

BEYOND THE FINE PRINT: COMPARATIVE PERSPECTIVES ON CONTRACT INTERPRETATION

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Abstract

Who holds the power to determine the true meaning of a contract? Is it the intent of those who drafted it, or the legal framework that transcends their individual interests? No longer a mere private arrangement, every contract functions as a living entity, shaping economic, legal, and social relations. This paper examines the enduring tension between subjective and objective contract interpretation, highlighting the clash between party autonomy and the need for legal certainty. It explores key interpretative principles, including the *contra proferentem* rule as the guardian of the written word, the principle of good faith as a moral compass, and judicial intervention as a tool for social balance. Through a comparative analysis of various legal systems, this research reveals that contract interpretation is not a neutral process but a battleground of ideological and economic contestation. The way contracts are understood and enforced reflects broader struggles over power, fairness, and economic justice. Additionally, this article considers the economic impact of interpretative methods in commercial transactions and assesses the influence of legislative frameworks on judicial decision-making and the economy. By contrasting subjective and objective approaches, this study aims to provide insights into best practices for ensuring fairness, predictability, and efficiency in contract enforcement.

Keywords: Contract Interpretation, Legal Hermeneutics, Contract Law, Good Faith in Contracts, Commercial Contracts, Judicial Reasoning, Legal Certainty, Business Transactions, Comparative Contract Law, Legislative Framework.

VIŠE OD SITNIH SLOVA: KOMPARATIVNI PRISTUPI TUMAČENJU UGOVORA

Apstrakt

Ko poseduje moć određivanja pravog značenja ugovora? Da li je to namera onih koji su ga sastavili, ili pravni okvir koji nadilazi njihove pojedinačne interese? Ugovor više nije puki privatni aranžman; svaki ugovor funkcionise kao živi entitet koji oblikuje ekonomske, pravne i društvene odnose. Ovaj rad ispituje trajnu tenziju između subjektivnog i objektivnog tumačenja ugovora, ističući sukob između autonomije volje ugovornih strana i potrebe za



pravnom sigurnošću. Istražuju se ključni interpretativni principi, uključujući pravilo *contra proferentem* kao čuvara napisane reči, načelo savesnosti i poštenja kao moralni kompas, i sudsku intervenciju kao alat za postizanje društvene ravnoteže. Kroz komparativnu analizu različitih pravnih sistema, ovo istraživanje otkriva da tumačenje ugovora nije neutralan proces, već poprište ideoloških i ekonomskih sporenja. Način na koji se ugovori razumeju i sprovode odražava širu borbu za moć, pravičnost i ekonomsku pravdu. Pored toga, rad razmatra ekonomski uticaj metoda tumačenja u trgovinskim transakcijama i procenjuje uticaj zakonodavnih okvira na sudsko odlučivanje. Kontrastiranjem subjektivnog i objektivnog pristupa, ova studija nastoji da pruži uvid u najbolje prakse za osiguranje pravičnosti, predvidljivosti i efikasnosti u izvršenju ugovora.

Ključne reči: Tumačenje ugovora, pravna hermeneutika, ugovorno pravo, savesnost i poštenje u ugovorima, trgovinski ugovori, sudsko rasuđivanje, pravna sigurnost, poslovne transakcije, uporedno ugovorno pravo, zakonodavni okvir

INTRODUCTION

Within the intricate web of legal relations across all spheres of society (Patterson, E.W., 2013), contracts serve as fundamental pillars that clearly delineate the rights and obligations of parties in various transactions (Katz, A.W., 1997), ensuring stability and predictability, to the extent that this is possible under any legal arrangement (Eggleston & Et al., 2000). In the realm of corporate law, these pillars form the foundation for fostering cooperation and collective progress. Thus, the principles governing contract interpretation hold significant importance, as they ensure fairness, legal certainty, and the equitable distribution of obligations, as much as this is viable, among all stakeholders (Farnsworth, E.A., 1967).

Hypothetically, consider a contractual agreement between two enterprises in which one party is obligated to construct ten facilities. While one party interprets this obligation as the complete construction of fully functional business premises ready for rent, the other understands it as merely erecting the structural framework for ten buildings. Both sides insist on strict adherence to the agreement and its timeline, each seeking compensation for delays, arguing that the contract is sufficiently clear. Yet, this discrepancy in interpretation, amounting to several million euros, reveals the practical complexities of contract interpretation, particularly regarding differing understandings of key contractual terms and the precise scope of obligations undertaken by the parties (Adkins, F.M., 1974).

Such conflicts, and their significant financial and legal repercussions, underscore the necessity of precise, equitable, and socially responsible contractual interpretation (Berman, H.J. & Kaufman, C., 1978). In general, national Laws on Obligations provide the foundational framework for contract interpretation, defining the parameters within which economic actors operate and ensuring legal predictability in business transactions. This thematic paper begins with an in-depth analysis of the principles that govern contract interpretation within the Macedonian legal system as an anchor, establishing the legal and theoretical foundations upon which contractual engagements rest, and then comparing it to Bosnia and Herzegovina, Croatia, Montenegro, Serbia, and Slovenia.

Beyond the national framework, the study expands its scope through a comparative legal analysis of the jurisdictions-successors to the shared Yugoslav legal tradition, which offer a particularly relevant basis for comparison, given their structural similarities and legal realities. Accordingly, the following sections examine the evolution of contract interpretation, its codification in Macedonian law, comparative perspectives from regional legal systems, and relevant international legal sources.

The central aim of this paper is to assess the state and efficacy of contract law in South-Eastern Europe, with particular emphasis on the functionality of the internal domestic market and potential legal or structural barriers that may hinder trade, contract execution, and cross-border commercial engagements within the economy (Galev, G., 2021). By providing an integrative and critical review of the current legal landscape, this study seeks to determine whether existing legal frameworks adequately facilitate economic cooperation or whether reforms are necessary to enhance legal certainty and market efficiency within the existing economy.

Finally, the paper conducts a detailed examination of the practical needs of parties engaged in commercial transactions, focusing on the methodological aspects of contractual interpretation (Coates, I.V., 2016). The core question is how precisely rights and obligations arising from contractual relationships are determined. This entails analyzing the mechanisms of contract formation, including whether agreements are structured as single documents, multiple interrelated documents, or oral commitments, and whether contractual terms should be interpreted literally or supplemented with implied provisions (Spagnolo, L., 2016). Through this exploration, the paper aims to contribute to a more just and socially responsible understanding of contractual obligations, fostering legal clarity and economic stability in both national and regional contexts.

DECIPHERING OBLIGATIONS: ANALYSIS OF CONTRACT INTERPRETATION IN POST-YUGOSLAV LEGAL SYSTEMS

The interpretation of contracts in North Macedonia is primarily regulated in Section 3 of the Law on Obligations, which is the only part of the legislation where the term 'interpretation' is explicitly mentioned. Despite its formally neutral placement within the law, these provisions have historically given rise to more disputes than almost any other aspect of contract law, underscoring the complexities inherent in contractual relationships (Court and Arbitration Decisions, 1991-2026).

Regarding the application and interpretation of contractual provisions, Article 91, Paragraph 1, stipulates that agreements **must be applied as written**. However, Paragraph 2 introduces an important qualification: **in cases of ambiguity**, the literal meaning of contractual terms should not be strictly adhered to. Instead, **the common intention** of the contracting parties must be determined, and the provision should be interpreted in alignment with the fundamental principles of obligation law as prescribed by the Law on Obligations. This formulation reflects a legislative approach that prioritizes the will of the parties while ensuring that contractual obligations remain consistent with broader legal and societal norms (Dabović Anastasovska, J, 2017).

Macedonian contract law, in this regard, mirrors the legal frameworks of Bosnia and Herzegovina (Article 99), Croatia (Article 319), Montenegro (Article 99), Serbia (Article 99), and Slovenia (Article 99), all of which adopt identical provisions on contract interpretation. Each of these legal systems contains a dedicated section on interpretation and maintains the same two fundamental principles:

- (1) the initial application of contractual terms as written and
- (2) the prioritization of the common intention of the parties over the literal meaning of contractual language.

Unclear contractual provisions are further addressed in Article 92 of the Law on Obligations of North Macedonia, which serves as a fundamental safeguard for the party that did not draft the contract. When an agreement is based on pre-drafted terms or unilaterally prepared by one side, ambiguities must be interpreted in favor of the other party. This provision reflects a crucial principle of fairness, ensuring that the weaker party is not disadvantaged by legal technicalities. The underlying rationale recognizes the inherent imbalance in contractual negotiations and aims to protect against exploitation.

A similar logic is found in Article 93, which states that in contracts without compensation, unclear provisions should be construed in a way that imposes the least burden on the debtor. In contracts of performance, however, interpretations should ensure a fair balance of obligations between the parties. This approach acknowledges the economic realities of creditor-debtor relations, where the creditor typically assumes fewer risks, necessitating legal mechanisms to maintain equilibrium.

A nearly identical framework is observed across Bosnian (Articles 100-101), Croatian (Article 320), Montenegrin (Articles 98-99), Serbian (Articles 100-101), and Slovenian (Articles 100-101), legal systems. The primary variation appears in the Croatian Law on Obligations, where these rules are consolidated into a single Article with two clauses, while the other jurisdictions maintain them as separate provisions. Nevertheless, the intent remains unchanged: contracts of performance must uphold a fair distribution of obligations, in line with the principles of the six legislations. The *contra proferentem* rule, which mandates that ambiguous contract terms be interpreted against the drafting party, plays a central role in reinforcing this principle and will be further examined below (Smythe, D.J., 2016).

General contract conditions, i.e. clauses pre-determined by one party, must be made publicly available or presented to the counterparty for review before acceptance. If such provisions violate the fundamental purpose of the agreement or contradict good business practices, they are deemed null and void. Even when formally approved by a competent authority, courts retain the power to reject contractual terms that are unjust, excessively restrictive, or unduly burdensome to one party. Moreover, standardized contracts, where one side dictates the terms, are subject to interpretation that disfavors the drafting party, ensuring fairness and preventing exploitation.

Extrajudicial contract interpretation is governed by Article 94 of the Law on Obligations of North Macedonia, allowing parties to designate a third party to resolve disputes regarding the meaning of contractual provisions. Unless otherwise specified, disputes cannot be brought before a court or other competent authority

until an interpretation has been obtained, except when the designated third party refuses to provide one. This system is uniformly reflected in the legal codes of Bosnia and Herzegovina, Slovenia, Serbia, Croatia, and Montenegro.

This uniformity across post-Yugoslav legal systems reflects a shared legal heritage and a collective commitment to balancing party autonomy with the overarching principles of justice, fairness, and economic cooperation.

However, Montenegrin law introduces two unique additions absent in the legal frameworks of the other five states. Article 96 explicitly regulates the determination of the contracting parties' intent, while Article 97 outlines the key circumstances that must be considered in contract interpretation. According to these provisions, common intent is assessed based on what one party explicitly stated and how the other party should have reasonably understood it. If a shared intent cannot be established, the contract is interpreted in light of what reasonable persons in similar circumstances would have understood. Additionally, if it is determined that one party intended a specific meaning, and the other party knew or should have known of this intent at the time of contract formation, then the interpretation must reflect that intent.

Montenegrin law also establishes key criteria for contract interpretation, requiring courts to consider:

- The circumstances in which the contract was concluded
- Pre-contractual negotiations and post-contractual conduct
- The nature and purpose of the contract
- Previous interpretations of similar provisions by the contracting parties
- Established trade customs and professional terminology
- The principles of conscientiousness and honesty

These additional provisions were likely introduced to create greater clarity in contract interpretation, aligning with broader international trends in commercial law. Given this development, it is essential to examine how other legal systems approach contract interpretation and to evaluate whether these principles contribute to greater legal certainty and fairness in commercial transactions.

UNRAVELING THE PUZZLE: THE INTERPRETATION OF CONTRACTS ACCORDING TO COMPARATIVE LEGAL SOURCES

According to comparative sources, the basic types from which the principles of contractual interpretation derive can be divided into three essential forms of interpretation: identification, meaning, and complementation (Spagnolo, L., 2016, p. 715).

Identifying the terms of the contract is the primary question of interpretation. At its core, identification seeks to determine which objects and matters form the content of the contract and which do not. Here are considered the rules for incorporating terms, formations, and rules about what evidence is admissible in determining content (Perillo, J. M., 2000).

After identification, the next step is to determine the meaning of those terms. According to Melvin Eisenberg, if the contracting parties attach different subjective meanings to the words of their contract, then the most reasonable meaning prevails.

Second, if the parties subjectively attach different meanings to an expression, and both meanings are equally reasonable, no meaning prevails, that is, there is no manifestation of mutual agreement. Third, if the parties subjectively attach the same meaning to the expression, that meaning prevails even though it is unreasonable. Fourth, if the contracting party knew the other party's meaning, then that other party's meaning attaches to the contract (Eisenberg, M.A., 1994).

Finally, if the parties did not determine the meaning of the term in the contract and knowingly left an open/broad term or unknowingly created a gap, then the courts use evidentiary rules to fill the gaps, whereby we enter the third sphere, i.e., the process of supplementation.

The aforementioned three forms of interpretation are the core of the comparative legal sources of contractual interpretation. If this is taken into account from an international perspective (Fisher, G.E., 1997), the Vienna Convention represents one of the most successful tools for the unification of international contracts for the sale of goods and also one of the most significant instruments in international trade in terms of interpretation, and as such a suitable example for exploration. The success is mainly due to the fact that as of the beginning of 2024, 97 countries have signed and ratified it and the convention itself today has the character of almost universal acceptance.

In addition to the Vienna Convention, the advisory opinions of the committee that interprets the convention are of particular interest, such as opinion number 3, as well as opinion number 13, but also other international instruments, such as the UNIDROIT principles for international trade agreements. For the countries of the European continent and those who cooperate with companies from the European Union, the Principles of European contract law (Lando principles) and the common European sales law are also relevant. If we want an even more detailed analysis and to check the uniformity of these provisions around the world, it is definitely worth looking at the solutions in German, French, Spanish, American, Chinese and British laws. However, due to space and time constraints, this thematic paper cannot delve into comprehensive academic research in this regard and will limit itself to the Vienna Convention as the main source of law of relevance to this paper.

Considering the breadth of the subject, the concept of fundamental breach of contract could be part of discussions on the interpretation of treaties. In short, the concept represents such a serious breach of contractual obligations that it strikes at the heart of the contract, undermining the very essence of the contractual relationship (Spaić, A., 2014). However, as with comparative legal sources, this segment of the subject will not be considered in order to avoid too broad an analysis.

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS-VIENNA CONVENTION

From what has been stated so far, it follows that it is necessary to see the level of compliance of the Macedonian Law on Obligations, which is identical to the legal solutions currently in force in the other five countries that were part of the former SFR Yugoslavia, with the Vienna Convention as a generally acceptable international standard (Sepe, S.M., 2010). The first relevant provision in this regard is paragraph

1 of Article 7, which states that when interpreting this Convention, its international character and the need to promote uniformity in the application and observance of good faith in international trade should be taken into account.

Furthermore, Article 8 emphasizes that for the purposes of this Convention, statements made and other behaviors of one of the parties should be interpreted according to the intentions of that party as long as the other party knew or could not have been unaware what those intentions were. If the preceding paragraph is not applicable, the statements made and other conduct of a party shall be interpreted according to the understanding that a reasonable person would have under the same circumstances as the other party. In determining the intentions of one of the parties or the understanding that a reasonable person would have in the same circumstances, regard should be had to all the relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usage and subsequent conduct of the parties.

Pursuant to Article 9, the parties are bound by any usage they have agreed to and any practices they have established between themselves. It is considered that the parties, unless otherwise agreed, implicitly consent to a usage of which the parties know or should have known and which in international trade is widely known and regularly used by the parties to the agreements in the particular trade. In addition, Article 11 goes specifically into the nature of the contract of sale and emphasizes that it does not have to be concluded or evidenced in writing and that it is not subject to any other criteria in terms of form, i.e. that it can be evidenced by any means, including witnesses (Article 11).

Finally, the Convention goes into another section, emphasizing that a response to an offer that is considered acceptance, but contains additions, restrictions or other changes, is a rejection of the offer and constitutes a counteroffer (Article 19). On the other hand, a response to an offer that purports to be an acceptance but contains additional or different terms that do not materially change the terms of the offer constitutes an acceptance unless the offeror, without undue delay, orally objects to the discrepancy or sends notice of that. If neither party objects, the terms of the contract are the terms of the offer as modified by the acceptance. Additional or different terms relating, among other things, to price, payment, quality and quantity of goods, place and time of delivery, the degree of liability of one party to the other or the resolution of disputes, constitute a material change to the terms of the offer.

Without going into the specifics of the sales contract and/or the conditions surrounding the offer and the acceptance of the offer, this paper will focus only on the first three articles of the Convention which are of importance and direct correlation with the articles of national Laws on Obligations.

THE DEGREE OF CONFORMITY BETWEEN THE NATIONAL LAWS ON OBLIGATIONS AND THE VIENNA CONVENTION

Primarily, it can be said that the six legislations fully stand behind the international character and the need to promote uniformity in the application and respect of goodwill in international trade (Pavic, V., 2013). This is based on the fact that the Socialist Federal Republic of Yugoslavia supported the Convention from the very

beginning as a signatory country on April 11, 1980, and then ratified it on March 27, 1985. By way of succession, the six Republics acceded to the Convention, and until now there is not a single provision in this sphere that hinders the purpose of the Convention.

In relation to the remaining two articles, it is evident that both the national laws and the international perspective on the interpretation of contracts see it as a mental activity aimed at discovering the true meaning and implications of the words and clauses used, seen separately, but also in the context of the goals of the contract (Cohen, G.M., 2011). It is an activity that is required whenever the mentioned expressions, clauses, or the whole contract are understood and explained in a different way between the two parties. At the same time, the relevant interpretation can be performed by the parties themselves, entrusted to a third party, or left to the court.

When it comes to the interpretation of contractual provisions by a third party, it is important to emphasize that this only happens if there is agreement between the contracting parties. Although this is not required by the Convention, the national laws of the six countries go a step further and explicitly state that unless the contract provides otherwise, the parties cannot bring a dispute before a court or other competent authority until they first obtain an interpretation of the contract, unless the third party refuses to give a contract interpretation.

The fundamental provision for the interpretation of contracts in the national laws indicates that the provisions of the contract are applied as they read. It certainly refers to those provisions of the contract which are undoubtedly clear and indisputable for the parties, so there is no need for their interpretation. In contrast to this, the disputed provisions of the contract are always subject to interpretation and when it comes to these provisions, the laws expressly require that the literal meaning of the used expressions is not accepted in their interpretation, but that the common intention of the contracting parties and the provision to be investigated are understood as corresponding to the principles of the law of obligations established by these laws.

On the one hand, this means that the common intention of the contracting parties should be "investigated" when concluding contracts in the form of a subjective criterion, and on the other hand, the disputed provision should be "understood as it corresponds to the principles of the law of obligations" in the form of an objective criterion. So, only if both criteria are taken together can a correct understanding of the interpreted disputed provision of the contract be reached. In conclusion to this part, it can be said that the national laws are fully compliant with the principles of the Convention.

Regarding the general rules for compensation of damage, as a potential consequence in the interpretation of contracts, the national legislations regulate what happens when the obligation is fulfilled and what are the consequences of non-fulfilment, as well as when the debtor is released from responsibility. Article 251 of the Law on Obligations of North Macedonia states that the creditor in a binding relationship is authorized to demand from the debtor the fulfillment of the obligation, and the debtor is obliged to fulfill it conscientiously in everything as it reads. In situations

where the debtor does not fulfill the obligation or is late with its fulfillment, the creditor has the right to demand compensation for the damage suffered because of it. The debtor to whom the creditor has given an exemplary additional deadline for fulfillment is also responsible for the damage caused by the delay in fulfillment. The debtor is also responsible for the partial or complete impossibility of fulfillment even though he did not hide that impossibility if it occurred after his arrival in a delay for which he is responsible. The debtor is released from responsibility for the damage if he proves that what is the subject of the obligation would accidentally fail even if he would have fulfilled his obligation on time.

On the other hand, Article 252 defines the concept of force majeure and states that the debtor is released from responsibility for damage if he proves that he could not fulfil his obligation, i.e. that he was late in fulfilling the obligation due to an extraordinary event that occurred after the conclusion of the contract, and which he could not prevent, avoid or remove.

THE RULE *CONTRA PROFERENTEM*

A specific aspect of the interpretation of contracts in relation to the aforementioned articles is the *contra proferentem* rule (Torbert, P.M., 2014). It is a legal doctrine in contract law that dictates how ambiguous provisions in a contract should be interpreted. The rule provides that if a provision in a contract is ambiguous or open to multiple interpretations, it should be read in a manner that is unfavorable to the party that originally drafted, introduced, or sought to include that provision (Shavell, S., 2006).

This rule, which can be loosely translated as "fault of the drafter" or "reference in favor of the other party", guides the legal interpretation of contracts and is usually applied when the contract is contested in court. *Contra proferentem* shifts the blame to the party who creates or introduces an ambiguous contractual provision (Vukadinović, S., 2020). Ambiguity in this context means that the language of the contract is ambiguous or unclear, which will cause one party to interpret the contract differently than the other party. In such situations, blame is placed on the party that created or requested the inclusion of the ambiguous clause, which is intended to serve as a warning as well as a penalty for introducing and including an intentionally vague contractual clause.

The basic idea behind this rule is that the party drafting or introducing the provision deliberately uses ambiguity to create or deliver results that favor its own interests. The deliberate vagueness that *contra proferentem* tries to soften and apply rules in favor of the innocent party by pointing out the ambiguity as unjustified is something that, in Macedonian legislation, is regulated in Article 92 of the Law on Obligation, and similarly in the other 5 jurisdictions.

The Macedonian legislation and the corresponding comparative experiences that were mentioned above follow an identical legal logic with this rule. If the general conditions have become a valid integral part of the contract, it is assumed that their application is the result of the agreement of the wills of both parties and the realization of the principle of autonomy of the will, that is, freedom of negotiation. So, if the selection and application of those provisions is the result of mutual

agreement between two business-capable entities, then the legally concluded contract becomes law, that is, valid law for both contracting parties, and in that contractual situation the purpose of interpretation should be to determine the common intention. In that direction, all relevant circumstances should be taken into account, as well as the fact that the general conditions are an integral part of the contract, i.e., that the contract was concluded by accession because the text has pre-printed content or was otherwise prepared and proposed by one party.

However, that fact cannot exclude all other circumstances in a specific case and be applied absolutely. Namely, although the *contra proferentem* rule is necessary to prevent potential abuses by one contracting party, this rule should not be used as a means of abuse by the other contracting party either. This rule of interpretation does not serve that purpose and therefore should not be a reserve asset of the debtor and a tool that he keeps as a wild card in an attempt to change the content of the contractual obligation by interpreting and shifting the burden to the party that formulated the general conditions.

Therefore, in applying this rule of interpretation, apart from the previous legal issues and mechanisms that should be legitimately considered, from the perspective of interpretation, one should be sure whether the provision in question is indeed substantially and indisputably vague. If the provision is unclear, but the contracting parties do not dispute its interpretation because they have no problems in the execution of the contract, there will not even be a question of interpretation, and vice versa if the interpretation is disputed between the parties, this does not in itself mean that the provision is unclear. Hence, before drawing the conclusion, it is necessary to consider the significance of the dispute and the clarity of the provisions regarding the interpretation of the contracts according to the national Laws on Obligations and comparative legal sources.

THE MEANING OF THE DISPUTE AND CLARITY OF THE PROVISIONS IN RELATION TO THE INTERPRETATION OF THE CONTRACTS

In practice, it often happens that the parties do not negotiate the content of the general conditions, but accept them *en bloc* without careful analysis of the individual provisions they contain. Although the conclusion of contracts is accelerated in this way, it sometimes happens that a certain provision is unclear at the stage of conclusion of contracts (Leib, E.J., 2014). Therefore, the question of interpretation of vague provisions usually arises during the execution of the contract, as well as in a situation where a dispute arises. Hence, for the parties in a contractual relationship, the interpretation of the contract is of instrumental importance because the discussion about the meaning of the words for them is a matter of great importance in terms of fulfilling the purpose of the contract, as well as in relation to a potential dispute (Horton, D., 2009).

If, during the execution phase of the contract, the contracting parties have a different understanding of the provisions, that is, the rights and obligations they have assumed, they can first try to reach a common interpretation (Silverstein, J.M., 2020). If they can't agree, the next attempt is to agree to have a third-party

interpretation, but if that doesn't work, there will be a dispute. The very fact that the parties argue about the interpretation, that is, the fact that they bring the issue before the court, does not necessarily mean that it is justified and necessary for the court to interpret the contested provision (Rakić-Vodinelić, V., 1984). The fact that the provision was or became disputed for the contracting parties does not necessarily mean that it is unclear, because in practice the opposite can also happen: the provision is unclear, i.e., ambiguous, but the issue does not represent a problem between the parties during the execution of the contract and subsequently does not require a legal dispute. This clearly follows from paragraphs one and two of Article 91 of the Law on Obligations of North Macedonia, as well as subsequently from Articles 92-94, as well as the other relevant counterparts in the 5 jurisdictions.

If the contractual provisions are not unclear, even if they are formulated and contained in the general conditions, the question of interpretation does not arise because it is unfounded and there is no justified need to interpret the clear and undoubted meaning of a certain provision. This is primarily so because the interpretation in contract law requires the meaning and scope of the existing provisions, it is not a question of a legal gap, following the principles of autonomy of will and freedom of agreement, therefore it would be unacceptable to intervene with an alleged interpretation of express provision in such a way as to change what the contracting parties have agreed to (Spigelman, J., 2011).

The laws of a specific area, as a rule, in addition to the general provisions for the interpretation of contracts, also contain additional special provisions for the interpretation of unclear provisions contained in the contracts drawn up by one of the contracting parties. As a general rule, it is held that the claimant must bear some of the risk of ambiguity and that the court, when assessing whether a provision is vague, has the task of first determining whether there is such a degree of vagueness that cannot be avoided and for this it uses the standard of the average participant in the turnover (Vukadinović, S., 2020, p. 143). If the general terms and conditions are vague only for the particular party to the dispute, the courts do not consider such general terms or contractual obligations to be vague. Only vagueness that exceeds the limits beyond which the average participant cannot be expected to understand the provision constitutes "legally relevant" vagueness, and in the presence of such a degree of vagueness, the court engages in interpretation (Vukadinović, S., 2020, p. 142).

In this sense, in case of litigation, it would not be enough for one party to claim that the contractual provision is unclear, especially if the other party disputes such statements and points out that the provision is already clear to them. In such a case, the court should first determine whether the provision is unclear by applying an objective criterion, such as that of the level of understanding of the average participant, and only after determining that it is indeed a question of an unclear provision, decide on the application of the mentioned rule depending on the circumstances of the particular case (Koevski, G., 2014).

This means that the mere subjective difference between the parties to the dispute about the meaning of the provision is not an indication that the provision is unclear, but that it is disputed. The fact that the provision or its interpretation is disputed between the contracting parties is not sufficient to lead to the application of the

contra proferentem rule. Therefore, in each individual case, it should first be determined that it is a vague provision contained in the general conditions, and then take into account all other specific and accompanying circumstances that may be relevant in a given case.

These include the nature and the purpose of the contract, the negotiations between the parties, the manner and circumstances of the conclusion of the contract, the practice established between the contracting parties, the conduct after the conclusion of the contract, the meaning of terms and expressions that are common in the given area, language practice, customs, habits and previous business practice between the contracting parties with a standard of reasonableness, conscientiousness and honesty (Klausner, M., 1995). In other words, the fact that there was a dispute about the meaning of a provision contained in the general conditions of the contract and that there are even diametrically opposite views of the contracting parties about the meaning of a certain provision of the general conditions. does not necessarily mean that the provision is vague.

Perhaps such a provision with the same degree of clarity would also exist in the contracts agreed upon by the parties, in which one proposed one thing, the other another, but still concluded a contract and did not challenge the "clarity" of the provisions until the moment when for one of the contracting parties the fulfillment of the undertaken obligation has become unprofitable, unfavorable and/or inappropriate. In these cases, the possibility is not excluded that the cause of the dispute is that some other advantage has arisen, so one party wants to get rid of this obligation from the point of view of its interests through an imagined interpretation of otherwise clear provisions.

CONCLUSION

Interpreting contracts in any law is not the easiest nor the most straightforward thing to do. In addition to the fact that when discussing interpretation under the Law of Obligations there are only four articles that govern the area, potentially every article of law, contract and communication can be subject to interpretation and result in a small million of disputes and huge damages. Hence, what legal systems and comparative legal sources can guarantee is that clear contours are set in relation to the space where interpretation takes place and that there is legal predictability in relation to the way interpretation is carried out (Pedamon, C., 2021).

Complexity escalates when multiple written contracts are involved, potentially leading to multiple interpretations and the multiplication of consequential ambiguities. That is why, through the in-depth analysis of this paper, the correct steps have been taken to draw the contours for the appropriate resolution of the challenges that arise in connection with the interpretation of contract law in North Macedonia and the region. Starting from the leading premise that the freedom of agreement of the parties is one of the key concepts in terms of contractual interpretation on which the Vienna Convention is based, but also the Laws on Obligations of the Republic of North Macedonia, the Republic of Bosnia and Herzegovina, the Republic of Slovenia, the Republic of Serbia, the Republic of

Croatia and the Republic of Montenegro, it is evident that the states of the region have largely transposed the spirit of the Vienna Convention into their legislation.

The states of the region have provided provisions that take into account the system of rules of interpretation that together constitute a rounded whole. This set of rules in each individual dispute should lead to solutions that are in accordance, as far as possible, with the purpose of the agreements, that is, the intention of the contracting parties. Hence, when interpreting contracts according to the Law on Obligations and comparative legal sources, it is expected to take steps in the following order:

1. The provisions of the contract are applied as they read ;
2. When this is not possible, when interpreting the disputed provisions, the literal meaning of the used expressions should not be accepted ; rather
3. It is necessary to investigate the common intention of the contracting parties (subjective element) and to understand the provision so that it corresponds to the principles of the obligation law determined by Law on obligations (objective element) . Those principles are:
 - freedom to arrange the bond relations (Article 3);
 - equality and equity (Article 4);
 - conscientiousness and honesty (Article 5);
 - prohibition of abuse of rights (Article 6);
 - equivalence, i.e. equal value of giving (Article 8);
 - prohibition of causing damage (Article 9);
 - justice (Article 10).

The common intention of the contracting parties is determined by what one party actually stated and how the other party should have understood it. When the common intention of the contracting parties cannot be ascertained, it is necessary to inquire into the intention which reasonable persons of the same nature in the same circumstances would ordinarily have. If it is established that one party intended the contract to have a certain meaning, and at the time of the conclusion of the contract, the other party must have known about this intention, the contract should be interpreted in a way that is consistent with the intention of the first party.

When interpreting a contract, the following are especially valued: the circumstances in which it was concluded, previous negotiations, the behavior of the contracting parties after the conclusion of the contract, the nature and purpose of the contract, the interpretation that the contracting parties have already applied to similar provisions and the practice that they mutually have established, the meaning that is usually attached to provisions and expressions in a certain profession or branch, as well as the principle of conscientiousness and honesty. However, there are two situations when different rules may apply:

3.1. Exception 1, in the event that the contract is concluded according to pre-printed content or when the contract was otherwise prepared and proposed by one contracting party, unclear provisions will be interpreted in favor of the other party (*contra proferentem rule*).

3.2. Exception 2, the vague provisions in the contract without compensation should be interpreted in the sense that is less difficult for the debtor, and in the cargo contract in the sense that achieves a fair relationship of the loan.

Lastly, two final sets of rules conclude the interpretation cheat sheet

4. The parties can provide that in case of disagreement regarding the meaning and scope of the contractual provisions, a third party will interpret the contract.

5. If the contract does not provide otherwise, the parties cannot initiate a dispute before a court or other competent authority until they first obtain an interpretation of the contract, unless the third party refuses to provide an interpretation of the contract.

Seen this way, Macedonian and regional legislation offer great predictability in the context of legal certainty with a clear and straightforward arrangement. In that respect, the fact that the draft civil code, which at the time of writing this paper is in the works in several countries, does not propose a single amendment, supplement or correction in the specific articles, indicates that these provisions have withstood the test of time and have proven to be useful. In addition, the regulation of this type is largely aligned with the Vienna Convention, the Principles for International Commercial Contracts (UNIDROIT Principles of International Commercial Contracts), and the Principles of European Contract Law (PECL)/Lando principles.

In general, the constant development of the Convention and other instruments influences and encourages the tendency to go towards uniformity in the application and respect of good faith in contractual relations in national legislations (Rosett, A., 1992). Thus, today concepts that are close to some of the solutions presented in this paper have been for many years in a large number of modern laws, primarily in the American, British, German, Estonian, Chinese, Scandinavian, French, Dutch and Spanish laws.

On the other hand, social circumstances are changing not only in terms of the more frequent use of general terms and conditions, but also because they are publicly available as a regular course of things, mostly on the websites of companies; hence anyone interested can easily familiarize themselves with their content. Their application today is not surprising nor an exception, but a regular practice. It can even be said that in everyday life situations we more often conclude contracts through various general conditions, standard and adhesion contracts, and other forms than we jointly determine the content of the contract.

Therefore, the existence of the above-mentioned rules of interpretation is of particular importance and is always evaluated from the aspect of conscientiousness and honesty and other general principles of obligation law. An important note in that regard is that when applying the *contra proferentem* rule, the current circumstances should be taken into account which indicate that the general conditions are, as a rule, publicly published and available to everyone on the websites, which leads to the conclusion that the interested person has a real opportunity to read them and become familiar with them and their content before deciding to enter into a contract.

In that regard, the existence of the *contra proferentem* rule and the proportion of dispute and clarity of the provisions in relation to the interpretation of contracts has a significant preventive role. However, their place remains as one of the additional, i.e., subsidiary and special rules of interpretation, respecting the general and other special rules of interpretation, which implies, first of all, a search for the common intention of the contracting parties. This means that their application is conditional and limited when it is justified and appropriate.

Finally, in the pursuit of unification of international trade law to mitigate the differences inherent in national legal systems, the concept and rules of contractual interpretation appear as a powerful tool. Legal predictability and clarity regarding treaty interpretation are a direct reminder to national systems that a higher degree of compliance with international trade law can provide greater clarity in domestic contract law. Hence, the region is well positioned in terms of the trend of predictable construction of its contract law in accordance with comparative legal sources.

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REZIME

Predmet ovog rada je kompleksna problematika tumačenja ugovora, sa posebnim osvrtom na većitu dilemu između namere ugovornih strana i formalnog pravnog okvira. Polazeći od teze da ugovor predstavlja „živi entitet“ koji prevazilazi okvire privatnog aranžmana, rad analizira kako interpretativne metode direktno oblikuju ekonomske i društvene odnose. Centralni deo istraživanja posvećen je sukobu

između subjektivnog pristupa (autonomija volje) i objektivnog pristupa (pravna sigurnost). Kroz detaljnu analizu ključnih principa, kao što su pravilo contra proferentem, načelo savesnosti i poštenja, te uloga sudske intervencije, rad osvetljava mehanizme kojima se postiže ravnoteža između suprotstavljenih interesa. Poseban doprinos rada ogleda se u komparativnom pristupu, koji otkriva da tumačenje ugovora nije samo neutralna pravna tehnika, već polje na kojem se prelamaju ideološka i ekonomska sporenja. Rezultati istraživanja ukazuju na to da način na koji zakonodavstva i sudovi pristupaju interpretaciji direktno reflektuje šire društvene vrednosti, od težnje za ekonomskom efikasnošću do borbe za socijalnu pravdu i fer-plej u trgovinskim transakcijama. Zaključno, rad nudi smernice za unapređenje pravne prakse u cilju postizanja veće predvidljivosti i pravičnosti u ugovornim odnosima.