the contract. This conclusion by the PhD student contradicts his view that what is common to all invalid contracts is the existence of an unlawful legal fact *at the time of the conclusion of the contract*. In the case of pending invalidity as a type falling under the generic concept of invalidity, *no such unlawful legal fact exists*; therefore, they (at least for the purposes of the dissertation) should be excluded from the generic concept of “invalidity”.

## 8 Conclusion.

The critical comments made do not detract from the scientific results achieved in the dissertation. It contains scientific and applied scientific findings which represent an original contribution to science and attest to the PhD student's in-depth theoretical knowledge in the field of private (civil) law, as well as to his qualities and skills in conducting independent scientific research. Furthermore, the PhD student holds a Master's degree and meets the minimum national requirements under Article 2b, paragraphs 2 and 3 of the Law on the Development of Academic Staff in the Republic of Bulgaria (LDASRB), in conjunction with the Annex to Article 1a, paragraph 1 of Council of Ministers Decree No. 122 of 2018 amending and supplementing the Regulation for the Implementation of the LDASRB (RI-LDASRB) concerning the award of the educational and scientific degree of “Doctor”. He has also submitted a declaration of originality and authenticity of the doctoral thesis. In this regard, the conditions set out in Article 6 of the LDASRB and Article 27 of the RI-LDASRB are met for the award of the educational and scientific degree of “Doctor” to full-time PhD student Yordan Pangev.

In view of the above, I give my **positive assessment** of the research conducted and the results achieved in the doctoral thesis. I shall therefore vote

in favour of awarding *Yordan Nikolaev Pangev* – a full-time PhD student at the Faculty of Law, University of Plovdiv – the educational and scientific degree of “*Doctor*” in the field of higher education 3. Social, Economic and Legal Sciences, Professional field 3.6. Law, PhD programme in “Civil and Family Law”.

2 September 2026 г. – – – – – – – – – –

Sofia

Prepared by:

Prof. Grigor Grigorov