

The Scope of the Principle of Good Faith in Modern Contract Theory A Study in Selected Western and Arab Legislations

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Received
26/04/2026

Accepted
16/07/2026

Published
31/10/2026

Abstract: The study aims to examine the scope of application of the principle of good faith within the modern theory of private contracts, with particular attention to certain Western and Arab legislations. The study analyzes the civil laws of Germany, France, Egypt, and Algeria, highlighting how the principle of good faith manifests itself in the stages of contract formation, performance, and interpretation. It also explores its role in regulating the exercise of rights, preventing abuse, and ensuring a balance between the contracting parties.

Furthermore, the study shows that the principle of good faith has evolved into a central instrument of contractual loyalty, enabling the derivation of ancillary obligations and the reconsideration of the legal characterization of contracts in a manner consistent with economic and social justice. The study also demonstrates the reciprocal influence between comparative legal scholarship and national legislations, particularly the impact of French civil law on Arab civil codes in shaping contractual rules relating to trust and contractual balance.

key words: Good faith, private contracts, comparative law, Algerian civil law, Egyptian civil law, French civil law, German civil law.

introduction:

The principle of good faith occupies a central and indispensable position within the modern theory of contracts, both in general contract law and in the realm of specific contractual arrangements. Its importance stems from its fundamental role in ensuring equitable balance between contracting parties, fostering mutual trust, and guaranteeing the proper performance of obligations in a manner marked by honesty, fairness, and contractual loyalty. Traditionally perceived as merely an interpretative tool or an ethical guideline, the principle of good faith has progressively evolved into a binding legal standard that governs multiple stages of the contractual relationship. It now extends far beyond the interpretation of contractual clauses, influencing the very formation of contracts, guiding the execution of obligations, and shaping the determination of legal effects and remedies. Through these functions, it protects the legitimate interests of the parties, mitigates conflicts, and reinforces confidence in both economic and social transactions, thereby contributing to the stability and predictability of contractual relations in contemporary legal systems.

Research Problem : The study of the principle of good faith assumes particular significance when approached from a comparative perspective. Comparative legal analysis highlights the profound impact of French legal doctrine and codification on several Arab legal systems, notably those of Algeria and Egypt, while also emphasizing the methodological rigor of German law in defining the boundaries of good faith and using it as a regulatory instrument to supervise the exercise of contractual rights. This comparative lens reveals the complex interplay between ethical considerations, doctrinal developments, and statutory regulations that collectively shape the principle's practical application. Within this context, the present research seeks to answer the following central question: How is the principle of good faith applied in private contracts under Algerian legislation, and to what extent does its practical implementation converge with or diverge from the experiences observed in German, French, and Egyptian law?

Research Hypothesis : The study proceeds from the hypothesis that Algerian legislation, deeply rooted in the Latin legal tradition and particularly influenced by French civil law, recognizes the principle of good faith as a core element of contractual relationships. However,

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through the influence of comparative legal experiences, the scope of this principle has undergone gradual expansion, especially in areas relating to the performance of contractual obligations, the prevention of abuses of contractual rights, and the promotion of cooperative conduct between contracting parties. This hypothesis presumes that while Algerian law draws heavily on French doctrinal concepts, it simultaneously incorporates elements inspired by German and broader comparative practices to reinforce the protective and balancing function of good faith.

Methodology and Research Tools :To address this research problem effectively, the study employs both comparative and analytical methodologies. The comparative method allows for a detailed examination of how the principle of good faith is regulated and applied across selected legal systems, highlighting both shared patterns and distinctive approaches. The analytical method is utilized to interpret statutory provisions, judicial decisions, and doctrinal writings, thereby providing a critical assessment of the principle's application in practice. Key research tools include legislative texts governing the principle of good faith within the civil codes under study, leading doctrinal works, specialized legal commentaries, and relevant judicial interpretations that shed light on the operational scope and limitations of the principle.

Structure of the Study:

For the purpose of a systematic and coherent analysis, the study is organized into two main sections. The first section explores the principle of good faith in Western legal systems, with particular emphasis on its regulation in the German Civil Code and the French Civil Code. The second section addresses the principle of good faith within Arab legal frameworks, focusing specifically on its application in the Egyptian Civil Code and the Algerian Civil Code. Each section seeks not only to describe the formal rules but also to examine the underlying legal philosophy and practical effects, thereby providing a holistic understanding of the principle.

Objective of the Study:

Overall, the study aims to offer a comprehensive comparative analysis that elucidates the scope and operational dynamics of the principle of good faith across selected legal systems. By highlighting points of convergence and divergence among these systems, the

research intends to provide insights that may contribute to enhancing the effectiveness of this principle within Algerian law. Ultimately, the study aspires to bridge doctrinal knowledge and practical application, aligning the interpretation and implementation of good faith with the evolving demands of the modern theory of contract and the broader objectives of justice, equity, and contractual reliability.

I. The Principle of Good Faith in Major Western Legislations

In this study, the choice was made to focus on German law and French law. German law was selected because the German legal school is renowned for its depth and rationality in both legislation and legal interpretation. French law, on the other hand, was chosen due to its well-known influence on Arab legislations, stemming from historical and cultural factors.

A. The Principle of Good Faith in German Civil Law

The principle of good faith constitutes one of the most important general principles governing contractual relations in German legislation. It was expressly enshrined by the legislator in §242 of the German Civil Code, known as the *Bürgerliches Gesetzbuch (BGB)*, which provides that the debtor is required to perform his obligation in accordance with the requirements of good faith, taking into account established custom.

Through the efforts of legal doctrine and judicial practice, this provision has evolved into a principle of broad scope extending to the various stages of the contractual relationship. Evidence of the comprehensive nature of the principle of good faith in German contract law lies in the legislator's careful legal formulation. The provision links good faith to the performance of the debtor's obligations rather than to a specific legal act such as the contract itself, nor does it confine the principle to a particular stage of the legal transaction, such as the stage of contractual performance. Consequently, the principle of good faith in German law has been understood as governing the entirety of the debtor's obligations within the contractual relationship.

1- Good faith as a general principle governing the entire contractual relationship

As previously indicated, the principle of good faith in German law constitutes a general rule governing all obligations and contractual relationships, rather than a rule confined solely to the performance of

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contracts. Section §242 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) requires the parties to a legal relationship to act in honesty and loyalty, while taking into consideration the legitimate interests of the other party. German legal doctrine has therefore regarded this provision as a fundamental regulatory principle underpinning the entire contractual system.

This position is confirmed by a number of scholarly studies, which state in their original formulation the following:

“An obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration.”¹

This means that the contractual relationship in German law is founded upon a duty of loyalty and mutual trust between the parties, which requires them to take into account the interests of the other party and to act with integrity in the performance of their obligations.

The reference here to the contractual relationship is made in a general sense; it does not concern a specific party to the relationship, nor is it limited to a particular stage thereof. Rather, it encompasses the entire contractual process and, more broadly, every legal transaction.

2- Good faith in the interpretation of contracts

This implies that, under German law, contractual relationships are grounded in a duty of loyalty and mutual trust between the parties, obliging them to consider the legitimate interests of the other party and to act with honesty and integrity when performing their obligations.

The reference to the contractual relationship here is understood in a general and comprehensive sense. It does not pertain to any specific party nor to a particular stage of the contract; rather, it applies to the entire contractual process and extends to all legal acts within that framework.²

¹ - Weber, S., & Martinez, J. (2020). *Good Faith in International Arbitration: Comparative Approaches in ICC Awards*. ICC International Court of Arbitration Bulletin, p. 119.

² - Whittaker, S., & Zimmermann, R. (2000). *Good Faith in European Contract Law*. Cambridge University Press, p. 18.

3- Good faith as a source of ancillary and cooperative obligations

One of the most prominent areas of application of the principle of good faith in German law is that it serves as a basis for imposing ancillary or secondary obligations (sometimes referred to as implied obligations) on the parties to a contract, such as duties of cooperation, disclosure, and protection. German courts have developed these obligations pursuant to §242 in order to supplement the contract when it is incomplete or unclear.

Legal doctrine indicates that the principle of good faith aims to achieve the following objectives:

- Imposing duties to protect the interests of the other party;
- Imposing duties of cooperation to achieve the purpose of the contract;
- Imposing duties to refrain from causing harm to the other party.

This is confirmed by a legal study, which states:

good faith “serves to particularize an incomplete contractual obligation by imposition of secondary duties”.¹

Contract interpretation is not limited to a literal reading of its terms; rather, it constitutes a conscious and holistic examination of the contract in both its text and spirit. This approach allows for the extraction of its express obligations from the explicit wording, as well as its implicit or implied obligations, which may be inferred from various sources such as statutory law, customary practices, and principles of equity.

4- Good faith as a tool to restrict the exercise of rights and prevent abuse

German civil law is well known for granting paramount importance to the doctrine of abuse of rights. Accordingly, the principle of good faith in German law constitutes an effective tool for supervising the exercise of rights and preventing their misuse. German courts have consistently held that the exercise of a right in a manner that conflicts with good faith is unlawful.

Among the well-established applications recognized in German legal doctrine are the following:

¹ - Auer, M. (2014). *Good Faith in German Contract Law*. Journal of Comparative Law, p. 45.

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- The principle of prohibition of contradictory conduct (*Venire contra factum proprium*);

- The doctrine of abuse of rights (*Rechtsmissbrauch*).

Legal scholars have considered that asserting a right in a manner inconsistent with prior conduct or with the legitimate trust of the other party constitutes a violation of the principle of good faith.¹

Here, the importance of the profound and deliberate conception of the principle of good faith in German civil law becomes evident.

5- Good faith as a means for the development of new legal rules

The German legislative approach demonstrates a highly innovative and creative vision in the development of new legal rules through the judicious application of the principle of good faith. In German law, the scope of this principle extends to the creation of new legal doctrines through judicial practice, with Section §242 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) serving as the foundation for the development of significant legal theories, such as:

- The doctrine of changed circumstances or frustration of the contract (*Wegfall der Geschäftsgrundlage*);

- The doctrine of estoppel by conduct (*Verwirkung*).

A significant strand of legal scholarship maintains that these doctrines originated primarily from the practical application of the principle of good faith, prior to their later codification in German legislation. This illustrates the innovative and developmental orientation grounded in the principle of good faith, as noted above.

Under §242 BGB, which obliges the debtor to perform his obligations in accordance with the requirements of good faith, German law is considered one of the most comprehensive systems in the application of the principle of good faith. Its reach extends across all stages of the contractual relationship:

- **Negotiation stage (pre-contractual phase):** In accordance with the emerging doctrine of pre-contractual liability, parties are required not to mislead the other party;

- **Contract formation stage:** The abusive exercise of contractual rights is prohibited;

¹- Ranieri, Filippo, “**Good Faith**”, in: Basedow J., Hopt K., Zimmermann R., Stier A. (eds.), *Max Planck Encyclopedia of European Private Law*, Vol. I, Oxford University Press, 2012, p. 784.

• **Performance stage:** Parties are obliged to cooperate, with the possibility of judicial intervention to modify the contract if necessary. Even in the event of the contract's expiration, the law prevents arbitrary termination or rescission that would prejudice the other party.

In summary, some scholars have concluded that the influence of the principle of good faith in the German legal system has reached such a level that it functions as a general regulatory principle for the entirety of private law.¹

B. The Principle of Good Faith in French Civil Law

The principle of good faith constitutes one of the fundamental principles of French civil law and has been firmly established, particularly following the reform of contract law in 2016. The legislator explicitly provided in Article 1104 of the new French Civil Code of 2016 that contracts must be negotiated, concluded, and performed in good faith. This provision grants the principle a broad scope, encompassing all stages of the contractual lifecycle. The following are the main areas of application of the principle of good faith in French civil law.

1- Good faith at the stage of contract negotiations

The French legislator has extended the scope of the principle of good faith to include the pre-contractual negotiation phase, also referred to as the stage of preliminary agreements. Article 1104 of the Civil Code obliges the parties to act with honesty and transparency during negotiations, prohibiting the arbitrary or bad-faith termination of discussions. A breach of this duty gives rise to tortious liability for the party who misuses the freedom to negotiate.

In this context, the French scholar François Terré explains that the principle of good faith has become a general rule governing contractual conduct from the very earliest stages of the contractual relationship, noting that: "Good faith now governs not only the performance of the contract but also its formation and the pre-contractual negotiations."²

The extension of the principle of good faith to the negotiation phase, also referred to as the stage of preliminary agreements, strongly

¹ - Schlechtriem, P. (1997). *Good Faith in German Law and in International Uniform Laws*, p. 24.

² - Terré, F., Simler, P., Lequette, Y., *Droit civil – Les obligations*, 12e éd., Dalloz, Paris, 2018, p. 112.

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reflects the heightened importance that negotiation has acquired in contracts generally, and in private law contracts in particular, especially in the context of international commercial agreements.

2-Good faith as a source of the duty of disclosure and transparency

One of the most important applications of the principle of good faith in contemporary French law is the recognition of the duty of contractual disclosure. Article 1112-1 of the Civil Code provides that a party who possesses information crucial to the other party is obligated to disclose it prior to contracting; it is unlawful for the latter to remain unaware of such information.

Comparative legal scholarship views this duty as a direct extension of the principle of good faith in contractual relations, aiming to ensure balance between the parties and to prevent the exploitation of information asymmetry. In this context, the English scholar Hugh Beale notes that:

“The French reform of contract law strengthened the role of good faith by imposing a duty of disclosure during negotiations.”¹

3- Good faith in the interpretation of contracts

The principle of good faith plays a significant role in contract interpretation under French law, requiring that agreements be construed in a manner that balances the parties’ intentions with the legitimate trust established between them. French legal scholars emphasize that the judge is not limited to the literal meaning of the contract’s terms but must also consider the requirements of good faith and the economic purpose of the contract.

In this context, the French scholar Jacques Ghestin notes that good faith serves as an interpretative standard, enabling the judge to give the contract a meaning consistent with the spirit of the agreement and the purpose intended by the contracting parties².

4- Good faith in the performance of the contract

Contract performance represents the traditional domain for the application of the principle of good faith in French law. Prior to the 2016 reform, Article 1134 of the Civil Code provided that agreements

¹ - Beale, H., *Chitty on Contracts*, Vol. 1, Sweet & Maxwell, London, 2018, p. 33.

² - Ghestin, J., *Traité de droit civil – La formation du contrat*, LGDJ, Paris, 1993, p. 334.

must be performed in good faith, and this principle was reaffirmed in Article 1104 following the reform.

Under this principle, the parties are obliged to cooperate in order to achieve the purpose of the contract and to refrain from conduct that could cause unjustified harm to the other party. The French scholar Philippe Malaurie explains that good faith imposes on the parties a duty of contractual loyalty, requiring them to respect the legitimate interests of the other party during performance.¹

5- Good faith as a tool to limit the abuse of contractual rights

The principle of good faith is also used as a tool to restrict the exercise of contractual rights when such exercise produces outcomes that conflict with contractual justice. French courts may refuse to uphold a legal act if it is found to constitute an abuse of rights or a breach of the duty of contractual loyalty.

In this regard, the German scholar Reinhard Zimmermann explains that French law, like other civil law systems, employs the principle of good faith as a means to regulate the exercise of contractual rights in a manner consistent with the requirements of justice.

“Good faith in French contract law functions as a standard controlling the manner in which contractual rights are exercised.”²

Consequently, the principle applies to three main stages: the negotiation stage, which requires the parties intending to contract to negotiate in good faith and imposes liability for terminating negotiations in bad faith; the contract formation stage, which mandates honesty, transparency, and the duty to disclose information prior to contracting; and the contract performance stage, which requires that the contract be executed in accordance with the requirements of good faith and prohibits the abusive exercise of contractual rights.

What distinguishes French legislation is its precise identification of the contractual stages to which good faith applies. However, German law predates this approach, as it does not focus on labeling

¹ - Malaurie, P., Aynès, L., Stoffel-Munck, P., *Droit des obligations*, 11e éd., LGDJ, Paris, 2018, p. 321.

² - Zimmermann, R., *The Law of Obligations: Roman Foundations of the Civilian Tradition*, Oxford University Press, Oxford, 1996, p. 673.

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the stages; rather, it links good faith to the obligation itself, regardless of its source or the stage of the contractual process.

II. The Scope of the Principle of Good Faith in Certain Arab Legislations

In this study, we have chosen to focus on Egyptian and Algerian law for two fundamental reasons. The first is the prominence of Egyptian law as a reference in scholarly studies across the Arab world. The second reason is that the study aims to highlight the position of the Algerian legislator regarding the scope of application of the principle of good faith in private contracts and to compare this position with that of major Western and Arab legal systems.

A. The Scope of the Principle of Good Faith in Egyptian Civil Law

The principle of good faith is one of the fundamental principles underpinning Egyptian civil law. It was expressly enshrined by the legislator in Article 148(1) of the Egyptian Civil Code, which provides that: *“A contract must be performed in accordance with its terms and in a manner consistent with the requirements of good faith.”*

In light of legal doctrine and judicial practice, this provision has led to an expansion of the scope of the principle of good faith to cover multiple areas of contractual life, including the performance of the contract, its interpretation, and the regulation of the exercise of contractual rights.

1- The principle of good faith in the performance of contractual obligations

Contract performance constitutes the traditional domain for the application of the principle of good faith in Egyptian civil law. Article 148 of the Egyptian Civil Code obliges contracting parties to perform their obligations in a manner consistent with the requirements of integrity and contractual loyalty, requiring each party to respect the legitimate interests of the other during performance.

The Egyptian scholar Abdel-Razzak Al-Sanhouri emphasized that good faith is not limited to the mere execution of the obligation itself but also encompasses the manner in which performance is

carried out, imposing on the debtor a duty to act in accordance with the legitimate trust established by the contract.¹

2- The principle of good faith as a source of ancillary obligations (duty of cooperation and disclosure)

The role of good faith in Egyptian law is not limited to the performance of the primary obligation; it also serves as a basis for imposing ancillary obligations on the parties to a contract, such as duties of cooperation, disclosure, and the protection of the other party's interests. Legal scholarship has established that these obligations may be derived from the principle of good faith, even if they are not expressly stipulated in the contract.

In this context, the French scholar Jacques Ghestin observes that the principle of good faith in modern civil law systems enables the judge to derive additional obligations from the nature of the contract or from the requirements of contractual justice.

“La bonne foi permet au juge de dégager des obligations implicites destinées à assurer la loyauté contractuelle.”²

3- The principle of good faith in the interpretation of contracts

The scope of the principle of good faith in Egyptian civil law also extends to contract interpretation, requiring that a contract be construed in a manner consistent with the nature of the dealings and the legitimate trust between the parties. The judge is not limited to the literal meaning of the text but relies on the principle of good faith to uncover the true intention of the contracting parties.

The Egyptian scholar Abdel-Razzak Al-Sanhouri noted that good faith serves as an interpretative standard, enabling the judge to determine the content of the contract in a manner consistent with the economic purpose intended by the parties.³

¹ -Al-Sanhuri, Abd al-Razzaq, *Al-Wasit fi Sharh al-Qanun al-Madani al-Jadid – Nazariyyat al-Iltizam bi-Wajh ‘Amm* (The Intermediate Treatise on the Explanation of the New Civil Code – General Theory of Obligations) Part I, Dar Al-Nahda Al-Arabiya, Cairo, 1964, p. 540.

² -Ghestin, J., *Traité de droit civil – Les obligations*, LGDJ, Paris, 2001, p. 382.

³ - Al-Sanhuri, Abd al-Razzaq, *Al-Wasit fi Sharh al-Qanun al-Madani al-Jadid – Nazariyyat al-Iltizam bi-Wajh ‘Amm* (The Intermediate Treatise on the Explanation of the New Civil Code – General Theory of Obligations) Part I, Dar Al-Nahda Al-Arabiya, Cairo, 1964, p. 545.

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4- The principle of good faith as a tool to limit the abuse of rights

The principle of good faith also plays a crucial role in regulating the exercise of contractual rights and preventing their abusive use. If a party exercises a right granted under the contract in a manner that conflicts with the requirements of good faith, the judge may limit such exercise or prevent its legal effects.

In this context, the comparative law scholar Reinhard Zimmermann explains that the principle of good faith in civil law systems—including Egyptian law, which is influenced by French codification—serves as a standard for regulating the exercise of contractual rights to ensure fairness between the parties.

“Good faith operates as a standard controlling the manner in which contractual rights are exercised.”¹

5- The principle of good faith as a foundation for contractual balance and the achievement of justice

Legal scholars hold that the principle of good faith in Egyptian civil law plays a significant role in achieving contractual balance between the parties, particularly in situations where a literal application of the contract could lead to unfair outcomes. This principle grants the judge discretionary authority to adjust the effects of the contract in a manner consistent with the requirements of justice.

The Egyptian scholar Abdel-Razzak Al-Sanhouri noted that good faith constitutes one of the foundations of the modern contractual system, as it enables the judge to move beyond the formal rigidity of the text and to achieve fairness in contractual relationships.²

Accordingly, from a statutory perspective, Egyptian law remains narrower in scope compared to German and French law. The application of the principle is essentially limited to the contract performance stage, as the law requires that the contract be performed in accordance with its terms and in good faith, without explicitly extending good faith to the negotiation or formation stages. However,

¹ - Zimmermann, R., *The Law of Obligations: Roman Foundations of the Civilian Tradition*, Oxford University Press, Oxford, 1996, p. 673.

² - Al-Sanhuri, Abd al-Razzaq, *Al-Wasit fi Sharh al-Qanun al-Madani al-Jadid – Nazariyyat al-Iltizam bi-Wajh ‘Amm* (The Intermediate Treatise on the Explanation of the New Civil Code – General Theory of Obligations) (Part I, Dar Al-Nahda Al-Arabiya, Cairo, 1964, p. 547.

Egyptian courts and legal scholarship have applied the principle more broadly, particularly in preventing the abusive exercise of rights.

Thus, it can be maintained that Egyptian legislation remains distinct from its French and German counterparts by restricting the principle of good faith primarily to the performance of contractual obligations.

B. The Scope of the Principle of Good Faith in Algerian Civil Law

The principle of good faith is one of the fundamental principles underpinning the contractual system in Algeria. It was expressly enshrined by the legislator in Article 107 of the Algerian Civil Code, which provides that: *“A contract must be performed in accordance with its terms and in good faith.”*

This provision reflects the regulatory role of good faith in contractual relationships, as it is not limited to the mere performance of obligations but extends to contract interpretation, the derivation of ancillary obligations, and the regulation of the exercise of contractual rights. Algerian and comparative legal scholarship have analyzed this principle in depth, highlighting its areas of application within the Algerian legal system.

1- The principle of good faith in the performance of contractual obligations

Contract performance constitutes the traditional domain for the application of the principle of good faith in Algerian civil law. Article 107 of the Algerian Civil Code obliges contracting parties to perform their obligations in a manner consistent with the requirements of integrity and contractual loyalty. Accordingly, the performance of an obligation is not limited to literal fulfillment of its terms but must be carried out in a manner that respects the legitimate trust established by the contract between the parties.

In this context, the Algerian scholar Ali Filali explains that good faith serves as a legal standard guiding the conduct of the contracting parties during performance, requiring them to consider the legitimate interests of the other party and to refrain from exercising contractual rights in a manner inconsistent with the spirit of the contract.¹

¹ -Filali, Ali, *Obligations – General Theory of the Contract*, Dar Houma, Algiers, 2013, p. 257.

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2- The principle of good faith as a source of ancillary obligations (duty of cooperation and disclosure)

The role of good faith in Algerian law is not limited to the performance of the primary obligation; it also serves as a basis for imposing ancillary obligations on the parties to a contract, such as the duty of cooperation between the contracting parties or the duty to inform the other party of information necessary for the execution of the contract. These obligations are derived from the nature of the contract and the requirements of good faith, even if they are not expressly stipulated in the agreement.

In this context, the Algerian scholar Belhadj Al-Arabi asserts that the principle of good faith allows the judge to derive implicit obligations aimed at ensuring the economic purpose of the contract and maintaining balance between the parties.¹

3- The principle of good faith in the interpretation of the contract

The scope of the principle of good faith in Algerian civil law also extends to contract interpretation, allowing the judge to construe agreements in a manner consistent with the nature of the dealings and the legitimate trust between the contracting parties. Interpretation is not limited to the literal meaning of the contract's terms but must take into account the economic purpose of the contract and the conduct of the parties during its performance.

The French scholar Jacques Ghestin, in his comparative study on contract theory in civil law systems influenced by French law—including Algeria—notes that the principle of good faith enables the judge to interpret the contract in a way that ensures contractual justice and reflects the true intentions of the parties.

« La bonne foi constitue un principe directeur permettant au juge d'interpréter le contrat conformément à l'esprit de l'accord. »²

4- The principle of good faith as a tool to prevent the abuse of rights

The principle of good faith in Algerian law also plays an important role in regulating the exercise of contractual rights and preventing their abusive use. If a party exercises a right granted under

¹ -Belhadj El Arabi, *The General Theory of Obligations in Algerian Civil Law*, Office des Publications Universitaires, Algiers, 2005, p. 198.

² - Ghestin, J., *Traité de droit civil – Les obligations*, LGDJ, Paris, 2001, p. 383.

the contract in a manner that conflicts with the requirements of good faith, the judge may limit such exercise to protect the other party.

In this context, the comparative law scholar Reinhard Zimmermann notes that the principle of good faith in civil law systems influenced by French codification—including Algerian law—serves as a general standard for overseeing the exercise of contractual rights.

“Good faith operates as a standard controlling the manner in which contractual rights are exercised.”¹

5- The principle of good faith as a means to achieve contractual balance

The principle of good faith in Algerian civil law contributes to achieving balance between the contracting parties, particularly in situations where a literal application of the texts or contract terms could lead to unfair outcomes. This principle grants the judge discretionary authority to adjust the effects of the contract in a manner consistent with contractual justice and the stability of transactions.

The French scholar Denis Mazeaud, in his study on good faith in comparative law, notes that this principle has become a fundamental tool for ensuring contractual fairness in modern legal systems, including the Maghrebien systems influenced by French codification.²

Finally, it appears that Algerian law is influenced by both Egyptian and French law, as reflected in the provisions of Article 107 of the Algerian Civil Code, which states: “*A contract must be performed in accordance with its terms and in good faith.*” Accordingly, the application of this provision primarily covers the contract performance stage (its core scope), while legal doctrine and judicial practice have gradually expanded its application to include the negotiation stage, the contract formation stage, and contract interpretation.

The most notable observation regarding Algerian legislation is that it limits the scope of good faith to the performance stage and to contractual obligations. Nevertheless, it allows the judge to derive non-explicit obligations from the terms of the contract in order to

¹ - Zimmermann, R., *The Law of Obligations: Roman Foundations of the Civilian Tradition*, Oxford University Press, Oxford, 1996, p. 673.

² - Mazeaud, D., *La bonne foi dans le droit des contrats*, Revue des contrats, 2004, p. 45

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complete the contract and to achieve the principles of justice and contractual balance.

Conclusion:

The study has demonstrated the central and fundamental nature of the principle of good faith in contractual dealings, as it ensures the performance of obligations with honesty and integrity, limits the abuse of rights, and contributes to achieving contractual balance between the parties. A comparative analysis between Algerian legislation and the German, French, and Egyptian legal systems reveals that, although the Algerian Civil Code expressly provides for the obligation to perform contracts in good faith (Article 107), it suffers from the absence of a clear and detailed delineation of the practical scope of application of this principle, particularly with regard to ancillary obligations and the flexible judicial interpretation of contracts. Indeed, a literal interpretation of paragraph 1 of Article 107 suggests that the principle applies solely to the stage of performance, excluding the negotiation and formation stages. This may restrict the discretionary power of the civil judge in applying the provisions of Article 107, especially since paragraph 2 thereof grants the judge the authority to infer implied obligations not expressly stipulated in the contract, in accordance with law, custom, equity, and the nature of the obligation. However, limiting such authority to the performance stage alone constitutes a narrowing of the scope of application of the principle of good faith in contractual relations.

This stands in contrast to German law, which defines the scope of good faith with precision through doctrines such as *Rechtsmissbrauch* (abuse of rights) and *Venire contra factum proprium* (prohibition of inconsistent conduct). Although German legislation does not explicitly enumerate the contractual stages to which the principle applies, its affirmation that good faith binds the debtor in all obligations reflects a broad scope of application, encompassing the stages of negotiation, formation, and performance.

Similarly, French law has enabled the judiciary to derive implied obligations and to protect legitimate expectations, while explicitly providing that the principle of good faith governs the stages of negotiation, formation, and performance of contractual relations.

On the other hand, a significant similarity can be observed between Article 107 (paragraphs 1 and 2) of the Algerian Civil Code

and Article 148(1) of the Egyptian Civil Code, as both provisions emphasize the obligation to perform contracts in accordance with their content and with what may be inferred therefrom pursuant to law, custom, and equity, in good faith, while granting the judge the authority to derive implied obligations within this framework. Nevertheless, both the Algerian and Egyptian legislations appear to confine the application of these provisions to the stage of performance, without expressly extending them to the stages of negotiation and formation.

It should be noted, however, that the negotiation stage may materialize in the form of preliminary agreements. In such cases, the performance of obligations arising from these preliminary contracts may fall within the scope of the principle of good faith in performance.

Accordingly, the following recommendations may be advanced in order to enhance the effectiveness of the principle of good faith in Algerian law:

1. To clarify the scope of application of good faith within the legislation by specifying the circumstances under which ancillary or implied obligations may be inferred, and by expressly providing that the principle applies to the stages of negotiation, formation, and performance. This would require, in particular, an amendment to paragraph 2 of Article 107 of the Algerian Civil Code.

2. To encourage the judiciary to adopt a flexible approach to contractual interpretation aimed at protecting the weaker party and ensuring contractual balance. In this respect, the Algerian civil judge should rely on Article 111 of the Algerian Civil Code, which, while prohibiting the distortion of clear contractual terms, allows—where ambiguity exists—the search for the common intention of the parties rather than adherence to the literal meaning of the wording, guided by factors such as the nature of the transaction, mutual trust between the parties, and commercial custom.

3. To draw on comparative experiences, particularly those of German and French law, in developing legal rules aimed at preventing the abuse of rights and broadening interpretative approaches in the interest of the contracting parties, as well as extending the application of the principle of good faith to the stages of negotiation and contract formation, given the significant obligations that may arise during these phases.

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4. To integrate the principle of good faith into civil, commercial, and economic legislative policies in order to ensure coherence between legal provisions and the evolving requirements of modern contractual transactions.

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