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PROCEDURAL GOOD FAITH AS A PRINCIPLE OF JUSTICE. [51]

A BOA-FÉ PROCESSUAL COMO PRINCÍPIO DE JUSTIÇA.

Anastasia V. Melnikova
National Research University "Higher School of Economics".
melnikova.hse@bk.ru

ABSTRACT: In most countries, law enforcement authorities actively refer to the principle of procedural good faith when adjudicating civil cases, while in many countries, including the Russian Federation, this principle has not yet been formalized. This establishes a foundation for discussing procedural good faith's content and its relationship to other principles of justice. For this reason, the purpose of this scientific article was to conduct a comprehensive study of the phenomenon of procedural good faith in order to identify it as a separate principle of justice. The author's conclusion was that the rationale for implementing provisions on good faith in the civil process of most states is objective based on the comparative legal method of research. Moreover, in fact, the principle of procedural good faith already exists in many developed legal systems, without creating, at the same time, a potential threat to other (more classical) principles of effectuation of justice. The scientific novelty of the study conducted by the author is based on taking into account modern global trends in the development of civil procedure. The author considers the general development of the justice system's principles, which is characterized by the disappearance or narrowing of the scope of old, no longer relevant principles, and the emergence of those principles of justice effectuation that better meet modern realities, as well as the emerging trend of professionalizing civil proceedings. For this reason, the author once again confirms the obvious need (and particular relevance) for a proper study of the principle of procedural good faith, with its inherent content, its main features and properties, as well as the impact of the process of digitalization of justice on it.

KEYWORDS: good faith, civil procedure, judicial procedure, abuse of process, principle of effectuation of justice, professionalizing.

RESUMO: Na maioria dos países, as autoridades referem-se ativamente ao princípio da boa-fé processual ao julgar casos civis, enquanto em muitos países, incluindo a Federação Russa, esse princípio ainda não foi formalizado. Isso estabelece uma base para discutir o conteúdo da boa-fé processual e sua relação com outros princípios de justiça.

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Por essa razão, o objetivo deste artigo científico foi realizar um estudo abrangente do fenômeno da boa-fé processual, a fim de identificá-lo como um princípio separado de justiça. A conclusão do autor foi que a justificativa para a implementação de disposições sobre boa-fé no processo civil da maioria dos estados é objetiva com base no método de pesquisa jurídica comparada. Além disso, de fato, o princípio da boa-fé processual já existe em muitos ordenamentos jurídicos desenvolvidos, sem criar uma ameaça potencial a outros princípios (mais clássicos) de efetivação da justiça. A novidade científica do estudo realizado pelo autor baseia-se em levar em consideração as tendências globais modernas no desenvolvimento do processo civil. O autor considera o desenvolvimento geral dos princípios do sistema de justiça, que se caracteriza pelo desaparecimento ou estreitamento do escopo de princípios antigos, não mais relevantes, e o surgimento daqueles princípios de efetivação da justiça que melhor atendem às realidades modernas, bem como a tendência emergente de profissionalização do processo civil. Por essa razão, o autor confirma mais uma vez a necessidade óbvia (e particular relevância) de um estudo adequado do princípio da boa-fé processual, com seu conteúdo inerente, suas principais características e propriedades, bem como o impacto do processo de digitalização da justiça sobre ele.

PALAVRAS-CHAVE: boa-fé, processo civil, processo judicial, abuso de processo, princípio da efetivação da justiça, profissionalização.

INTRODUCTION

Good faith for legal relationship participants in the global scientific community is directly linked to the implementation of ethical standards. It is possible to consider good faith in oneself to be a social norm (Grunewald, 2009). H. L. A. Hart's terminology identifies it as a norm of a special and distinct order that assigns a certain law-making function to the court. In this regard, most legal systems around the world consider the requirement of good faith to be one of the fundamental legal principles, which extends its effect primarily to the sphere of private (civil) law.

Thus, the principle of good faith is regulated in most civil codes, sources of substantive law of European states (Article 1134 (3) of the Civil Code of the French (CCF); § 242 of the Bürgerliches Gesetzbuch (BGB); Article 288 of the Civil Code of Greece; Article 762 (2) of the Portuguese Civil Code; Articles 6:2 and 6:248 of the Civil Code of the Netherlands; Article 2 of the Swiss Civil Code; Articles 1175 and 1375 of the Italian Civil Code), being a detailed object of study in world civil literature. In procedural codes and special judicial laws, good faith, which is a principle of justice, is seldom found. For example, the Federal Rules of Civil Procedure in the US district courts, mention "good faith" only in the context of certain characteristics of the behavior of parties involved in a case (for example, in the context of testimony, interacting with the

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other party, disclosing evidence), without giving this category the status of a "principle". The same can be said of the procedural law of Great Britain, where the category of "good faith" is encountered rather as a general or at least a private law principle used by law-enforcers when resolving specific cases. The principle of good faith is not fully understood in the People's Republic of China. It is just beginning to form within the context of a general rule that prohibits actions that violate public order. Russian civil procedural codes also mention in a rather laconic manner such evaluative categories as “good faith,” “bad faith,” and “abusive act”, without disclosing their specific content or significant criteria that allow the application of the relevant categories to a particular behavior or individual actions of participants in the process.

The requirement of good faith in Russia is mentioned, for the most part, in the context of an appeal to persons participating in the case, as well as to a specialist when consultation, to a mediator, as well as to a person who is entrusted with conducting a case in the interests of a group of persons.

In the states mentioned above, procedural good faith is not a principle of justice de jure, leading to the absence of good faith in scientific literature on civil procedure. The requirement for respect for the law and the court in France has been upgraded to a procedural principle (Article 24 of the French Code of Civil Procedure), which may indicate that the principle of procedural good faith in France is normatively established and legalized.

This corresponds to the general evolution of the system of principles of civil procedure (Corblin, 1954), during which old principles that have lost their relevance disappear or their significance decreases, and those principles of justice that better correspond to modern conditions, including the digital transformation of civil proceedings, come to the fore. The latter of these principles of justice, in our opinion, include the requirement of procedural good faith and the prohibition against abuse of procedural rights.

In the explanations of the Supreme Court of the Russian Federation, good faith has been explicitly stated as a principle of justice. The principle of procedural good faith is frequently referenced by law enforcement officials throughout the Russian Federation when resolving civil cases. It appears that the intensity of the development of the practice of applying good faith and related doctrines both in Russia and in other countries is only increasing.

This provides grounds for discussions both regarding the content of procedural good faith and its relationship with other principles of justice, such as the disposition principle and adversarial principle. In this regard, it does not seem appropriate to deny the obvious need (and particular relevance) for a proper study of this principle, with its inherent content, highlighting its main features and properties, as well as the impact of the process of digitalization of justice on it.

There are two large blocks of scientific works that form the theoretical basis for this study. The primary focus of these scientific works of civilists is on

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issues of good faith, which is a general legal principle that is mainly reflected in substantive law. Secondly, these scientific studies are focused on improving the requirement of good faith, particularly in the procedural plane.

The first block of works is represented by the following authors: H.P. Haferkamp (2018), J.W. Hedemann (1993), Krühöffer (1909), R. Zimmermann and S. Whittaker (2000), Y. Picod (1998), A. M. Musy (2001), R. Brownsword (1994). Among Russian scientists, the following researchers can also be added to them: M. M. Agarkov (1946), V. P. Gribanov (2001), K. I. Sklovskiy (2018), K. V. Nam (2023). The first block of works is focused on the study of the category of 'good conscience' in the context of substantive liability law. Although the subject of the research of these scientific works is not the legal trial, in our opinion, the results of the research on good faith in the material plane are of no less important value, since they are the foundation and starting point for their adaptation in the procedural sphere.

The second scientific research block is not as comprehensive as the first, as procedural good faith (as opposed to substantive) has been less researched in the literature. However, the detailed elaboration of issues related to procedural good faith makes it more valuable to us.

General issues of procedural good faith are covered in scientific works edited by M. Taruffo (1999), C. Wells (2023), a joint study by C. Gibson, P. Skinner and R. Tandy (2023), and a monograph by J. van de Velden. (2017).

In the scientific articles edited by M. Taruffo (1999), eighteen scientists examine global law enforcement practice and conclude that procedural standards have significantly declined in the United States, a number of European countries, Australia, Japan, and Latin America, which also provides conception of the theoretical and moral consequences of procedural abuses. Of great value is also the monograph by J. van de Velden. (2017), devoted to individual aspects of procedural bad faith in Dutch law.

Scientific research in Russia initially included only sporadic references to typical abuse cases, mostly in separate paragraphs or sections of dissertations, such as in the work of O. V. Aksenova "Subjective civil rights and their implementation in civil proceedings" (2004). Then came the publication of fundamental works by other researchers, most of which were published before procedural good faith was actively used in law enforcement, before the large-scale judicial reform of 2019-2020, the introduction of digital technologies in the legal trial and the development of the concept of professionalizing civil proceedings.

Thus, at present, modern monographic and at the same time interdisciplinary studies devoted to the principle of good faith in civil proceedings are clearly needed due to the lack of specialized works and insufficient study of this topic.

1 MATERIALS AND METHODS

The aim of this article is to undertake a comprehensive study of procedural good faith and explore the

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potential for its normative consolidation as a distinct principle of justice.

The objectives of the study are as follows:

1. To identify the essence of the principle of procedural good faith and its significance in the system of principles of civil procedure;

2. To identify the features of the legal nature of procedural good faith in comparison with the requirement of good faith in substantive law;

3. To determine the relationship between procedural good faith and the tendency of professionalizing civil proceedings.

This study used an explanatory sequential approach based on the mixed methods paradigm. The work involved the use of different research methods: the basic dialectical method, classical scientific approaches (including analysis, synthesis, deduction, induction, comparative method and abstraction), historical principle, as well as specialized legal methods. The dialectical method serves as a foundational method, allowing us to consider the principle of procedural good faith in connection with other legal phenomena and the dynamics of its evolution.

Using a legalistic approach, the article intentionally abstracts the material and socio-class aspects of the legal system. The structural features of the law, which include logical and linguistic characteristics, are the main focus when studying the principle of good faith. In this regard, special complex legal and technical means were used, allowing the use of methods from various non-legal sciences in the study, particularly psychology and economic analysis.

The author utilized the axiological method created by G. Radbruch to examine the value content of the principle of procedural good faith and its importance in guaranteeing a fair trial. A separate role in the study was given to the systemic legal and comparative legal methods, which allowed for a qualitative comparison of the current legal regulation of good faith in global legal orders, to determine the place of the prohibition on abuse of law in the civil process of various legal orders.

The author used the achievements and methods of such sciences as civil law and civil procedure, general theory of law and state.

According to the study's hypothesis, procedural good faith is already present in the civil process of many states, which does not prevent its legal acceptance, including in the Russian Federation.

2RESULTS AND DISCUSSION

2.1. THE CONCEPT AND MEANING OF THE PRINCIPLES OF LEGAL PROCEEDINGS. THE MEANING OF THE PRINCIPLE OF PROCEDURAL GOOD FAIT

Fundamental legal ideas that are highly generalized and abstract are known as general principles of law and are commonly expressed in the form of basic legal principles or conceptual provisions. Their key difference from other legal norms (legislative acts or contracts) is that they were not formed through traditional formal sources of

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law. The system of norms of civil and arbitration procedural law is based on the principles of legal proceedings, making them the central concepts of the entire system of procedural laws.

One of the most correct definitions of the principles of administration of justice, in our opinion, was proposed by S. A. Vinogradova (2017), according to whom the principles of legal proceedings are "standards that determine the activities of the court (both the court organization and judicial procedure) and determine the direction of justice development". It seems that a legal principle is not always formally defined in the legal language, its essence and individual provisions can "permeate" the text of the normative act in individual norms, the interpretation of which allows us to testify to the presence of this principle in a specific branch (branches) of law.

Based on the above, the legal principles of legal proceedings (justice) are the ones that determine the meaning and content of procedural rules, and they play a crucial role in the event of collisions or gaps in procedural legislation. At the same time, according to K. Larenz (2013), the principles are not predetermined rules of conduct, but instead establish the initial basis for legal regulation, which is later defined in relation to a particular case. In addition, the principles of law "are designed to ensure an understanding of the legality of behavior among the subjects of law themselves" (Barmina, 2014).

The following can be distinguished among the main classical principles of civil procedure: the principle of legality; the principle of administration of justice only by the court; the principle of judicial independence; equality before the law and the court; procedural equality of the parties; the principle of the state language; publicity of judicial examination; adversarial principle; principle of party disposition.

From our perspective, three trends can be observed in the transformation of the aforementioned principles currently: firstly, “legislative expansion of the scope of application of the principles” (for example, modification of the principle of publicity with the introduction of the possibility of participating in court hearings via web conferences); secondly, leveling of procedural principles that do not correspond to modern requirements of justice (for example, departure from the principle of continuity of the judicial process); thirdly, the emergence of new procedural principles developing against the background of the evolution of civil procedural relations.

Modern researchers include the principle of legal certainty, the principle of procedural economy, the principle of cooperation and, finally, the principle of procedural good faith in such “newest” principles of legal proceedings that are being developed at the present stage. The use of “newest” in quotation marks in the previous sentence is not coincidental, as we believe that these principles had been used in civil proceedings before but were not legally established. These principles are more commonly referred to as 'phenomena' in procedural law, as they are not identified by the legislator as principles, goals, or objectives of civil proceedings. However,

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they are frequently employed by scientists (Zavadilova, 2016) and, moreover, even by executors of law.

The English Court of Chancery established a precedent in 1843 that forbids a party to a civil case from making any claims in a subsequent trial that they should have made in a previous dispute (Henderson v Henderson), thereby applying the principle of procedural estoppel and emphasizing the importance of procedural good faith as an element on which a judicial decision can be built. In 2016, the civil chamber of the Court of Cassation (France) issued a decision in case No. 15-25.651, according to which “the introduction of intentionally false evidence is a violation of the principle of procedural good faith and may lead to appropriate sanctions”.

The volume and tools used by unconscientious individuals have expanded the scope of procedural abuse in the modern world to a whole new level. Thus, the use of fabricated electronic evidence, as well as the involvement of perjured witnesses in an online hearing in order to mislead the court, was actively demonstrated by one of the parties in the case of Lenihan v. Shankar (2021), a custody trial heard in the United States of America. The children's mother falsified a multitude of digital sources, including email and SMS messages, social networks, and video calls, which even her legal representatives were unaware of. In judgment on the merits against the children's mother, the judge indicated in the judicial act "as our court moves to a completely digital platform, this trial has become a vivid reminder of the possibility of manipulation and misuse of evidence." If not through the principle of procedural good faith, how can abusive actions be countered?

Back in 2017, in paragraph 2 of point 25 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 18.04.2017 No. 10 "On Certain Issues of Court Application of Provisions of the Civil Procedure Code of the Russian Federation and of the Arbitration Procedure Code of the Russian Federation regarding Simplified Proceedings", the requirement of good faith of the parties was mentioned as one of the principles of legal proceedings. This trend was confirmed in paragraph 2 of clause 2 of the Resolution of the Supreme Court of the Russian Federation of 23.12.2021 No. 46 "On the Application of the Arbitration Procedure Code of the Russian Federation in Considering Cases in the Court of First Instance", in which procedural economy was added to the principle of procedural good faith as a principle of administration of justice, which had been mentioned as a principle of justice in certain resolutions of the Supreme Court of the Russian Federation since 2012.

The emergence of the principle of procedural good faith is a clear manifestation of the process of "diffusion of civilistic principles into procedural law" (Lebedev, 2020). In our opinion, this process is a logical outcome, given the broad discretion in the execution of procedural subjective rights guaranteed to persons participating in the case through the disposition principle and adversarial principle. The principle of procedural

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good faith, without conflicting with the disposition principle and adversarial principle, gives the law enforcement discretion in cases of obvious abuses by participants in the civil process that are not regulated by procedural law. In addition, the requirement of procedural good faith is fully consistent with the principles of natural equity and procedural equality. For example, all arguments that abuse of rights may serve as a denial of protection of the rights of the claimant, but not the defendant, were rightly rejected by Russian courts, based on the inadmissibility of abuse of rights regardless of the procedural status of the parties (Resolution of the FAS Moscow District dated 29.04.2004 No. KG-A40/2885-04).

Following the principle of procedural good faith, a number of scholars have taken it a step further by introducing the principle of cooperation between the parties and the court in civil proceedings (Waxse, 2012). The purpose of this principle is to create conditions for interaction between the court and the parties involved in a case to guarantee the most expeditious and accurate resolution of a civil dispute.

It should be noted that this idea is not solely theoretical; it can be found in developed legal systems throughout the world. In France, there are two additional duties that stem from the obligation to act in good faith: the duty of loyalty (obligation de loyauté) and the obligation to cooperate with the other party (obligation de coopération) (Starck, Roland & Boyer, 1989). If we look at the text of the current French Civil Procedure Code, we will find provisions in its first ten articles that disclose individual obligations of the parties to provide mutual assistance in legal proceedings.

As for the Russian Federation, the regulatory provisions that indicate the existence of the cooperation principle (at least in arbitration proceedings) include Part 1 of Article 57 of the Civil Procedure Code of the Russian Federation ("Introduction and Disclosure of Evidence"), as well as Part 3 of Article 9 of the Arbitration Procedure Code of the Russian Federation (in the context of the assistance by the arbitration court to persons participating in the case). In addition, this also includes the requirement for the early disclosure of evidence in arbitration proceedings (Part 3 of Article 65 of the Arbitration Procedure Code of the Russian Federation), the submission of a statement of defence or gravamen (Articles 131, 262, 279 of the Arbitration Procedure Code of the Russian Federation), and so on.

Thus, the principle of good faith may refer to the obligation to assist the other party, or it may be considered a closely related principle of justice. The principle of cooperation among parties can be found not only in scientific theory, but also in law enforcement practice.

For example, the Federal Court's of Australia Notice to Practitioners and Litigants concerning Case Management and the Individual Docket System, published on 5 May 2008 by Chief Justice Black, states that "the parties and their representatives have an obligation to cooperate with, and assist, the Court in fulfilling the overarching purposes and, in particular, in identifying the real issues in dispute as early as possible and

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dealing with those issues in the most efficient way possible".

The existence of the principle of cooperation in Russia is expressly stated in the Ruling of the Constitutional Court of the Russian Federation of 28.12.2022 in case No. 59-П/2022.

In conclusion of this paragraph, it is necessary to note that the principles of administration of justice, understood as the main, guiding principles in law, form the moral and organizational basis for the delivering justice, embodying, at the same time, the subjective perception of the civil process by individual participants in the process and outside observers. Legislators are guided by the principles of justice by setting certain limits on the content of the legal norms they adopt, and also these principles act as a source of legal regulation (analogy of law) in cases of a legal gap with the simultaneous absence of a procedural law norm regulating similar relations.

It appears that the requirement for the fair execution of procedural rights, especially, possesses most of the characteristics inherent in legal principles and principles of legal proceedings, which allows us to fully examine it within the framework of this work precisely as a principle, and not as an ordinary phenomenon.

Moreover, the principle of good faith is responsible for ensuring the accuracy of the law by modifying the legal language to reflect the fairness of the law. It is in this aspect, according to K. V. Nam, that “the difference between the principle of good faith and other legal principles and its special role in the entire legal system” lies (Nam, 2023).

2.2. DEFINITION AND LEGAL NATURE OF GOOD FAITH: SUBSTANTIVE AND PROCEDURAL ASPECTS

The concept of 'good morals', which has been known since Ancient Rome and applies to both law and religion, is the origin of the category of 'good faith' (bona fides). Subsequently, the category of 'good morals' began to be opposed to the law, when the application of strict norms of the law seemed clearly unfair to lawyers and judges (Sklovskiy, 2018).

Currently, the requirement of good faith has gained the most widespread application in the private (mainly civil) law of most countries. Rather than opposing legal regulations, it now complements them in cases where abuse of the law is obvious. The European civil law (unlike general law) recognizes the category of good faith even as one of the basic principles of law. Since March 1, 2013, the requirement of good faith has been enshrined in Article 1 of the Civil Code of the Russian Federation as one of the basic principles of civil legislation.

According to civil lawyers, it is necessary to differentiate between good faith in the objective and subjective senses. The first case involves assessing a person's behavior from the perspective of principles of justice, fair dealing, and ethical standards. In the second case, good faith is manifested as a justified essential ignorance (“did not know and should not have known”). When discussing good faith, which is a fundamental legal principle in most countries' civil law, it is important to have an objective understanding.

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Why is it necessary to evaluate the actions of legal entities in terms of ethical norms and standards? It seems that such a need arises in a situation of forced judicial activism and lawmaking, when the court, assessing the lawful, but malicious behavior of a party, needs to depart from formal rules in order to delicate legal adjustment (deformalization in the name of justice).

On the one hand, the principle of good faith ensures the law's mobility and dynamism, which allows for the elimination of injustice in a specific case. On the other hand, the absence of clear boundaries and generalizations makes this principle a signal for law enforcement officers to depart from the statutory rules, acting as a catalyst for judicial arbitrariness and undermining the principle of legal certainty.

In most legal systems, standards of good faith are established by the court "case by case", and retrospectively - in the format of ex-post control. For example, in Russia, when assessing the actions of the parties as good faith or bad faith, the courts, as a rule, follow the behavior expected from any participant in civil transactions, taking into account the rights and legitimate interests of the other party, assisting it, including in obtaining the necessary information.

For this reason, the main task of the law-enforcer and the legislator is to develop basic criteria for establishing the presence or absence of signs of bad faith in a particular action of the subject. K. I. Sklovskiy (2018) agrees with this, stating that “there is currently no other way to concretize the principle other than the accumulation of judicial practice”.

Consequently, good faith in the general legal aspect is currently defined as an abstract model of behavior established by law-enforcers based on the socially expected behavior of the subject of legal relations in similar circumstances. That is, the main provisions of the principle of good faith are developed by law-enforcers in a negative way, since it is possible to better understand this doctrine by studying how it works in practice and what functions it actually performs.

As for the definition of the concept and legal nature of procedural good faith, in the current stage of world legal science, there are at least three approaches that have been developed to comprehend good faith in procedural law:

1) Good faith use of procedural rights as a direct obligation of persons participating in the case;

2) Good faith as a principle of civil law process;

3) Good faith procedural behavior as a legal presumption.

Is it worthwhile to transfer the interpretation of material good faith to the civil process or would this approach be simplified?

Despite the fact that the provisions of the general doctrine of the principle of good faith can also be applied in the procedural sphere, procedural good faith seems to have a few characteristics and properties that separate it from its substantive legal conscientiousness.

Firstly, this concerns the standards of good faith behavior. From our perspective, civil legal relationships that are defined by equality and broad

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autonomy of the will (initially?) have a higher standard of cooperation, collaboration, and consistent legal conduct. In civil proceedings, the adversarial principle should be allowed to be applied based on the opposing interests of the participants in the trial, expressed in a certain "duel" between the claimant and the defendant. In this regard, it is impossible to disagree with the opinion of Russian scientists D. V. Kaysin and A. A. Komogorov (2021), according to which "the use of the standard of substantive good faith as a measure of the good faith of procedural actions contradicts the principle of adversarial proceedings".

Secondly, the classification of procedural behavior as abuse is only feasible in cases of obvious and manifest bad faith, as stated above (due to the specifics of the adversarial process), whereas bad faith in substantive legal relations has a lower standard of proof.

Thirdly, the purpose of procedural abuse is usually broader than the purpose of abuse of substantive law, since procedural abuse is expressed in the intention of a person to obtain not only substantive but also procedural advantages.

Fourthly, there is a similar difference in the consequences of unfair procedural behavior. In procedural law (unlike civil law), the violated right of another person will act as an optional consequence of bad faith, since the general consequence of abuse in the process is the undermining of judicial procedures, delay in the consideration of the case and (or) obstruction of justice.

Fifthly, there is a clear difference in the adverse consequences used by the courts in the case of abuse of substantive and procedural rights, the establishment of their own autonomous system of procedural compulsion in the case of unfair procedural behavior.

The assessment of procedural behavior "must proceed from different approaches based on regularities both in the absence of disputes and when disputes occur" (Schwartz, 2016). Therefore, despite the coincidence of its name, the principle of good faith in procedural law will differ from the same principle in substantive law in its specific features and in the sphere of implementation, which once again confirms the inadmissibility of classification of procedural legal relations as unfair, based on the source of substantive law.

2.3. THE EMERGENCE AND DEVELOPMENT OF THE PRINCIPLE OF PROCEDURAL GOOD FAITH: THE RELATIONSHIP WITH THE PROFESSIONALIZING OF THE PROCESS

A. Doni (1999) correctly notes that the issue of unfair procedural behavior exists in all legal systems, but the approaches to resolving it differ. For example, the principle of good faith, which is typically found in European law, is not applied in English law. For a long time this was not required due to the existence of separate equity courts, but now the necessary flexibility of law is ensured in England by other institutions of legalized judicial legislation. This may be due, in our opinion, to a certain fear of arbitrary interference of the court in dispositive regulation (in particular, in

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freedom of contract), as well as to a desperate fight for legal certainty of the parties (especially in the business sphere).

In European legal thought, good faith has been primarily regarded as a general legal principle since the 20th century, which establishes the conditions for its recognition as a principle of justice. In our opinion, this is explained by the impossibility of detailed legislative regulation of all possible manifestations of bad faith behavior, therefore the function of implementing such "delicate adjustment" of the law was given to law enforcement agencies. At the same time, "good faith" in this case can be revealed through other, related categories, such as: reasonableness and fairness (Netherlands), honesty (Italy), and so on. The normative consolidation of the principle of procedural good faith has already been carried out in the People's Republic of China (hereinafter - PRC). Since 2013, good faith has been included in the Civil Procedure Code of the PRC as one of the principles of civil proceedings (Article 13 of the Civil Procedure Code of the PRC), for the violation of which such types of sanctions as a judicial penalty and even arrest are established.

The experience of the Republic of Kazakhstan is a valuable resource when discussing the advisability of normative consolidation of the principle of procedural good faith in other legal systems. In 2021, there were widespread discussions in Kazakhstan's legal community about the need to establish procedural good faith and the justification for prohibiting procedural rights abuse.

The main controversy arose between the authors of the "Draft Amendments to the Laws of the Republic of Kazakhstan on the Status and Activities of Representatives in Court" and their opponents A. Shaikenov and V. Shaikenov. In our opinion, the arguments of both sides can be used in analyzing the advisability of the consistent development of the idea of procedural good faith in other legal systems, especially in the context of the emerging global trend towards professionalizing of the civil process.

Summarizing all the arguments presented by opponents of the introduction of procedural good faith allows us to identify the general argument that it is impossible to adapt good faith as a category of procedural (and not substantive) law, which is manifested in the following:

1) The impossibility of integrating the deformalized principle of procedural good faith into the civil process, which must remain absolutely formal;

2) The principle of procedural integrity will create conditions for judges to abuse their authority, leading to arbitrary judicial discretion and lawlessness;

3) Inapplicability of the principles of private law to public-law procedural relations, since in the context of the process of administration of justice the parties must be relieved from the obligation of "social altruism" (Schwartz, 1998).

In our opinion, these arguments certainly deserve attention, but they are not “blocking”, since any legal principle is inherently deformalized. Free judicial

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discretion as a phenomenon exists even without the principle of procedural good faith, the expansion of judicial lawmaking is an objectively determined process. Moreover, the absence of a normative consolidation of this principle entails even greater lawlessness and arbitrariness, expressed in the application of individual provisions of the sources of substantive law to procedural legal relations. As for the proposal to release the parties from any moral requirements (Hess, 1999), it seems that the penetration of ethics into legal matter is already an irreversible process, at this stage it is necessary to "lead this chaos" and outline the boundaries of its application in relation to specific situations. In scientific literature, the category of good faith is often considered as a "door" through which ethical norms penetrate into the law (Terre, Simler & Lequette, 1996).

We should move on to the arguments that support establishing good faith as an independent principle in the administration of justice:

1) In fact, this principle has already been established in most states' civil procedures, as a requirement for conscientious use of procedural rights. The development of uniform standards for its application is necessary due to the exponential increase in law enforcement practice with references to procedural good faith.

2) The normative consolidation of the principle will help harmonize the civil process and outline the scope of judicial discretion in this area.

3) The introduction of the principle of procedural good faith is consistent with the objectives of legal proceedings to strengthen the rule of law and order, prevent offenses, and develop a respectful attitude towards the court.

4) The impossibility of legislative regulation of all manifestations of procedural bad faith, especially given the emergence of new procedural abuses in the digital environment, forces the legislator to delegate the function of identifying bad faith behavior to the courts.

5) The principle of procedural good faith is one of the manifestations of the professionalizing of the civil process.

The last argument deserves special attention. It appears that there should be a difference between the good faith standard for ordinary citizens and legal professionals. Moreover, professional participants in the process can act as a kind of "assistants of justice" (Suleimenov, 2022), thanks to which it is possible to achieve more efficient and speedy consideration of cases. Thus, a professional representative has responsibilities not only to the client, but also to the court.

The requirements for litigators at the international level are being raised. According to the "Basic Principles on the Role of Lawyers", representatives of the legal profession are called "responsible officials in the administration of justice", dealing with "upholding the interests of justice".

Requirements for lawyers are also set out in the "International Principles on Conduct for the Legal Profession" approved by the International Bar Association (IBA). According to these Principles, lawyers must protect the interests of their clients as a priority, but at the same time always

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comply with their obligations to the court, respect the interests of justice, follow the law and adhere to ethical standards.

Similar provisions were also enshrined in the Code of Conduct for Lawyers in the European Union, a separate paragraph of which is devoted to the issue of good faith in the conduct of proceedings. This document states that a lawyer is prohibited from contacting a judge without prior notice to the other party or providing evidence without disclosing it.

In addition to the sources listed above, there are other acts that regulate the ethical aspects of the behavior of judicial representatives, including the requirement of good faith conduct during the process, but at the level of individual states:

1) Federal Regulations of the Advocate Profession (Germany);

2) Code of Conduct for Norwegian Lawyers (Norway);

3) Charter of the Swedish Bar Association (Sweden);

4) Code of Advocate's Ethics (Armenia);

5) Code of Conduct for Italian Lawyers (Italy);

6) Code of Ethics of Advocates (Republic of Moldova);

7) Code of Professional Ethics of Lawyers (Russian Federation).

It should be noted that these documents typically only pertain to lawyers who represent the legal community, not everyone with higher legal education. Therefore, these latter ones do not fall within their scope of application. This gap could be compensated for by introducing a general industry principle of good faith in civil proceedings.

CONCLUSION

The research conducted shows that the reasons for introducing provisions in good faith in the civil process of most states are quite objective. At the same time, the development of law enforcement practice in applying procedural good faith is becoming more intense every year.

The need to improve the efficiency of the civil process has led to a transformation of the fundamental principles of justice, in which non-classical principles such as the principle of procedural economy, the principle of cooperation and the principle of good faith have come to the fore. In many ways, these principles are a manifestation of the emerging process of professionalizing the civil process.

The civil law process in both developing and developed countries already adheres to the principle of procedural good faith, as confirmed by the study. In these countries, it does not pose a threat to other classical principles of justice administration. On the contrary, it is in a systemic relationship and serves to implement other principles (adversarial principle, principle of equality...). Thus, the study once again demonstrated and repeatedly confirmed the regularity of the introduction of the principle of procedural good faith at the regulatory level.

The civil process could be supplemented by the introduction of a

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general principle of good faith that fills the gap caused by the absence of ethical standards of conduct aimed at regulating the activities of representatives of the legal profession who are not members of the advocacy community, but actively represent the interests of their clients in courts of various instances.

This article defines 'good faith' as an abstract model of behavior that executors of law establish based on the socially expected behavior of the subject of legal relations in similar circumstances. That is, the main provisions of the principle of good faith are derived by executors of law in a negative way. However, despite the fact that the category of 'procedural good faith' acts as an instrument for legitimizing judicial activism and lawmaking, creating conditions for adjusting the results of formal law enforcement, the author came to the conclusion that the expansion of judicial lawmaking is currently an objectively determined process.

In general, the normative regulation of the principle of procedural good faith will not only set the main vectors of behavior of participants in procedural legal relations, but also serve as a foundation for regulating individual measures of procedural liability in cases of bad faith behavior of persons participating in the case.

It is clear that the normative consolidation of procedural good faith cannot immediately eliminate all problems and difficulties associated with abuse. In order for this principle to work effectively, for the benefit of justice, countries must simultaneously and consistently:

1) improve the quality of the judiciary, foster the rule on the extraordinary nature of the principle of good faith (application in cases of obvious unfair procedural behavior that undermines the process of correct and speedy trial);

2) work on the legal awareness of the court and persons participating in the case in order to minimize inconsistent and unmotivated references to bad faith in any unclear case;

3) realize their role in the process of developing the principle of procedural good faith for the purpose of its proper legal regulation, and also initiate the development of clarifications by leading courts on the issue of abuse of procedural rights;

4) work towards identifying and systematizing the doctrines derived by the courts from the provisions of good faith into independent legal norms (for example, establish a legislative ban on pleading the expiry of the period of limitation in the courts of appeal and subsequent instances).

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