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Principle of Good Faith and Constitutional Values in Contract Law^{*1}

1. Principle of good faith and protection of constitutional values

The fundamental rights and freedoms guaranteed by the Constitution, and constitutional principles form the objective values applicable in all areas of law. The constitutional values also determine the principles and general aims of private law and the bases for shaping value beliefs. Therefore, fundamental rights and freedoms and constitutional principles have to be taken into account in the interpretation and application of private law provisions. Courts often have to consider very specific individual and conflicting interests when settling civil disputes, and the attainment of a just settlement can be extremely difficult. For the sake of a just settlement of a dispute, an interpretation of private law provisions through the fundamental rights and freedoms, or the direct application of the Constitution, may be inevitable in such a case. The obligation to act in good faith in the exercise of civil rights and performance of civil obligations and the general clause on good morals are considered the most important private law provisions through which constitutional values appear in private law.^{*2}

The principle of good faith is also a constitutional principle. It requires that participants in social relationships behave in goodwill, fairly and justly toward each other. Equity and estoppel, which are also considered principles of the Estonian Constitution, are regarded as derivatives of the principle of good faith. According to the preamble of the Constitution, justice is a basic value of the Estonian statehood.^{*3} Thus, the principle of justice also needs to be treated as an element of the constitutional values.

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² See Münchener Kommentar zum Bürgerliches Gesetzbuch/ Roth. Vol. II. 3th ed. 1994, § 242, paragraph No. 38 *ff.*

³ See R. Maruste. *Põhiseadus ja selle järelevalve* (Constitution and Constitutional Review). Tallinn, 1997, pp. 68–69; 60–61 (in Estonian).

The purpose of setting out the principle of good faith in civil law is to bring into economic relations fairness, justice, order and reasonableness — everything required by the Constitution. It is possible to identify which constitutional values are appraised and protected in private relations through how substance is given to the principle of good faith and how this principle is applied in settling civil disputes.*⁴

In the Estonian legal order, the principle of good faith has been in force as a general principle of civil law since 1 September 1994, when the General Part of the Civil Code Act (hereinafter GPCCA) entered into force. Section 108 of this Act set out the general obligation of persons to act in good faith when exercising civil rights and performing civil obligations, and prohibited the exercise of a right for the purpose of causing damage to another person. The principle of good faith is also contained in the new General Part of the Civil Code Act passed on 27 March 2002 (§ 138). Pursuant to § 6 (1) of the Law of Obligations Act (LOA) passed on 26 September 2001, obligees and obligors shall act in good faith in their relations with one another. As the principle of good faith is also a constitutional principle and hence superior to civil laws, LOA § 6 (2) provides that nothing arising from law, a usage or a transaction shall be applied to an obligation if it is contrary to the principle of good faith.

As a rule, contractual acts only affect the parties to a legal relationship. However, in certain cases the contractual acts of the parties may damage the interests or violate the rights of third parties, which is why the needs to protect the constitutional rights, freedoms and interests of third parties may also impose limits to the freedom of determining the content of a contract. The value beliefs and prevalent perceptions of society can be so sharply contrary to the content of a contract that society cannot tolerate the binding nature of such contract and provide legal protection to it.*⁵ Contracts, the content of which is contrary to good morals, must be regarded as null and void. This means that such contracts will not be given protection by the courts. Therefore, the general clause of good morals serves the same purpose as the principle of good faith — a fair settlement of a single case, the attainment of “fair justice”.*⁶

The application of the principle of good faith in legal practice and its role in law development by courts largely depends on the gaps present in the law or in a disputed contract. If the legal order of a contract contains provisions that enable the dispute to be settled fairly, there is essentially no need to resort to the principle of good faith.*⁷ However, undefined legal concepts will always be present in civil law; neither will all laws and contracts ever be perfect or free from gaps. This causes the need for general principles of law, through which legal provisions or contracts can be rendered more specific.

The role of the principle of good faith in the legal order is treated through the functions and values.*⁸ Through the principle of good faith, obligations can be extended, *i.e.* new obligations can be created further to those agreed upon in a contract or provided by law; the exercise of rights can be restricted and amendments can be allowed to contractual provisions if changed or unforeseeable circumstances appear.*⁹ When the principle of good faith is applied, its content has to be specified in accordance with the constitutional values, the values of ordinary laws and the standards of collective value beliefs.*¹⁰

All institutions of modern society, such as the market, associations of persons, state authorities, the health care system, social security, the family, culture, religion, *etc.* pose certain demands and expectations on private relations, which depend on a vast range of different social factors. This also causes the instability of the principle of good faith and a constant development of its content.*¹¹ The practice of application of the principle of good faith in the settlement of civil disputes is also affected by interpretations of fundamental rights and freedoms and the possibilities for their protection in other areas of law.

Violation of the fundamental freedoms of a person is a defence by which the principles of party autonomy and private autonomy inherent in civil law can be restricted. In Estonian law, such a defence is made pos-

⁴ Principles of European Contract Law. Part I: Performance, Non-performance and Remedies. Prepared by The Commission on European Contract Law. O. Lando, H. Beale (eds.). Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1995, p. 53.

⁵ P. Schlechtriem. *Võlaõigus. Üldosa* (Law of Obligations. General Part). Tallinn: Juura, Õigusteabe AS, 1999, p. 18 (in Estonian).

⁶ H. Köhler. *Tsiviilseadustik. Üldosa* (Civil Code. General Part). Tallinn: Juura, Õigusteabe AS, 1998, p. 13 (in Estonian).

⁷ P. Schlechtriem. *Good Faith in German Law and in International Uniform Laws*, 1997. Available at: <http://www.cnr.it/CRDCS/frames24.htm>.

⁸ See Münchener kommentar zum Bürgerlichen Gesetzbuch/Roth. Vol. 2. Schuldrecht Allgemeiner Teil. 4th ed. München: C.H.Beck, 2001, § 242, paragraph No. 13. A major source for theoretical discussion on the principle of good faith: F. Wieacker. *Zur rechtstheoretische Präzisierung des § 242*. Tübingen: J.C.Mohr, 1956, particularly pp. 20–44.

⁹ H. P. Westermann. *Handkommentar zum Bürgerlichen Gesetzbuch*. Münster, 1989, p. 514. A similar classification of functions has been followed by P. Schlechtriem. See P. Schlechtriem (Note 5), pp. 37–44; P. Schlechtriem (Note 7). Setting the provisional basis for law development, objections and a reallocation of contractual risks are also distinguished between as functions of the principle of good faith. W. F. Ebke, B. M. Steinbauer. *The Doctrine of Good Faith in German Contract Law*. – J. Beatson, D. Friedman (eds.). *Good Faith and Fault in Contract Law*. Oxford: Clarendon Press, 1995, p. 171.

¹⁰ See P. Schlechtriem (Note 5), pp. 32–34.

¹¹ G. Teubner. *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*. – *The Modern Law Review*, Vol. 61, 1998, p. 21.

sible by LOA § 5, pursuant to which derogation from the provisions of law is allowed upon agreement between the parties, unless derogation is contrary to public order or good morals or violates the fundamental rights of a person. The law thus expressly provides for the obligation to take account of constitutional values in relationships under the law of obligations.

Development of the mechanisms of protection of fundamental rights and freedoms and the activity of constitutional courts has significantly increased the importance of constitutional values in the settlement of private law disputes.^{*12} However, certain negative aspects are apparent in the settlement of civil disputes by relying on constitutional values. Namely, in certain cases this can result in a deviation from the balance of interests of the contracting parties, which is contrary to the principles of contract law, and cause social problems unforeseeable at first sight.^{*13}

In summary, the private law principle of good faith may be regarded as a means of protection of fundamental rights and freedoms. Application of this principle is aimed at securing constitutional values in private relations.

2. Constitutional values and freedom of contract

In the application of the general clauses or principles of private law, the constitutional values that simultaneously guarantee and restrict the freedom of contract are the highest standard.

A democratic state based on the rule of law must guarantee the freedom and opportunity of people to organise their lives themselves.^{*14} An independent organisation of one's life is guaranteed by fundamental rights and freedoms. The listing of fundamental rights provided in the Estonian Constitution corresponds to the internationally recognised listing of human rights and freedoms.^{*15}

Fundamental rights must ensure everyone's protection in respect of the state, as well as in respect of other persons. The state protects fundamental rights by laws, prohibiting activities that violate fundamental rights. Courts in turn perform their protection functions through applying such general interpretable principles as the obligation to act in good faith and in accordance with public order and good morals.

When weighing values, it is important to consider which subjective rights of other persons could be violated. The relevance of fundamental rights and freedoms when compared to other benefits that are subject to protection is decisive in such weighing. The values of major relevance are particularly human dignity (Constitution § 10), equality (§ 12), the right to life (§ 16), protection of honour and good name (§ 17), inviolability of private and family life (§ 26), and inviolability of dwelling (§ 33).

The freedom of contract is usually understood as private autonomy and its securing in the state regulation of economic and social affairs. The freedom of contract means that a person is free to decide whether and with whom and under which conditions he or she enters into a contract. In contracts, personal liberty and the right of self-determination are expressed the most directly. In a free organisation of their lives, people enter into contracts to establish employment relationships, and the freedom of contract makes free enterprise and a responsible formation of economic relations possible.^{*16}

In the Constitution, the freedom of contract as the most important principle of private law is chiefly secured by § 19 which sets out the right to free self-realisation, § 31 which entitles people to engage in enterprise, and § 32 which entitles people to freely possess, use and dispose of their property. At the same time, these provisions also contain restrictions on the freedom of contract.

¹² S. Ofer. *Fundamental Rights and Their Impact on Private Law — Doctrine and Practice under German Constitution*. — Tel Aviv University Studies in Law, Vol. 12, 1994, p. 13.

¹³ For example, the number of leased apartments sharply decreased because the interests of lessees arising from constitutional values were largely given preference in the settlement of dwelling disputes. To solve the situation, the German constitutional court has tried to balance different constitutional interests and regarded the lessor's wish to establish a second bedroom as an interest worthy of protection, entitling the lessor to premature termination of a lease contract. See S. Ofer (Note 11), p. 14. An opportunity to resort to the need to protect one's constitutional rights is provided in Estonia, for example, by LOA § 313 (1), pursuant to which the parties may cancel a contract for good reason. A reason is good if, upon the occurrence thereof, a party who wishes to cancel cannot be presumed to continue performing the contract taking into account all the circumstances and considering the interests of both parties.

¹⁴ R. Maruste (Note 3), p. 75.

¹⁵ K. Merusk, R. Narits. *Eesti konstitutsiooniõigusest* (On Estonian Constitutional Law). Tallinn: Juura, Õigusteabe AS, 1998, p. 167 (in Estonian).

¹⁶ A. Barak. *Constitutional Human Rights and Private Law*. — A. M. Rebelló, P. Sarcevic (eds.). *Freedom of Contract and Constitutional Law*. Israel: Hamaccabi Press, 1998, p. 44.

Constitutional values restrict private autonomy both directly and indirectly. Pursuant to § 31 (1) of the Constitution, conditions and procedure for the exercise of the right to engage in enterprise may be provided by law. Pursuant to § 32 (2), restrictions on the free possession, use and disposal of property may be established by law. The same section provides for the constitutional restriction on using one's property contrary to the public interest. Section 19 secures everyone's right to free self-realisation only on the condition that the rights and freedoms of other persons are honoured and considered. The freedom of contract is also restricted by the right of equality (§ 12), pursuant to which everyone is equal before the law. The constitutional right of equality can be violated by the unequal treatment of private subjects upon entry into or negotiations for a contract. The aim of restrictions on private autonomy can be the securing of individual rights or general well-being (e.g. § 19 (2) and § 32 (2) of the Constitution).

When certain subjects of law are prohibited from entering into contracts under the law of obligations or when the content of contracts is provided imperatively, this constitutes a public law restriction on the freedom of contract, which is allowed only in accordance with § 11 of the Constitution. This section provides that restrictions on rights and freedoms must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted. Restrictions not provided for by law may be derived from the principle of good faith, taking into account constitutional limitations, if these are necessary for protecting fundamental rights in contractual relationships.

According to § 11 of the Constitution, it is necessary to decide in order to protect constitutional values whether the restriction on the right of contract established by law is necessary in a democratic society and suitable for attaining the desired aim. The Estonian judicial practice is poor as regards the assessment of the compliance of contract law restrictions with the Constitution. No constitutional review cases have been instituted in contract disputes, although the Civil Chamber of the Supreme Court has stated the contrariness of a provision of law that restricts the freedom of contract to the constitutional values in one case. The dispute concerned the prohibition from charging interest on loan contracts in which one of the subjects is not a person listed by law, as provided by § 274 of the Civil Code. The court found that the application of restrictions on charging interests and thus a restriction on the rights of one subject when compared to the others is not in compliance with the constitutional right to freely possess, use and dispose of property (§ 32 (2) of the Constitution) and the principle set out in § 11 of the Constitution. It was also found that although the law does not impose restrictions on the amount of interest and the parties may freely agree upon it when entering into a contract, interest may be restricted on the basis of the public interest criterion set out in § 32 (2) of the Constitution, and also due to contrariness to good morals as provided in GPCCA § 66.^{*17}

Contestation of the compliance of legal provisions restricting the freedom of contract is not common practice. For example, the compliance of provisions restricting compensation for damage with the Constitution has not been questioned so far. Section 25 of the Constitution secures everyone's right to compensation for moral and material damage caused by the unlawful action of any person. The section does not provide for any reservation of law. At the same time, compensation for damage is restricted in certain cases according to the applicable law (e.g. the restriction on the depositary's liability in a deposit contract pursuant to § 426 of the Civil Code). The Law of Obligations Act also establishes restrictions on compensation for damage caused by a violation of different contracts (§ 795 sets limits to compensation for the value of goods in a contract of carriage, § 913 restricts the liability of a keeper of an accommodation establishment in the case of loss of or damage to things brought to the premises of the enterprise by visitors, etc.). The basis for interference with the freedom of contract as regards agreements on compensation for damage is provided to courts by LOA § 140. Pursuant to subsection 1 of this section, the court may reduce the amount of compensation for damage if compensation in full would be grossly unfair with regard to the obligated person or not reasonably acceptable for any other reason. The constitutional value that restricts the amount of compensation may be, according to the circumstances, even the right to human dignity of the person who caused damage.

Sometimes the ideas of constitutional values are directly transferred to provisions restricting the freedom of contract. For example, pursuant to LOA § 106 (2), agreements under which liability is precluded or restricted in the case of intentional non-performance or which allow the obligor to perform an obligation in a manner materially different from that which could be reasonably expected by the obligee or which unreasonably exclude or restrict liability in some other manner are void.

A general restriction on the freedom of forming the content of a contract is provided in § 86 of the new General Part of the Civil Code Act, setting out the obligation to follow good morals and public order in contracts. This is a general clause that judicial practice needs to specify. The sense of propriety of all persons who think fairly and justly is regarded as the measure of good morals. Contractual provisions are assessed relying on the perceived general sense of propriety as has been required by courts earlier under similar circumstances. For example, contractual provisions restricting personal rights and freedoms (oblig-

¹⁷ Judgment of Civil Chamber of Supreme Court, 23 October 1997 (3-2-1-116-97). – Riigi Teataja (The State Gazette) III, 1997, 31/32, 332 (in Estonian).

ing persons to renounce religion, restricting the freedom of movement, *etc.*), requiring that one creditor be preferred to others, excessively restricting the economic activities of one of the parties or are of a usurious nature, *etc.*, are regarded as contrary to good morals.^{*18}

Constitutional values are also considered when the freedom of contract is restricted not by legal provisions, but by agreement of the contracting parties who are in a private relationship. Such restrictions include, for example, agreements on prohibitions on contractual activities or acts. Whether such agreements can be regarded as binding and provided legal protection should be decided in consideration of constitutional values. Assessment of the restriction on the freedom of contract can rely on the principle of good faith when the restriction is not generally impermissible or contrary to good morals or public order, but, under the given circumstances, violates someone's fundamental rights and freedoms.

By relying on the principle of good faith, lack of consent to a contract is expressed by taking account of the general traditions and standards of acting, and a just solution is attempted to be reached, for example, by adding obligations, by not satisfying claims, by creating new judicial remedies, compensation for damage, *etc.*, without declaring the transaction void. But when protection of all the values that are important to society is considered relevant, reference is made to contrariness to good morals, resulting in the voidness of the transaction. As the contrariness of a contract to good morals is established by the provision of an overall assessment, taking into account not only the objective content of the contract but also other relevant circumstances, the consequences of the contract, the understandings, motives and aims of the parties, *i.e.* everything that a decision on the acting of the parties in good faith is based on, the positions assumed in delimiting the events of application of the principles of good morals and good faith are not very strict.^{*19} Neither are courts very consistent in applying these general principles: they sometimes apply the principle of good faith, sometimes the general clause on good morals, and sometimes both under similar circumstances.

The case of surety provided by family members from the German judicial practice illustrates the simultaneous application of the principle of good faith and the general clause on good morals well. Surety was provided by a family member of the debtor who, under objective circumstances and as known to the creditor, was actually not able to perform the assumed obligations himself, as he had not yet obtained an education and had no income. The constitutional court found that under the described circumstances, the claim against the surety was immoral and declared the contract of suretyship void. The surety's liability under such circumstances constitutes a violation of personal freedoms within the meaning of the Constitution (article 2 of the German Constitution). Fundamental freedoms guarantee private autonomy in determining one's social, economic and legal activity. When the negotiating parties are unequal and, as a result, the contract is excessively burdening for the weaker party, the private autonomy of the person is not adequately guaranteed. Civil courts have the constitutional duty of assessing, when declaring the voidness of contracts upon settling claims, whether the contracts are not entered into on immoral grounds and in bad faith. The voidness of a contract as a legal consequence is proportionate to the desired aim of restoring the violated freedom of contract.^{*20}

At the same time, the choice between whether to apply the principle of good morals or that of good faith, can be highly important. When a dispute is settled, the importance of constitutional values and their meaning under the given circumstances have to be considered separately for each of these general principles. The choice of the general clause to be applied is most broadly determined by the aim of the just settlement of the dispute. Under certain circumstances, the declaration of the voidness of a transaction made contrary to good morals may be so unbearably unjust in respect of one of the contracting parties that, instead, the principle of good faith has to be applied in order to protect constitutional values.^{*21}

3. On the application of the principle of good faith

In private relationships, constitutional values are protected by judicial remedies of civil law. It is found that when the effective protection of a person's fundamental right or freedom cannot be achieved by the application of a remedy directly provided for in private law, the court itself has to engage in law development and create a suitable remedy. When a subjective right of a person is recognised, the protection of the right also

¹⁸ See H. Köhler (Note 6), pp. 199–203.

¹⁹ B. S. Markesinis. The German Law of Obligations. Vol. I. – B. S. Markesinis, W. Lorenz, G. Dannemann. The Law of Contracts and Restitution: A Comparative Introduction. Oxford, 1997, p. 182.

²⁰ See NJW, 36, 1994, 19 October 1993; A. Flessner. Freedom of Contract and Constitutional Law in Germany. 1998, pp. 97–99.

²¹ See H. Köhler (Note 6), pp. 13–14.

has to be secured. New judicial remedies can be created either by filling gaps and applying the analogy of law, or on the basis of the general principles of law. The principle of good faith has to be followed both in the application of the remedies provided by civil law and in the creation of new ones.^{*22}

The civil law remedies available are the recognition of a right (including recognition of the right to withdraw from or cancel a contract), prohibition of the violation of rights, restoration of the situation preceding violation, compensation for damage, compulsory performance of obligations, release from performance, reduction of price, application of interest, *etc.* In order to protect fundamental rights, the court may also apply other legal remedies not expressly provided by law as such.

The principle of good faith is a provision restricting the application of judicial remedies in the settlement of contractual disputes. European civil codes, including the General Part of the Civil Code Act of Estonia, contain a prohibition against the unlawful exercise of rights and the exercise of rights in order to cause damage to another person. This prohibition expresses the function of the principle of good faith to prevent the exercise of the rights arising from the law or a contract in certain cases.^{*23}

In Estonian judicial practice, lawful claims in dwelling disputes have been dismissed with reference to constitutional values. The court found that the right provided by the Dwelling Act to contest a lessee's preemptive right to enter into a new lease contract when the lease contract was concluded for a term of not more than one year and provided for the lessee's obligation to vacate the dwelling after the expiration of the term, may not be exercised when the lease relationship has lasted for more than one year. The court established that the lease contract was concluded for a term shorter than a year in order for the lessees to lose the preemptive right to renew the contract, and assumed the position that the described behaviour was contrary to the meaning of the Dwelling Act. The court also found that the Dwelling Act protects the lessee as the weaker party to the legal relationship, whose constitutional right to a home the legal relationship concerns.^{*24} Although the court did not mention the application of the general clause on good faith in the judgment, the dispute was essentially settled on the basis of the principle of good faith.

Another provision that has been used in the settlement of a dwelling dispute is § 28 (4) of the Constitution, which provides that families with many children and persons with disabilities shall be under the special care of the state and local governments. The local government which acted as the lessor filed an action for the premature termination of the lease contract and the eviction of the lessee and the persons living together with him from the dwelling due to a three months' debt of rent and public utility charges. Had the action been satisfied, a family with five minor children and one adult child, a mother on a parental leave and a disabled father would have been left without shelter. The court dismissed the action of the local government, reasoning the judgment chiefly by the argument that the bases for the premature termination of the lease contract had resulted from the omissions of the lessor. The economic situation of the defendants was difficult and they needed social assistance. The local government as the lessor had not organised social welfare in accordance with requirements. Therefore, the court regarded the reasons for failure to pay rent and public utility charges as good reasons.^{*25} Essentially, the reasons of the Supreme Court judgment state that the claim of the local government was not granted legal protection because the local government had acted in bad faith.

Section 15 of the Constitution provides that everyone whose rights and freedoms are violated has the right of recourse to the courts. At the same time, § 19 requires that everyone honour and consider the rights and freedoms of others when exercising their rights. The right of recourse to the courts can sometimes be exercised for a vexatious purpose, such as for damaging a competitor's reputation. In such case, the plaintiff exercises his or her right of recourse to the courts in bad faith and the honour and good name of the defen-

²² A. Barak (Note 18), p. 147. As known to the author, Estonian courts have only applied the judicial remedies provided by law.

²³ The respective provisions of the Civil Code of the Netherlands are the following. Article 248, Book 6 (6:248): 1. A contract has not only the juridical effects agreed to by the parties, but also those which, according to the nature of the contract, result from the law, usage or the requirements of reasonableness and equity. 2. A rule binding upon the parties as a result of the contract does not apply to the extent that, in the given circumstances, this would be unacceptable according to criteria of reasonableness and equity. Article 3, Book 3 (3:13): 1. A person having a right may not exercise it to an extent that this would damage others. 2. The exercise of a right for the purpose of damaging another person or for a purpose other than for which the right was granted, or the exercise of a right which, according to criteria of reasonableness and equity, should not have been exercised, but nevertheless was and subsequently caused damage, is regarded as a violation of rights. 3. A right may also be inviolable by nature. Article 258, Book 6 (6:258): 1. Upon the demand of one of the parties, the judge may modify the effects of a contract or he may set it aside in whole or in part on the basis of unforeseen circumstances which are of such a nature that the contracting party, according to criteria of reasonableness and equity, may not expect that the contract be maintained in an unmodified form. In the judicial practice of the Netherlands, Article 13 (3:13) is used less in contract law and more in civil proceedings, family law and law of property. E. Hondius. Freedom of Contract and Constitutional Law in the Netherlands (Note 18), p. 218.

²⁴ Judgment of Civil Chamber of Supreme Court, 6 October 1999 (3-2-1-83-99). – Riigi Teataja (The State Gazette) III 1990, 28,265 (in Estonian).

²⁵ Judgment of Civil Chamber of Supreme Court, 18 October 2000 (3-2-1-104-00). – Riigi Teataja (The State Gazette) III 2000, 25, 278 (in Estonian).

dant may need protection, which is secured by § 17 of the Constitution. Subsection 60 (4) of the Code of Civil Procedure allows the court to refuse to order payment of the plaintiff's legal costs by the defendant if a vexatious action is filed. However, this in itself does not ensure the protection of constitutional values.

Based on § 17 of the Constitution, the plaintiff referred to the court, requesting that the defendant be prohibited from filing a bankruptcy caution and bankruptcy petition on the basis of a disputed claim for late interest. The court of appeal terminated the proceeding by a ruling, finding that the plaintiff's claims could not be regarded as claims for the removal of a civil law violation and prevention of further violation. The court of appeal also found that the claim was contrary to § 15 of the Constitution. The Supreme Court annulled the ruling of the court of appeal and assumed the position that it was essentially possible to violate a person's civil rights by filing an ungrounded bankruptcy caution and bankruptcy petition arising from a civil law relationship, and that claims filed for the removal of violation of rights and prevention of further violation were to be reviewed by way of civil proceedings. The court was to assess whether the subjective rights of the claimant had been violated by a vexatious filing of claims.^{*26} The Supreme Court thus assumed the position that the exercise of constitutional rights by a person may entail an abuse of the right and a violation of another person's right, which is why the state must perform its obligation to protect, and the court must, in the case of establishment of a violation, find a judicial remedy to terminate the violation.

Application of the principle of good faith is not common in the Estonian judicial practice. Besides dwelling disputes, the general clause on good faith has been applied to the settlement of labour disputes and disputes arising from a loan contract.^{*27} The relative importance of the principle of good faith in settling disputes arising from private law relationships will probably increase already in the near future. This is due to the increasing authority of the Constitution and the development of the institution of constitutional review and the mechanisms of protection of fundamental rights and freedoms, on the one hand, and the final stages of private law reform and the entry into force of new legal provisions corresponding to European private law traditions, on the other hand. For example, the principle of good faith is remarkably frequently applied in the judicial practice of European countries in settling disputes arising from precontractual negotiations.^{*28} As precontractual negotiations were not regulated in Estonia before the entry into force of the Law of Obligations Act, the courts have not been addressed for the settlement of the related disputes. As the Law of Obligations Act entered into force on 1 July 2002, the situation will probably change. Section 14 of this Act obliges the parties to take reasonable account of one another's interests and rights, to submit to each other accurate information in the course of preparation for entering into the contract, to inform the other party of all circumstances with regard to which the other party has, based on the purpose of the contract, an identifiable essential interest, not to engage in negotiations if the person has no real intention of entering into a contract, nor break off negotiations in bad faith, not to disclose information obtained in the course of negotiations to other persons or use it in bad faith in the person's own interests. The granting of regulative power to the obligations of parties to precontractual negotiations, following the principle of good faith, will surely help to improve the efficiency with which constitutional values are protected in private relationships.

Conclusions

Establishment of the principle of good faith as a general principle of civil law has created preconditions for a better protection of constitutional values in contractual relationships. Through this principle, respect for fundamental rights and freedoms, justice, fairness, order, good faith, reasonableness and other values set out in the Constitution and arising from its substance can be introduced to economic relationships.

Constitutional values both secure the freedom of contract and restrict it.

The restrictions on the freedom of contract as established by law must comply with the Constitution, *i.e.* the restrictions must be necessary in a democratic society and suitable for attaining the desired aim, and shall not distort the nature of the rights and freedoms restricted.

Restrictions on the freedom of contract in private relationships as agreed between the parties must also comply with the constitutional values. When deciding upon the grant of legal protection to contractual restrictions, the application of both the general clauses on the principle of good faith and on good morals have to be considered and it has to be decided, having regard to all the relevant circumstances, which principle needs to be applied in the given case in order to protect constitutional values.

²⁶ Judgment of Civil Chamber of Supreme Court, 20 June 2000 (3-2-1-85-00). – Riigi Teataja (The State Gazette) III 2000, 18, 197.

²⁷ See *e.g.* Judgments of the Civil Chamber of the Supreme Court, 2 October 1997 (3-2-1-106-97). – Riigi Teataja (The State Gazette) III 1997, 33 349 (in Estonian); 22 June 2001 (3-2-1-55-01). – Riigi Teataja (The State Gazette) III 2001, 23, 257; and 29 January 1998 (3-4-1-6-98). – Riigi Teataja (The State Gazette) III 1998, 5, 48 (in Estonian).

²⁸ See O. Palandt. *Bürgerliches Gesetzbuch*. 60th ed. München: C.H. Beck, 2001, paragraph No. 55 *ff.*