

THE IMPACT OF THE PRINCIPLE OF GOOD FAITH ON THE PERFORMANCE OF CIVIL CONTRACTS IN ALGERIAN LAW

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Abstract

This article examines the principle of good faith in the performance of civil contracts in Algerian law through a doctrinal and judicial approach. It begins by highlighting the status of the contract in regulating civil transactions and the importance of good faith as a moral and legal constraint on the principle of the binding force of the contract, aiming to balance the interests of the contracting parties and ensure contractual obligations are performed with honesty, cooperation, and without abuse. The study relies on an analysis of relevant legal texts—particularly the provisions of the Algerian Civil Code—supported by the opinions of jurists and the jurisprudence of the Supreme Court, in order to establish the concept of good faith, define the scope of its application at the stage of contract performance, and outline the obligations it imposes on the parties. It also highlights the role of the judge in reinforcing this principle through interpreting the contract and adjusting its effects when necessary. The study concludes that the principle of good faith is an effective tool for achieving contractual justice and protecting the weaker party, despite the issues it raises regarding the limits of judicial intervention and the stability of transactions. This finding calls for enhancing the clarity of its standards and unifying the judicial approach toward it.

Keywords: Good faith, contract performance, binding force of contract, contractual obligations, Algerian civil law, Algerian judiciary.

Introduction

The contract is considered one of the most important legal instruments regulating civil transactions. It forms the legal framework within which relationships and exchanges between individuals are organized, defining their rights and obligations in a way that promotes transactional stability and ensures respect for the mutual will of the parties. Modern civil legislations have given special attention to the contract as a fundamental tool for legal security and for fostering trust in dealings, which explains the pivotal position it occupies in civil law in general. However, economic and social developments and the increasing complexity of contractual relations have generated new problems that can no longer be resolved by relying on the principle of the autonomy of will alone. This has necessitated intervention by the legislature and the judiciary to find legal mechanisms that achieve balance and justice between contracting parties.

In this context, the principle of good faith emerged as one of the fundamental pillars of contract theory. It is a concept with ethical roots that gradually moved from the realm of abstract values to that of binding legal rules, especially in modern civil legislations[1][2]. The purpose of this principle is to control and guide the conduct of contracting parties in line with the requirements of honesty, integrity, and trustworthiness, thereby preventing deception, fraud, and the misuse of contractual terms. The principle of good faith holds a distinct place in contract law due to its influential role at various stages of the contractual

relationship: beginning with pre-contractual negotiations, through the formation of the contract, and finally during its performance – the stage where its practical effects are most evident[3].

Despite explicit legislative recognition of the principle of good faith at the performance stage of the contract, its legal nature and the extent to which it is considered a general obligation remain subjects of scholarly and judicial debate. One doctrinal view considers good faith to be merely a moral criterion or interpretive tool intended to guide the judge when contractual terms are ambiguous, whereas another view regards it as a general legal principle that imposes positive and negative obligations on the contracting parties and grants the judge authority to intervene to achieve contractual justice[4]. On the other hand, some jurists and judges view this principle with reservation, fearing that its broad scope and vague standards could undermine the stability of transactions and unduly restrict the principle of *pacta sunt servanda* (the binding force of contract)[4].

Hence, the importance of studying the principle of good faith in the performance of civil contracts in Algerian law becomes evident, especially in light of the explicit provision in the Civil Code and the case law that has emerged, striving to reconcile respect for the will of the parties with the requirements of justice and fairness in contractual relationships[5].

Research Problem

The main question arises as to the extent of the impact of the principle of good faith during the performance stage of civil contracts in Algerian law. In other words, to what extent can this moral-legal principle constrain or guide the performance of contractual obligations between the parties under the rules of the Algerian Civil Code? And does the judge have authority to intervene, based on this principle, to achieve balance and justice in contractual relations?

Methodology

This article adopts a descriptive-analytical approach based on a doctrinal and judicial study of the issue. It will analyze the relevant legal texts (especially the provisions of the Algerian Civil Code)[6], the opinions of jurists in this regard, and judicial decisions—particularly the rulings of the Algerian Supreme Court that have applied or interpreted the principle of good faith in contracts.

Section One: Conceptual and Legal Framework of the Principle of Good Faith in the Performance of Contracts

Definition of Good Faith in Jurisprudence and Law and Its Legal Basis

First: Definition of Good Faith

Civil legislations do not usually provide a precise, comprehensive definition of the concept of good faith, given its flexible nature and its connection to ethical standards[7]. Nevertheless, legal doctrine has defined it as conduct characterized by honesty, fairness, and integrity in dealings[8]. Good faith means that a contracting party is sincere in the performance of their obligations, refraining from fraud and deception, and acting as required by the legal and moral duty to cooperate with the other party[9]. From another perspective, it is sometimes defined as a genuine belief in the validity of an act and its freedom from defects, or an excusable ignorance of the existence of a fundamental fact or matter at the time of contracting[10]. In contrast, bad faith means that one contracting party knowingly and willfully acts in a manner that harms or unfairly prejudices the other party – for example, by concealing a material fact or exploiting contractual terms to achieve an

illegitimate benefit. Doctrine and case law have described the concept of good faith as “vague and difficult to precisely define”[11] due to its multifaceted nature (ethical and legal) and the variability of its applications in different contexts. This has led to a doctrinal debate over the standard by which good faith is measured: subjectively (by examining the contracting party’s inner intent and personal belief) or objectively (according to the conduct of an average person and the requirements of fair dealing)[12]. In practice, courts tend to adopt an objective standard in evaluating good faith, such that a party is expected to act as a cooperative and honest person would act, according to what the law and equity dictate[12].

Second: Legal Basis in Algerian Legislation

The Algerian legislator has explicitly enshrined the principle of good faith within the scope of contracts. Article 107(1) of the Algerian Civil Code provides that “a contract must be performed in accordance with its contents and in good faith”[13]. This provision gives the principle of good faith binding legal force at the stage of contract performance. It is linked to the preceding article (Article 106 of the Algerian Civil Code), which establishes the rule of *pacta sunt servanda* (the contract is the law of the parties) by stipulating that a contract validly formed in accordance with the law becomes binding on its parties and may not be revoked or modified except by their mutual agreement or for causes provided by law[14]. Thus, the principle of good faith complements the principle of the binding force of the contract by curbing the absolutism of contractual obligation—requiring the parties to perform what they agreed upon in a manner consistent with the demands of honesty and equity[15]. The Algerian Supreme Court affirmed this principle, stating: “It is legally established that the contract is the law of the parties and is to be performed according to its contents and in good faith; therefore, a judgment that contravenes this principle is a violation of the law”[16]. This judicial affirmation shows that any breach of the requirements of good faith during performance is considered contrary to the law and can lead to the overturning of a contrary court judgment.

Third: Distinction between Good Faith and Bad Faith

The difference between good faith and bad faith is reflected in the party’s intention and conduct during contract performance. A contracting party acting in good faith is one who adheres to the limits of the law and the terms of the contract with integrity, without seeking to deceive or to achieve illicit gains[17]. Bad faith, on the other hand, is manifested in exceeding those limits and exploiting provisions to obtain a benefit at the expense of the other party or intentionally causing harm[17]. Examples of bad faith include one party’s deliberate concealment of essential information about the subject of the contract, or exploiting loopholes in the contract in a manner that conflicts with its fair intent[18]. The Algerian Supreme Court has considered the deliberate silence about a material fact to be a form of *dolus* (fraud) that vitiates consent[18]. This means that engaging in such behavior is deemed bad faith and carries sanctions (such as annulment of the contract for fraud or liability for damages). By contrast, good faith implies positive conduct, such as disclosing important facts and cooperating in the execution of the contract. Good faith is presumed in all contracts unless there is evidence to the contrary[19].

Scope of Application of the Good Faith Principle in the Performance Stage, and Its Relationship with the Binding Force of Contract and the Limits of Judicial Intervention

Scope of the Principle in Performance: Article 107 of the Algerian Civil Code explicitly confines the obligation of good faith to the performance stage of the contract[20]. This means that once a contract has been validly concluded, each party must perform their contractual obligations according to the contract's terms and in a spirit of trust and cooperation. This requirement applies to all types of civil contracts without exception—from sale and lease contracts to employment, partnership, and others—each of which is required to respect the demands of good faith during performance[20]. Although the legislator did not expressly mention the need for good faith at the stage of contract formation (negotiations and conclusion of the contract)[21], this does not imply that deception or fraud is permitted during that stage. General rules of civil liability (such as those on fraud or the duty to disclose) continue to govern pre-contractual misconduct. The Algerian legislator's emphasis, however, was on the performance stage as the phase in which the cooperation of both parties is most necessary to achieve the purpose of the contract. Notably, several comparative legislations (for example, Article 202 of the Jordanian Civil Code) likewise explicitly limit the scope of good faith to the performance of the contract[22], although jurists in those countries call for expanding its scope to include pre-contractual stages as well, in order to afford greater protection to the weaker party. In all cases, the default rule is that good faith is a legal obligation during performance that neither contracting party may violate[23], and good faith is presumed to exist unless proven otherwise.

Relationship with the Principle of *Pacta Sunt Servanda*: The rule that “the contract is the law of the parties” (enshrined in Article 106 of the Algerian Civil Code) is a fundamental tenet of civil law, meaning that the terms and conditions of a contract bind the parties as law does[24][25]. However, this rule is not absolute; it is subject to an important qualification, namely the necessity of performing the contract in good faith[15][26]. In other words, a party's insistence on the literal terms of the contract in an arbitrary manner may conflict with that party's obligation of good faith. While the general rule is that the contracting parties must perform the contract to the letter as agreed, an exception is that neither of them may demand a literal performance that departs from the contract's equitable aims or inflicts unjustified harm on the other, contrary to the principle of good faith[27]. It has been aptly said that the principle of *pacta sunt servanda* itself “contains within it the principle of good faith, as an essential element of that rule, expressing the preservation of trust and honesty in transactions”[28]. Therefore, good faith acts to soften the rigidity of the traditional rule by introducing considerations of equity and preventing abuse in performance[29].

Under this approach, the creditor's right to demand full, inflexible performance is constrained if the debtor can show that the creditor's demand involves arbitrariness or violates the spirit of cooperation presumed in the contract[29]. For example, if the contract stipulates a certain penalty for delay in performance, the creditor is entitled to claim it; however, he must not abuse that clause in a way that contravenes good faith—such as insisting on the penalty even though the delay was minor and caused minimal harm[30]. In such a case, the court may refuse to grant the creditor the full penalty, on the grounds that the creditor's strictly literal insistence on the contract amounts to a departure from what good faith in performance requires[30].

Limits of Judicial Intervention Pursuant to Good Faith: A question arises as to the extent of the judge's authority to monitor good faith during contract performance, especially given that the default principle is to respect the will of the parties and not interfere in the terms of the contract[31]. The role of the judge under the principle of good faith is primarily manifested in interpreting the contract and adapting it in a manner that achieves justice between the parties. When hearing a dispute related to the performance of a contract, a judge is obliged to seek out the common intent of the contracting parties and not confine himself to the literal meaning of the words[32], in compliance with the requirements of good faith in the interpretation of legal acts. If the judge finds from the circumstances that one party seeks to exploit the literal wording of a contractual clause to harm the other or to escape a fundamental obligation, the judge may reject that narrow interpretation and give the contract its correct meaning consistent with good faith[33].

In addition to the power of interpretation, a judge may have a limited authority to modify certain effects of the contract in exceptional cases expressly permitted by law, such as the case of unforeseen circumstances or punitive clauses that are exorbitant. The Algerian legislator—following the example of the Egyptian legislator—recognizes the theory of *imprévision* (unforeseeable circumstances, hardship) in what appears to be Article 107(2) of the Civil Code, which allows a judge to adjust the obligations of a contract if extraordinary general events occur that were unforeseeable and that make performance of the obligation onerous for the debtor[34]. This theory can be characterized as a specific application of the principle of good faith and contractual justice, since it aims to restore the contractual equilibrium and to avoid obliging the debtor to perform beyond reasonable limits in the interest of fairness[35]. Likewise, the law permits the judge to reduce a contractual penalty if he finds it excessive, in order to prevent the creditor from abusing his right to agreed compensation[36]. One study noted that judicial intervention in contracts has evolved over time to curtail the autonomy of will when justice requires it[37].

That said, it should be noted that the judge's authority in this regard is not absolute; it is limited by the provisions of the law and by the need to respect the essence of the agreement. A judge does not modify a contract by his own unfettered will, but intervenes only within narrow bounds and when there is a legal basis for doing so (such as the prohibition of abuse of rights or the theory of unforeseen circumstances)[38]. In other cases, the judge's role is confined to applying the principle of good faith by invalidating acts tainted by fraud or bad faith, or by awarding compensation for the damage resulting from such acts under general liability rules[38].

Section Two: The Impact of the Principle of Good Faith on the Performance of Civil Contracts

Obligations Imposed by the Principle of Good Faith During Performance (Cooperation, Non-Abuse, and Disclosure)

The principle of good faith imposes on the parties to a contract both positive and negative obligations that supplement the express obligations in the contract. In addition to each party's duty to perform what has been agreed upon in literal terms, there is an implied duty to act in a way that achieves the intended purpose of the contract and protects the other party's legitimate interests[39]. The most important obligations arising from good faith include the following:

- **Obligation of Cooperation (L'obligation de coopération):** Each contracting party must cooperate with the other to ensure the contract is performed in the best manner and to realize the contract's purpose[40]. This means exerting reasonable efforts to facilitate the other party's performance of their obligations and avoiding anything that would hinder performance. This obligation is flexible and takes many forms depending on the nature and circumstances of the contract[40]. For example, in a contract of sale, the seller's role is not confined to merely delivering the good to the buyer; the seller must also cooperate by informing the buyer of necessary information on how to use the good and by warning of potential risks associated with its use[41]. Cooperation even extends to delivering necessary documents to the buyer (such as warranty certificates or title documents) and taking required steps to register the sold right and transfer ownership properly to the buyer[42]. Similarly, in other contracts – partnership contracts, for instance – cooperation between partners to achieve the common goal is fundamental, which may entail each partner's obligation to actively contribute to the company's activities and to refrain from doing anything that would impede its purpose[43]. Thus, the duty to cooperate is considered a requirement of good faith. If one party breaches this duty (for example, by adopting an unjustifiably passive or obstructive stance not warranted by the contract), that breach constitutes a failure in performance that may give rise to liability. It should be noted that the degree of required cooperation is proportional to the nature of the contract: in contracts such as construction contracts, a certain level of cooperation may be specified (e.g., the owner providing the contractor with blueprints or facilitating site access), whereas in contracts of adhesion (standard-form contracts) the scope for cooperation may be narrower due to the dominance of one party. Nonetheless, even the dominant party in an adhesion contract is obliged to facilitate the weaker party's enjoyment of the contract's benefits and not to place obstacles in their path[44].
- **Obligation to Refrain from Abuse (Non-Abusive Exercise of Rights):** Neither party to the contract may, in performing their obligations or exercising their rights arising from the contract, act in an abusive manner or use their right in a way that contradicts the contract or causes unlawful harm to the other party[45]. This duty is derived from a general principle of civil law (the principle of no abuse of rights), which provides that exercising a right in an unlawful manner or in a way that exceeds the bounds of its legitimate purpose is a forbidden misuse. In the context of contracts, for example, if a contract entitles a creditor to rescind the contract upon the debtor's delay, the creditor must not exercise this right abusively in the case of a trivial delay or for insubstantial reasons that do not materially harm the creditor's interests. The courts have affirmed this as a requirement of good faith: the holder of a contractual right may not insist on exercising it in a manner that causes significant harm to the other contracting party without a legitimate interest in doing so[46]. Likewise, a seller may not rescind a sales contract merely because of a slight delay by the buyer in paying an installment if partial performance has been rendered and most of the price has been paid; in such a situation, rescission would be a harmful act of arbitrariness and incompatible with good faith[47]. Other applications include the obligation of a seller or supplier not to exploit loopholes in

- the contract or in the law to harm the consumer (who is the weaker party) – for instance, by inserting unfair terms and then insisting on their literal enforcement. The principle of good faith restrains such behavior, enabling the court to strike out unfair terms or limit their effects in order to protect the weaker party[48]. In general, this obligation is negative in nature (an obligation to refrain), consisting of not deviating from the legitimate aims of the contract and not using the contractual rights of others for purposes other than those for which they were established[49]. Any deliberate breach of this duty may result in contractual liability or even nullity or termination of the contract if the breach reaches the level of fraud or deceit. The Algerian Supreme Court’s judgments have observed this idea; for example, the Court held in one decision that a creditor is not permitted to obtain two compensations for the same damage resulting from a contractual breach[50]. This ruling can be understood within the framework of preventing abuse (prohibiting unjust enrichment) and upholding good faith in contract performance[50]. Similarly, unjustified procrastination in performing an obligation, or attempts to obstruct the other party’s realization of their right, are forms of bad faith that warrant judicial intervention to enforce proper performance in line with justice.
- **Obligation of Disclosure and Transparency (Duty to Inform):** The duty to inform or disclose is a relatively modern obligation that has arisen from the idea of good faith. It requires a contracting party to provide the other party with material information related to contract performance, and not to conceal anything that would affect the other party’s rights and obligations[51]. This duty overlaps with the contract formation phase as well (a pre-contractual duty to inform), but its extension into the performance phase is clear in contracts that necessitate an exchange of information during execution. For instance, a contractor in a works contract is obliged to inform the project owner of any obstacles or unexpected circumstances encountered during performance that might affect the project’s cost or duration[52]. Likewise, in an insurance contract, the insured is obligated to notify the insurance company of the occurrence of the insured risk or of any material change that increases the likelihood of the risk, as part of executing the contract in good faith[52]. Good faith demands honesty and transparency between the contracting parties; neither party may leave the other in doubt or ignorance about facts that would impact contract performance[53]. The Algerian legislator has included scattered provisions imposing disclosure duties in certain contexts, such as the seller’s obligation to clearly indicate what they undertake to do, under penalty of annulment of the sale for mistake or the seller’s liability[54]. In the Algerian Consumer Protection Act, there are multiple disclosure obligations to ensure transparency in consumer transactions[55], which reflects the legislator’s concern to reinforce the requirements of good faith, especially when one of the parties is a consumer lacking expertise. Judicially, a breach of the duty to inform is treated according to its seriousness: it may lead to annulment of the contract if it resulted in a fundamental mistake or was the result of fraud[56], or it may only result in damages if it was merely a contractual or delictual fault not reaching the level of voiding the contract[57]. Thus, the duty to inform is derived from good faith and aims to prevent misrepresentation and deceit between contracting parties, ensuring

the contract is performed in conditions of mutual trust. An example from case law in this area is a ruling by the Algerian Supreme Court, which held that a seller's concealment of essential information about the condition of the sold item (such as hiding serious defects) amounted to fraud that entitles the buyer to seek annulment of the sale[58]. Likewise, if one party during performance breaches a fundamental duty of disclosure causing damage to the other, the courts may hold that party liable for the harm caused[59].

Role of the Judge in Light of the Principle of Good Faith – Interpretation, Modification, and Judicial Applications

The Judge's Role in Interpreting the Contract in Good Faith

As noted above, the principle of good faith obliges the judge to make every effort to discern the true common intent of the contracting parties when considering disputes over performance, and not to adhere strictly to the literal meaning of words if a literal interpretation would lead to unjust or unreasonable results[60]. This interpretive role is the first and most important role exercised by the judge to promote good faith; it prevents one party from exploiting contractual ambiguity or textual loopholes to the detriment of the other. The Algerian Supreme Court has consistently held that "if there is room to interpret the contract, one must search for the common intention of the contracting parties without stopping at the literal meaning of the terms"[61]. Accordingly, if one of the contracting parties claims an unusual right merely because a clause in the contract is worded in a way that could allow that interpretation, the judge will first verify whether that meaning was truly what both parties intended at the time of contracting, or whether good faith requires a different interpretation that is more in line with the nature of the transaction and the mutual interests of the parties[61]. Interpreting ambiguities in favor of the debtor or the weaker party is another rule that has emerged, as an application of the principle of good faith and equity. If a clause is unclear, it is interpreted against the interest of the stronger party who drafted the contract and failed to clarify its terms[62], in order to incentivize that party to act in good faith when formulating its obligations.

The Judge's Authority to Modify Contractual Effects (The Algerian Legislator's Approach)

In principle, a judge does not modify contracts of his own accord. However, the principle of good faith, together with other complementary principles, has allowed the legislature and judiciary to introduce certain modifications to the effects of a contract in order to achieve justice. Prominent among these situations are the theories of unforeseeable circumstances (*théorie de l'imprévision*) and force majeure, where the judge may, upon their conditions being met, partially relieve the debtor of an obligation, grant a respite, or even rescind the contract without damages. All of this is in response to the requirements of good faith and equity when insisting on strict performance would be against fairness[63]. Also, in the case of excessive penalty clauses, the law permits the judge to reduce the agreed compensation to a reasonable amount if there is an obvious disproportion between that compensation and the actual harm[63], so as to prevent one party from exploiting his position to obtain an undue advantage. Another application appears in contracts of adhesion: Article 110 of the Algerian Civil Code (similar to many other laws) grants the judge the power to modify or exempt the adhering party from unfair terms imposed by the stronger party, which can be considered an application of the constraint of good faith on

the freedom of the stronger party[64]. All these examples essentially aim to restore contractual balance whenever it has been seriously disturbed, based on the idea that contractual justice takes precedence over the will of the parties whenever that will is not guided by good faith. One researcher has noted that contemporary judicial jurisprudence has reverted to relying on the idea of good faith “to disable a contractual stipulation that leads to a result contrary to equity”[65], indicating a shift toward granting the judge a positive role in protecting contractual justice. On the other hand, the judge must exercise this role cautiously and according to clear guidelines so as not to threaten the security of transactions. The judge should rely on a legal text or a well-established principle (such as the prohibition of abuse of rights or the occurrence of extraordinary circumstances) to justify any modification[66]. For example, when the Algerian Supreme Court applied the theory of unforeseen circumstances in some decisions, it did so on the basis of the relevant article after the conditions for its application were fulfilled, and it ruled either to extend the term or to rescind the contract without compensation for the affected party, as appropriate to the case[67]. In another decision, the Supreme Court quashed a judgment that had annulled a sales contract on a formal pretext, because the buyer was in good faith and no fraud on his part was proven; the Court held that annulling the contract despite the buyer’s good faith was contrary to principles of justice and good faith in dealings[68].

Algerian Judicial Applications of Good Faith

The Algerian judiciary has recognized the concept of good faith and applied it on several occasions. One of the earliest cases in which this principle stood out was a Supreme Court decision dated March 21, 1983, involving a loan-for-use (*‘āriyat isti ‘māl*) of a house, where the Court based its interpretation and enforcement of that contract on the principle of good faith[69]. The Supreme Court also issued, on January 15, 1990 (Case No. 52061), a landmark judgment that strictly affirmed that a contract must be performed in good faith., and it deemed any ruling to the contrary a mistake in applying the law. This 1990 decision is a cornerstone in firmly establishing the principle in the judiciary’s practice. Other applications relate to the duty of disclosure: the Supreme Court held a professional seller liable for failing to inform the buyer of a serious defect in the sold item, considering the seller’s silence a form of fraud that entitles the buyer to request annulment of the sale. In another context, the Supreme Court applied the doctrine of *lesion* (exploitative inequity) in the sale of real estate: where it was proven that one party exploited the other’s need or recklessness to such an excessive imbalance that the Court intervened to annul or adjust the contract despite the principle of autonomy of will, on the consideration that the exploiting party ought to have acted in good faith and that it is impermissible to exploit the circumstances of the other contracting party. The Court has also established in a consistent line of decisions the rule that “it is legally unacceptable for an injured party to collect two compensations for the same harm. which can be viewed as an echo of the good faith principle in that it prevents unjust enrichment without cause. As for administrative contracts (though outside the scope of our civil discussion), the Administrative Chamber of the Supreme Court has likewise recognized that such contracts must be executed in good faith and that the administration may not resort to arbitrary termination of its contracts with individuals. In general, it can be said that the modern Algerian judiciary tends to protect the weaker party in contractual relationships by activating the requirements of good faith and equity, at times drawing on comparative jurisprudence for guidance (such as the

modern French judiciary after the 2016 reforms, which affirmed good faith as a mandatory rule in contracts).

Section Three: Scholarly and Judicial Perspectives on the Principle of Good Faith

Legal Doctrine's Position – Trends in Scholarly Opinion on the Principle

Legal scholarship has given increasing attention to the principle of good faith in contracts. However, as previously noted, it has not reached a unified view regarding the nature of this principle and the limits of its role. Two main trends in the doctrine can be distinguished:

The First Trend (Conservative/Traditional): Proponents of this trend tend to confine the principle of good faith to a narrow scope under strict control. They view it as merely a moral guideline or an interpretive aid that does not rise to the level of an imperative legal rule. They argue that conferring broad binding force on good faith could threaten the stability of transactions and place the fate of the contract in the hands of an overly flexible judicial discretion. Therefore, they prefer to keep its role limited to contract interpretation and guiding the application of provisions, without using it to create new obligations that are not expressly stipulated. Some jurists in this camp define good faith as the intention to stay within the bounds of the law and a willingness to comply with its provisions. Accordingly, they consider that a person acting in good faith is someone who does not intentionally violate the law, whereas bad faith is the deliberate departure from legal boundaries. This definition ties good faith to the notion of justified ignorance or an honest mistaken belief (as in the case of a possessor in good faith who is unaware of a defect in his title). Some proponents of this view argue that good faith is an entirely subjective concept that is difficult to verify, and therefore it should not be burdened with more than it can bear. In general, this group fears that the principle could serve as an entry point for an overreach of judicial discretion at the expense of the autonomy of will.

The Second Trend (Expansive/Modern): Adherents of this trend regard the principle of good faith as one of the binding general principles of civil law, even likening it to an implied term of the contract that is indispensable for achieving contractual justice. They call for adopting an objective concept of good faith, such that a contracting party's conduct is measured against the standard of a reasonable person commonly accepted in dealings. They assert that the principle applies at all stages of the contract (during negotiations, formation, performance, and even termination, citing legislations that explicitly or implicitly embrace that approach. For example, under U.S. law the principle of good faith is required in the performance of commercial contracts, and the UNIDROIT Principles of International Commercial Contracts contain an explicit provision requiring that a contract be negotiated and performed in good faith. In Arab legal systems, proponents point to the spread of provisions mandating good faith—for instance, Article 148(1) of the Egyptian Civil Code, Article 202 of the Jordanian Civil Code, and Article 172 of the Iraqi Civil Code, among others. This group argues that good faith demands honesty, loyalty, and cooperation between contracting parties, thereby imposing concrete obligations (such as duties to cooperate, to inform, and not to cause harm). Consequently, they consider that a party's breach of good faith is a contractual fault that entails a sanction (compensation, termination, or other remedies depending on the harm. In modern Algerian scholarship, recent writings advocate this direction: some researchers have examined the principle of good faith as a cornerstone for achieving contractual balance and ensuring an equilibrium of interests between the parties. Others have called for making the principle a general one

applicable not only to contracts but to all legal acts. on the premise of enhancing trust in transactions and preventing fraud across all fields. It is observed that most new legislations and amendments (as in France's 2016 reform) align with this trend by enshrining good faith as a general principle. The ongoing challenge for this camp, however, is to establish objective criteria to determine when conduct is considered contrary to good faith, in order to avoid the accusation of vagueness. Some scholars have suggested relying on the notion of the "honest and reasonable contracting party" as a benchmark, asking whether a typical upright person would have acted in that way under the same circumstances.

In conclusion, one can say that Algerian legal doctrine has been influenced by both of these trends. Although the general commentaries on the Algerian Civil Code did not allocate many pages to good faith and were content with passing references. recent years have seen a particular interest (in the form of master's theses and specialized articles) that delves deeply into the subject. This reflects a growing conviction of the importance of the principle in enriching both the doctrinal understanding and practical application of contract theory.

Judiciary's Position – Supreme Court Rulings, Protection of the Weaker Party, and Modern Trends

Jurisprudence of the Algerian Supreme Court: The Algerian judiciary, especially the Supreme Court, has witnessed a notable development in adopting the principle of good faith within the reasoning of its decisions to ensure the fair enforcement of contracts. After the incorporation of Article 107(1) of the Civil Code in 1975, the judiciary did not wait long to give it effect; it is observed that decisions in the early 1980s contain explicit references to the principle. One commentator noted that "in less than eight years, the principle of good faith in contracts was put into practice after the promulgation of its legislative text"., alluding to the Supreme Court's 1983 decision regarding a loan for use (commodatum). Since then, the Supreme Court's jurisprudence has settled on affirming the obligatory nature of good faith: its famous 1990 decision mentioned earlier. has become a point of reference in every case where this principle is invoked. Numerous subsequent judgments have applied the principle in various contexts. For example:

- In the realm of sales contracts: The Court overturned a ruling that had annulled a sales contract on the basis that the director of the selling company exceeded his authority. The Supreme Court relied on the principle of good faith to protect the other party who dealt with the director in appearance and in good faith. The Court held the company responsible for the contract, considering that the authorized manager had acted within the limits of his apparent authority and that the company must bear the consequences of the outward appearance it created. This judgment highlights the protection of the good-faith contracting party who deals with an agent of a company, and it refused to nullify the contract to that party's detriment.
- In contracts of adhesion and consumer contracts: The Supreme Court has shown a tendency to protect the adhering party (the consumer or weaker contracting party). Some judgments have treated contract terms that are unfair and contrary to the principle of good faith as void or voidable. Even if not always invoking good faith explicitly, this is implicitly understood through the application of public order rules or principles of equity. Likewise, courts typically interpret any ambiguity in

- consumer contracts in favor of the consumer, guided by the notion that a professional must deal honestly and transparently with their customers.
- In employment contracts: Courts apply the principle of good faith by requiring both the employee and the employer to fulfill the requirements of mutual trust. For example, an employee's disclosure of the employer's secrets has been deemed a breach of good faith justifying dismissal. Similarly, an employer's abusive termination of an employment contract without valid serious reasons has been considered contrary to the principle of good faith in performance.

Protection of the Weaker Party (Contractual Balance): Ensuring the protection of the weaker contracting party is one of the foremost motivations for the modern judiciary's application of the principle of good faith. In many contractual relationships, one party occupies a weaker bargaining position (such as a consumer vis-à-vis a professional, or an employee vis-à-vis an employer, or a less experienced party vis-à-vis a professional counterpart). The judiciary has leveraged the principle of good faith as a tool to ensure that the stronger party does not unilaterally impose an unjust interpretation or mode of performance on the other. This is evident in the courts' willingness to intervene to adjust adhesion contracts or to strike out unfair terms, as well as in imposing additional duties of information on the stronger party for the benefit of the weaker. Also, when considering damages for contractual breach, a judge might take into account whether the creditor had cooperated to mitigate the damage or whether he was obstinate; the judge may reduce the compensation if it is shown that the creditor acted in bad faith or failed to make efforts to prevent the aggravation of the damage. All these equitable considerations aim to keep the contract within the bounds of acceptable justice and to prevent outcomes that are socially shocking. Contemporary jurists have observed that "the principle of good faith at the performance stage gives the judge authority in some cases to restore balance to the contractual relationship in order to achieve justice between the contracting parties. This confirms that the fundamental purpose of good faith is to prevent one party from monopolizing the wording of the contract in such a way that the contract loses its spirit as an instrument of balanced interests.

Modern Trends and Influence of Doctrine and Comparative Law: It is evident that the Algerian judiciary is influenced—to some extent—by legislative developments and doctrinal thought in other systems, especially those sharing a civil-law origin (such as French law and comparable Arab laws. We have witnessed the reform of the French Civil Code in 2016, where new Article 1104 reaffirmed the principle of good faith as a mandatory principle applicable in the negotiation, formation, and performance of contracts. Such developments, along with international principles (like the UNIDROIT principles), serve as inspiration for strengthening the role of good faith. Accordingly, one notices that the modern Algerian judiciary is more bold in explicitly invoking the concept of good faith, compared to earlier times when it might have only hinted at it implicitly under the umbrella of other principles. An indicator of this is the growing citation of scholarly writings on good faith in the reasoning of judgments, which reflects a deeper judicial awareness of the concept. On the domestic legislative front, there is a trend toward enhancing consumer protection, regulating electronic contracts, and so forth—areas in which good faith emerges as a necessary principle to regulate the conduct of contracting parties. It would not be

surprising if a project to amend the Civil Code were to include clearer provisions on this principle, perhaps even expanding its scope as some doctrine has urged.

In summary, the current judicial stance has come to cement good faith as a principle for ensuring justice: the courts invalidate dealings that contravene it, interpret contractual terms in light of it, hold to account those who breach their duty of cooperation or disclosure, and protect the party harmed by the other's obstinacy.. All these are positive developments aligning with what some describe as "contractual justice" or the "ethical constitutionalization of contract," where the contract is not viewed merely as an arena for individual gain, but as a cooperative relationship that must be managed with a sense of shared responsibility.

Conclusion

Key Findings: From the above, it is clear that the principle of good faith has become an essential element in the performance of civil contracts under Algerian law, despite its ethical origins. The legislator acknowledged it in Article 107 of the Civil Code, making it a legal obligation at the performance stage. which gave the judiciary an explicit foundation for relying on it. This led to a notable development in case law that has contributed to greater contractual justice: through this principle, judges have been able to restrain the abuse by either creditors or debtors in exploiting contractual clauses. and have applied it to compel contracting parties to cooperate, to disclose information, and to exercise moderation in the exercise of rights. The study also brought to light the role of good faith in protecting the weaker party, preventing unjust enrichment, and closing loopholes that might be exploited by a party acting in bad faith. The doctrinal scholarship, for its part, has shown growing interest in theorizing the principle and analyzing its criteria (objective versus subjective. which has enhanced the judiciary's understanding of it. And although some ambiguity still surrounds its boundaries—particularly at the pre-contractual stage—the general trend leans toward considering it a general principle encompassing all stages of the contract, even if its explicit mandatory force is confined to the performance phase.

Effectiveness of the Principle and Achieving Contractual Justice: Judicial practice has demonstrated that the principle of good faith is an effective tool for ensuring balance and fairness in contracts. It prevents the strict, unacceptable results that the rule of *pacta sunt servanda* might produce if applied alone without moderation Thanks to good faith, the judiciary has been able to correct certain imbalances: such as mitigating harsh terms, refusing arbitrary termination, or requiring compensation in cases of fraud and breaches of the duty to cooperate. All of this reinforces the idea that a contract is not a chess game between adversaries but a legal relationship that must observe a degree of mutual trust. In practical terms, it can be said that parties in Algeria have become more aware that their conduct after signing a contract is judged by the standard of good faith; it is not enough for a contract to be valid, but it must also be performed in an honest manner, otherwise they expose themselves to liability.

Recommendations and Suggestions:

- **Developing Legislation:** It is proposed that the Algerian legislature consider explicitly expanding the scope of the principle of good faith to include the negotiation and formation stage of the contract, similar to what some modern laws have done and as some doctrine has recommended This would strengthen trust from

- the very beginning of contractual dealings and fill a legislative gap regarding liability for bad faith in negotiations.
- **Setting Clearer Criteria:** It would be advisable to provide, through preparatory works or doctrinal guidance, more clearly defined criteria for what constitutes a breach of good faith, whether by practical examples or guiding principles. This would help judges and contracting parties alike to predict outcomes and avoid wrongful conduct.
 - **Strengthening Judicial Jurisprudence:** The courts (especially the Supreme Court) should continue their approach of emphasizing the principle of good faith in their reasoning when adjudicating contractual disputes, given its educative and deterrent role. The more decisions accumulate that include concrete applications of good faith, the greater the confidence that the judiciary will stand guard against bad faith, which in turn encourages parties to settle their disputes in a more cooperative spirit before resorting to litigation.
 - **Awareness and Training:** It would be beneficial to incorporate the principle of good faith and its applications into the training programs of judges and lawyers, and to hold seminars and workshops for practitioners on the subject. If lawyers understand this principle, they will draft contracts that heed its requirements (for example, by drafting clear clauses and avoiding unfair terms), and they will advise their clients on the importance of acting with honesty and cooperation during performance to avoid disputes.

In conclusion, the principle of good faith in the performance of civil contracts in Algerian law is not merely a moral slogan, but a cornerstone for regulating contractual conduct and achieving justice. Its effectiveness has been demonstrated through judicial rulings, and efforts should continue in entrenching and developing it. In so doing, we ensure that the contract remains a tool for building mutual interests, not a weapon concealing betrayal or exploitation. To the extent that contracting parties commit to good faith, trust in transactions will flourish and resort to the courts will diminish except for the most extreme cases, which ultimately serves the stability of transactions and nurtures a spirit of civil responsibility in society.

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