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THE PRINCIPLE OF GOOD FAITH. FUNDAMENTALS OF THEORY AND LAW ENFORCEMENT IN THE CONTEXT OF THE GERMAN LEGAL EXPERIENCE

Dissertation summary
for the purpose of obtaining academic degree
Doctor of Science in Law

Moscow – 2021

The thesis was completed at the Department of Private Law of the Faculty of Law of the National Research University "Higher school of Economics"

The text of the thesis is deposited and available on the website of the Higher School of Economics: https://www.hse.ru/sci/diss/

12.00.03 – Civil law; business law;
family law; private international law

SUMMARY

The relevance of the dissertation research

Many European law systems had developed an almost clear understanding of the essence and content of the principle of good faith by the end of the last century.This principle is considered to have control over all legal life. The principle of good faith is important not only for the law of obligations but also wherever there is a special connection between two or more persons, for example, in other areas of civil law, such as property or family law, as well as in public law, in procedural law[1]. As noted, although the principle of good faith is one of the key concepts of classical law, which led to the emergence of many institutions and provisions of modern civil law, none of the European codes define this principle or disclose its content, as well as there is no clear decision on these issues in the theory of civil law[2].

In the first half of the 1990s of the last century, the developersof the first part of the Civil Code of the Russian Federation decided not to include in the text of the Code a reference of the principle of good faith as a principle of civil law.Thedevelopersseemed to have feared that in the absence of a clear understandingof this principle, together with an acute shortage of the relevant theoretical guidance, and also because of the still different legal mentality of our legal order during the collapse of the Soviet economy and the transition to market conditions, it would be premature to include the principle of good faith in the Civil Code.

But the two decades that have passed since the adoption of the first part of the Civil Code of the Russian Federation have shown that modern civil law cannot exist without such a system-forming category as good faith. In the Preamble of the Concept of the Development of Civil Legislation of the Russian Federation, the developers of the amendments emphasized that the development of the economy, as well as thedevelopment of civil society, require the use of all means of civil law[3]. The introduction of the principle of good faith in civil law as one of the most general and important principles of civil law was proposed as a key measure.

Good faith as a general principle of civil law was included in the text of the Civil Code of the Russian Federation in the process of reforming Russian civil lawcarried out in 2013–2015. In 2013, Article 1 of the Civil Code of the Russian Federation "Basic Principles of Civil Legislation" was supplemented by the rules stipulating that "in the establishment, exercise, and

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[1]*Nam K.V.* Development of the good faith principle. Modern stage. Internal systematics.// The Herald of Commercial Justice of Russia. 2018. № 7.

[2]*Popova A.V.* Thesis for a Candidate Degree in Law Sciences «The principle of good faith in international commercial trade: Legislation and court practice of the Russian Federation and the member states of the European Union. 2005. P. 6.

[3] Paragraph 6 of the Preamble of the Concept of the development of civil legislation of the Russian Federation // Bulletin of the Supreme Arbitration Court of the Russian Federation. 2009. № 11.

protection of civil-law rights and the performance of civil-law duties, the participants in civil legal relations must act in good faith", "no one has the right to obtain an advantage from his unlawful or bad faith conduct". Further, in 2015, to emphasize the importance of the principle of good faith one again, the rule about this principle was reproduced by the legislator in Article 307 of the Civil Code of the Russian Federation "Definition of an Obligation": "In the establishment and performance of an obligation and after its termination the parties have to act in good faith, considering the rights and lawful interests of each other, mutually rendering necessary support for achieving the purpose of the obligation and also providing one another necessary information." Moreover, the general part of the Civil Code of the Russian Federation includesa sufficient number of rules, in one way or another related to the principle of good faith. Some rules mention it explicitly, some do not, but the rules themselves, as recognized by many, are the reflection or concretization of the principle of good faith (for example, Article 6 (2), Article 10, Article 53 (3), Article 62 (4), Article 157 (3), Article 166 (2, 5), Article 179 (2), Article 220, Article 431.1, Article 432 (3), Article 434.1, Article 450 (4), Article 450.1 (4), Article 450.1 (5,6), Article 451 of the Civil Code of the Russian Federation, etc.).

The establishment of the principle of good faith in Russian civil law has attracted attention from the court system to it. However, aclear understanding of the relevant legal matter has led to considerable difficulties in applying the principle of good faith in court practice. The Russian legal literature has repeatedly emphasized the importance and necessity of relevant doctrinal research for application of this principle in practice, however similar works in Russian legal science are still almost non-existent[4].

Currently, as 20 years ago, the number of doctrinal developments is not enough to meet modern requirements and the level of civil turnover and to ensure that they can be used in the real-life civil legal turnover. Court practice also did not, and could not, make any significant contribution to the solution of this problem in such a short period, due to the lack of relevant doctrine. The quality of the judiciary and the judicial system as a whole has not improved over the past 20 years to the extent that it can be trusted the further development of the principle of good faith.

It has been emphasized in the literature that this principle could be a powerful weapon of court practicethat could be used to complement and develop positive law. But the use of any weapon can be very dangerous and lead to the opposite effect if it is in the wrong hands or the hands of persons with less than good intentions.In this sense, court practice that fails to use the

[4]See, for example, *Nam K.V.* The Principle of Good Faith: Some Problems of the Doctrine's Development // Civil Law Review. 2017. №. 6; *Sklovsky K.I.* Enforcement of law and the principle of good faith // The Herald of Commercial Justice of Russia. 2018. No. 2.

principle of good faith with due understanding of its goals and purposes shall cause great harm to the stability of turnover and the law as a whole[5].

It is obvious that the judge with such a tool as the principle of good faith, must not only more or less clearly understand the goals and purposes of this principle, but also have an idea of its functions, areas of application, methods, and means of implementation in specific cases. Legal science should provide the judge with an understanding of these issues. At this stage and soon, the priority tasks are to develop, define, and describe the legal tools necessary for the effective application and implementation of the principle of good faith in Russian civil law.

The degree of scientific development of the issue in Russian civil law currently cannot be considered satisfactory, even though in recent years issues related to the principle of good faith have repeatedly been the subject of scientific studies. In particular, works of *G.T. Beknazar-Yuzbasheva, E.E. Bogdanova, E.V. Vasilenko, D.L. Kondratyuk, O. V. Mazur, T.V. Novikova, L.V. Pashatskaya, A.V. Popova, E.A. Sorokina, A.V. Tatarnikova,and others* should be noted. However, these works do not examine the principle of good faith based on the experience of its application in Russian legal order over the past historical periods and, as a result, do not reveal its essence, namely, the role that this principle de facto plays in civil law, primarily in law enforcement. The main problem of studying and developing the theoretical bases of the category of the principle of good faith in Russian law is the lack of attention to those legal systems, primarily to German law, where the principle of good faith has been sufficiently developed both in court practice and in legal doctrine.

Certain issues that are more or less related to the category of the principle of good faith, such as fairness, reasonableness, or particularinstances of exercise and application of the principle of good faith have been examined, for example, in the works of such authors as *V.A. Vaypan, Yu.V. Vinichenko, V.A. Volkov, L.V. Volosatov, V.I. Emelyanov, S.A. Ivanova, N.A. Kovaleva, M.F. Lukyanenko, M.V. Novikov, T.G. Ochkhaev, P.V. Panchenko, O.A. Porotikova, I. V. Sazanova,and others*.

Among the pre-revolutionary works devoted to the issue of the principle of good faith, it is worth mentioning the work of *I.B. Novitsky*, published by him in 1916. This article, reissued in 2016, is very popular among domestic researchers of the category of the principle of good faith and serves as the main theoretical work devoted to the principle of good faith. However, the current relevance of this work is limited by the fact that it was written more than 100 years ago when the principle of good faith was just beginning to be popular in law. At the same time, the

[5]*Egorov A.V.* The principle of good faith in the Civil Code of the Russian Federation: the first steps of reform // Legal Insight. 2013. № 2.P. 4.

article by I.B. Novitsky was based on the analysis of works of the German legal theorists. But German jurisprudence and doctrine have come a long way in the past 100 years. In this regard, relevant comparative legal research is needed.

The theoretical basis of the research,in its fundamental part, is the works of German lawyers. German law was chosen as the main source of the dissertation research since the category of the principle of good faith was most developed in that law, and the German experience became an example and basis for the reception in many national legal systems, as well as influenced the content of the international acts of unification. The dissertation was based on the study and understanding of the scientific works of such authors as*Al-Shamari N., Brox H., Boerner F., Canaris C.-W., Caspers G., Dauner-Lieb B., Dernburg H., Doerner H., Duve T., Emmerich V., Emmerich V., Endemann F., Esser J., Fikentscher F., Finkenauer T., Gaier R., Gernhuber J., Grigoleit H-C., Grueneberg C., Haferkamp, H.-P., Hamburger M., Hedemann JW, Hermann H., Holtfrerich C.-L., Honsell H., Hubernagel G., Jhering R. v., Kohler J., Koziol H., Kuhlmann K., Larenz K., Looschelders D., Magnus U., Medicus D., Müller G., Nipperdey HC, Noerr KW, Oertmann P., Olzen D., Pohlmann, A., Roth G., Savigny, FK., Schmidt J., Schneider K., Siebert W., Stammler R., Steinbach E., Stolleis M., Strätz, H.-W., Teichmann A., Weber W., Wieacker F., Winscheid B., et al.*

The works of Russian and Soviet authors were also studied.

The object of thedissertation researchis the relations of subjects of civil lawgoverned by civil law in the context of the need to take into account and apply the principle of good faith. At the same time, the research is based primarily on the study and understanding of the German legal experience. The analysis of Russian law is carried out through comparative law in the context of the results obtained from the study of the German experience, as well as the approaches expressed in other national legal systems and international acts of unification.

The subject of the research is the doctrinal views of scholars, legislation, and law enforcement practice in the scope of the study in various national legal systems, primarily in German and Russian law, as well as in internationalacts of unification.

The goalof the dissertation research is to develop a theoretical framework, a holistic concept, primarily of an applied nature, for the development of the doctrine of the principle of good faith and to justify and facilitate its application in practice. The following **tasks** had to be solved for the achievement of that goal:

1) To examine the main theoretical understandings and approaches in German law on the concept and content of the category of the principle of good faith throughout its historical development from Roman law to the present day;

2) To study the approaches of practice concerning the application of the principle of good faith in court practice in German law;

3) To study the theoretical approaches and rationales of various cases of application of the principle of good faith in practice in German law;

4) To study, in the light of German legal experience, theoretical and practical approaches to the synthesis of typical cases of application of the principle of good faith;

5) Based on German legal experience,to propose, a systemic functional approach to the principle of good faith in practical enforcement;

6) To disclose the content of each of the functions of the principle of good faith;

7) To define and substantiate the basic meaning and essence of the principle of good faith for practical enforcement;

8) Based on the results of the study of the German legal experience, to reveal and substantiate the meaning and role of the principle of good faith in civil law;

9) Based on the results of the comparative legal research, to examine the category of the principle of good faith concerning legal rules and legal principles;

10) To propose and substantiate the author's approach to the principle of good faith as to a regulatory legal rule and legal principle;

11) To study the history of the development of the category of the principle of good faith in Russian civil law;

12) To analyze the legal regulation of the principle of good faith and the legal institutions and rules based on it from the perspective of relation thereof to the proposed system of functions of the principle of good faith;

13) To analyze the approaches of the Russian doctrine and court practice to the principle of good faith in the context of the German legal experience from the research that would be carried out and the conclusions that would be drawn;

14) Based on the results of the research carried out, to identify problematic, controversial points in the development, understanding, and enforcement of issues related to the category of the principle of good faith in Russian law.

The methodological and empirical framework of dissertation research

The methodological basis of thesis research includes modern scientific methods of research of legal and social phenomena, including dialectical, logical, historical-legal, formal-

legal, comparative-legal, systemic methods. Special emphasis was placed on comparative legal and historical-legal methods to ensure a comprehensive and historical approach to the study of the legal content of the category of the principle of good faith and to ensure that the rich doctrinal and law enforcement knowledge which was accumulated in the process of development and application of the principle of good faith especially in German law, would be taken into account and used in Russian law. Much attention was also paid to the status of legal regulation and the application of the principle of good faith in Russian law.

The dissertation is based on the analysis of current Russian, German, and other foreign civil legislation and its application, as well as on the study and development of existing theoretical approaches to the content, essence, and purpose of the principle of good faith in Russian and foreign civil law. In addition to legal theories and concepts, research of court practice has also provided the empirical basis for the study.

The scientific novelty of the thesis research is determined by the fact that it is a comprehensive study of the development, establishment, application of the category of the principle of conscientiousness within the framework of the national legal order based on German legal experience, which makes it possible to identify and analyze its impact on the development of civil legislation, legal regulation of civil legal relations, and the enforcement of the law. This study could be considered as a theoretical basis for further development of the doctrine and enforcement of the principle of good faith.

The dissertation is the first such comprehensive study of the principle of good faith, based on the experiences of its development and application in the national legal system which is close to the Russian legal system, and where the principle of good faith has been sufficiently developed. It is this approach, which is based on an analysis of how the principle of good faith is applied in practice, and how law enforcement is perceived and systematized in the doctrine, that has made it possible to understand and establish the essence, content, meaning, and role of the principle of good faith in civil law.

The results of the studyconstitute a solution to thesignificant scientific problem of Russian civil law, namely, the absence of comprehensive doctrinal approaches to the principle of good faith, based on the experience of its long-term development in theory and law enforcement within the national legal order. The study is applied in nature, which makes it possible to widely use the provisions thereof both in law enforcement and in educational processes, as well as in further scientific research.

The following results will be put forward on the defense of the dissertation:

1. The dissertation examines the historical stages of the development of the principle of good faith in German and Russian law. As a result of the historical and legal research, it was established that the principle of good faith, as well as the concepts and categories that preceded it at all stages of its development,was aimed at overcoming the deviation of positive regulation from the goals and objectives of the law, understood in the relevant historical period as the equitable regulation of social relations. However, they were never considered to be an external standard of behavior of a general nature.

2. The dissertation proves that the current development of the theory of the principle of good faith is determined by the approach according to which the main practical task of the principle is to ensure the achievement by the existing formal legal regulation and its results of those goals and objectives that the law pursues and implies, but not only those that can be seen and inferred from the literal prescription of objective rules.The goals and objectives of legal regulation should, therefore,be considered as an external testcriterionfor de facto regulation. The purpose of the practical application of the principle of good faith is to ensure the unity of the letter and spirit of the law in a particular case of law enforcement.

3. It is proposed in the dissertation to understand the "spirit of the law" as the necessity to ensure that legal regulation of public relations will be based on the socially justified and socially approved behavior of the participants in legal relations towards each other, based on common sense and values that are relevant for a given historical period, and which could be expressed by the will of the legislator as a normative rule of the law.

4. The dissertation establishes that such characteristics of the principle of good faith as the abstract and evaluative nature, quality of general rule, need to be determined for each case, make it possible to perform the task of adapting the law, based on the application of objective law, first, to the changing of social values upheld in society, second, to the peculiarities of specific factual situations.

5. The dissertation defines the role that the principle of good faith is called to play in the regulatory system, which consists of eliminating, correcting the costs and disadvantages of this system. Regulation reduces the possibilitiesfor individual resolution of individual situations, taking into account the peculiarities of a particular legal relationship and the factual circumstances of the case. In the continental legal system, the principle of good faith allows the regulatory framework to take into account and assess a particular situation when it falls out of the ordinary or typical category, and, as a result, to achieve anequitable, as a matter of law, result. In this sense, the principle of good faith, on the one hand, is part of the regulatory system of law and is of a general nature. It is not opposed to the normative system, it is not the rule for a specific, individual case. On the other hand, its task is to correct or remedy the disadvantages of

the regulatory system by applying elements of individual regulation in specific cases. Through the principle of good faith, the regulatory system corrects and eliminates its costs and disadvantages.

6. It is concluded that since the result of law enforcement, even in the absence of the principle of good faith, must be meaningfully based on the unity of the letter and spirit of the law, the principle of good faith itself is in some way declarative, as opposed to other legal principles. It is argued, however, that due to widespread positivist approaches, in which the primacy of the spirit of the law is ignored, the law needs a legal remedy that would ensure the unity of the letter and spirit of the law. It is concluded that this task should be performed by the principle of good faith.

7. The dissertation concludes that the principle of good faith affects the internal unity of the law not only at the level of law enforcement but also in the law-making processsince many rules which derived from the principle of good faith werethen adopted as positive law rules. Many doctrinal works, as well as results of law enforcement, have led to the introduction of rules on additional and protective duties, on pre-contractual liability, on a substantial change in circumstances, etc. in the texts of foreign laws. It is also concluded that the principle of good faith, as the basic legal or regulatory principle which is aimed at establishing and implementing the content of the spirit of the law, has also a certain stimulating, educational value as a guideline and rule of proper social behavior.

8. The system of normative legal regulation is based on the presumption that the existing rules of objective law are sufficient to regulate legal relations in such a way that the result obtained corresponds to the goals of legal regulation. But if the result does not meet the legal goals, then the law, through the principle of good faith, shall intervene and adjust the regulation to ensure that the spirit of the law prevails.

9. The rebuttal of the presumption of «correctness» of positive rules and the introduction of exceptions to the system of positive regulation requires additional justification and reasoning. The mere reference to the principle of good faith is not sufficient. The sufficiency of additional justification and reasoning directly depends on the level of development of the relevant doctrine. At the same time, the theoretical understanding and synthesis should be more practice-oriented and applied, allowing the principle to be applied in practice most efficiently and less arbitrarily.

The existence of an applied doctrinal framework, doctrinal support for the principle of good faith, related rules, and legal institutions, is a prerequisite for the correct and effective use of the relevant legal tools.

10. It is concluded that the legal rules on the principle of good faith and the rules related to it are not the usual regulatory rules of positive law. They constitute a legal substance different

from the usual formal system, the purpose of which is to justify and legitimize the introduction of certain exceptions to positive regulation. The legal rules developed based on the principle of good faith, which are embodied in the text of the law, are part of the legal substance of the principle of good faith.

11. The dissertation argues that the application of the principle of good faith and the rules and legal institutions related to it should be considered based on an internal system of practice-oriented functions of the principle of good faith: concretizing, complementary, restrictive, and corrective. Consideration of that system is the most accurate way of revealing the peculiarities of the meaningful interference of the principle of good faith in the legal regulation of civil legal relations. This systematic approach is reflected in the rules of Russian civil law.

12. The dissertation reveals the content of the practice-oriented functions of the principle of good faith.

The concretizing function of the principle of good faith is that the application of the principle of good faith makes it possible to specify the rights and obligations of participants in a legal relationship. Concretization is the definition of how and in what way the rights and obligations of the parties to a legal relationship are to be exercised in a particular situation, based not only on the text, i.e. the letter of the relevant rule but also on its spirit, the substance, and purpose of the obligation, the factual circumstances, the rights and interests of the parties. In Russian law, the concretizing function is based primarily on Article1 (3)and Article 307 (3) of the Civil Code of the Russian Federation.

The particularities of a particular situation may entail the need not only to specify rights and obligations but also to justify the existence of additional rights and obligations of the parties to the legal relationship. This is an additional function which, under Russian law, is based, inter alia, on Artice 1 (3), Article 307 (3), Article 434.1 of the Civil Code of the Russian Federation.

Restrictive function, in contrast to the concretizing and complementary functions, supposes that the scope of behavioral powers may be limited. It is a question of limiting the subjective rights available by virtue of formal rules. The reason for this restriction is the principle of good faith, which is intended to prevent situations of unacceptable use of subjective rights, when such inadmissibility in a particular situation follows from the spirit of the law, from the purposes of legal regulation. This includes both cases of intentional abuse and abuses in the broad sense where, under the principle of good faith, the inadmissibility of the exercise of a subjective right does not require the fault of the subject. In Russian law, the restrictive function is reflected, in particular, inArticle 1 (3), Article 10, Article 157(3), Article 166 (2, 5), 431.1 (2), Articles 450, and 450.1.

The corrective function of the principle of good faith is also intended to limit the subjective right of the party to the legal relationship. The difference from the restrictive function is that the reason for limiting subjective right is not on the entitled party, but on the «suffering» party, or is caused by external circumstances. The reason for the intervention of the principle of good faith is the unacceptability of the continuation of the original legal relations for the «suffering» party, although formally the other party is entitled to demand such continuation. In Russian law, in addition to Article 1 (3) of the Civil Code of the Russian Federation, the corrective function is reflected in Article 451 of the Civil Code of the Russian Federation.

Similarly to the concretizing and complementary functions, the basis for intervention under restrictive and corrective functions can only be mutual, joint consideration and weighing of the rights and interests of both parties to a particular legal relationship, taking into account all the factual circumstances and objectives of the obligation.

13. It is concluded that a theoretical understanding of the principle of good faith, its place and role in the system of codified law, as well as its internal system based on the functional method, should give substance to those rules and legal institutions related to the principle of good faith, which are contained in the text of the law, even if the literal wording of the relevant rules do not reflect the relevant doctrinal approaches and the legal ideas they contain. For example, certain rules on additional responsibilities are intended to perform a complementary function. The rules on non-abuse of rights or so-called estoppel are aimed at performing a restrictive function. The corrective function is provided, in particular, through the rules on a significant change in circumstances (the theory of the fall of the basis of the transaction).

14. The dissertation proves that all legal institutions and rules developed and derived from the principle of good faith should be considered in the context of the overall concept and system of the principle of good faith. For example, institutions rooted in Roman law, such as *culpa in contrahendo*, *venire contra factum proprium* or *rebus sic stantibus*, have developed and become relevant as legal tools for achieving the goal that is pursued by the principle of good faith. As a result, they have become valuable for the law and should henceforth be considered in theory and applied in practice in the context of the doctrine and system of the principle of good faith. Therefore, they cannot be considered independently of the principle of good faith. Although they are enshrined in the law separately, they are still part of the legal substance of the principle of good faith. Otherwise, the content of the rule may be misunderstood, and the goal pursued by the rule may be lost.

15. The dissertation established that the provisions of the law containing rules on the obligations to act in good faith, namely, to take into account the rights and interests of the other party, have a two-level content. On the one hand, they contain generally binding rules for an

unlimited number of persons in the form of either a prescription, a prohibition, or a permit (first level). On the other hand, these rules themselves, due to their lack of specificity, do not have definite content but require such an integral, legally relevant element as concretization (second level). The rules on the obligation to take into account the rights and interests of the other party in their passive state contain simultaneously all three types of rules: prescription, prohibition, and authorization. Which of these three rules becomes active depends on acertain situation and the specificity of the obligation.

16. The dissertationargues that the so-called standard of good-faith behavior cannot constitute the content of the principle of good faith. The term "standard" means that such a standard implies standardized rules of behavior that are common to a significant number of persons. Such rules of behavior, however, have specific content, specific rights, and obligations as accepted rules of social behavior. Based on this, the standard of behavior shall not include what is abstract and can be specified only in an individual case, that is individual rather than standardized. The so-called standard of good-faithbehavior is often identified with the duty to take into account the rights and interests of another person. But such a duty does not itself, have clear content, is not specific, and does not contain the standardized rules of conduct expected of any person. The abstract nature of the principle of good faith and the need to make it more specific for each case of law enforcement precludesthe identification of this principle with the so-called standards of good-faith behavior.

17. Requirements of good-faith behavior, as it is, in particular, follows from Article 1 (3) of the Civil Code of the Russian Federation and other rules are not per se regulatory rules which, as a sanction for their violation, result in the restriction of the subject’s rights on the sole ground that its conduct did not meet the requirements of good faith.In private and civil law, first of all, it is impossible to restrict the rights of one party to a legal relationship, if the rights and interests of the other party are not violated. Secondly, this erroneous approach would destroy fundamental foundations of civil law such as the principle of autonomy of will, the institutions of nullity of the transaction or the time period of limitation of actions, etc. Third, a direct imposition on each subject of civil turnover of the duty to act in good faith, as it follows from Article 1 (3) of the Civil Code of the Russian Federation, regardless of the content and respect for the rights and interests of each party relationship goes beyond the scope of civil law and is in the sphere of public law. Such interference in private legal relations is justified neither by the interests of civil law turnover nor by other public interests.

18. At present, Russian civil law formally enshrines both the principle of good faith itself and many legal institutions, which in German law, in particular, have been developed from this principle. The Civil Code of the Russian Federation includes rules that generally reflect the

German legal theory on the principle of good faith, disclosed through the functional method described in this dissertation. The dissertation concludes that the following rules should be understood and interpreted based on this system and its content: rules on additional duties (Article 307 (3) of the Civil Code of the Russian Federation) and pre-contractual liability (Article 434.1 of the Civil Code of the Russian Federation), on change and rescission of a contract in connection with a substantial change of circumstances (Article 451 of the Civil Code of the Russian Federation), on the inadmissibility of contradictory behavior (Article 166 (2, 5) of the Civil Code of the Russian Federation, etc.). At the same time, it is argued that the mere formal establishmentof the relevant rules in the civil legislation is not enough for the effective application of the principle of good faith and the rules related to it. To reveal the content of these rules, as well as correctly interpret and apply them, Russian civil law needs a relevant practice-oriented doctrinal study, that would also include comparative legal analysis.

The theoretical significance of the dissertation research

The conclusions proposed in the dissertation significantly complement and expand theoretical knowledge on the problems of the legal system in general and civil law in particular.

In Russian legal science, this research is the first experience of a comprehensive scientific-theoretical and scientific-practical understanding of the category of the principle of good faith in civil law. There is no similar work in Russian civil law science. The results obtained can be used in the teaching of the disciplines «civil law», «obligatory law», «contractual law», and also serve as a basis for future research on issues related to the category of the principle of good faith in general, as well as single rules and legal institutions related it.

The findings of the dissertation supplement and expand the theoretical knowledge not only of civil law but of the legal system as a whole. Certain provisions and conclusions of the dissertation are original and scientifically new, and therefore develop the relevant parts of not only civil law, but also the theory of state and law and some relevant legal sciences.

The practical significance of thedissertation research

The applied nature of the research carried out determines its great significance for practice. The conclusions and provisions of the dissertation can be used both for further improvement of legislation, as well as taken into account in judicial and other law enforcement practices.

The degree of reliability and approbation of the results of the dissertation research

The dissertation was recommended for defense by the Department of Private Law Disciplines of the Faculty of Law of the National Research University «Higher School of Economics»on 26 June 2020.

The main conclusions and provisions of the dissertation were reflected in articles and have been presented at the following scientific events: Discussion Club of the Moscow State Law Academy on Intellectual Property Law (IP Law Club MSAL) (the topic of the report "The principle of good faith in civil law and its application to intellectual rights", Moscow 2019), Scientific and practical charity round table of the M-Logos Law Institute (the topic of the report "Good Faith as a principle of civil law" in the practice of dispute resolution", Moscow 2019), report "The place and role of the principle of good faith in civil law" (at the Research Center of Private Law) (Moscow 2019), Scientific and practical conference "Dialogues on private law in Siberia" (Tomsk 2019). Many provisions and conclusions of the dissertation were discussed at the Internet legal page zakon.ru.

The monograph on the topic of the dissertation «The Principle of Good Faith: Development, System, Problems of Theory and Practice», published by the publisher «Statut», received the German-Russian Legal Award«The Best Scientific Work in Russian» in 2019.

The degree of reliability of the dissertation results is determined by the results of its approbation. In total, the author published 21 scientific works on the topic of the dissertation research, the total volume of which is 40 printed pages, including 1 monograph and 14 scientific articles published in journals included in the list of leading peer-reviewed scientific journals recommended by the dissertation Council of the National Research University Higher School of Economics.

The sources used in the bibliographic list are given as of 01.01.2020.

The structure of the dissertation research is determined by its subject, goals, and tasks. The dissertation consists of an introduction, 4 chapters, 11 paragraphs, a conclusion, and a bibliography.

MAIN CONTENT OF DISSERTATION.

The **introduction**addresses the relevance of the chosenproblems, shows the degree of its scientific development, defines the goal and tasks of the research, its novelty, theoretical and practical significance, methodology and methods, contains the results that will be put forward on

the defense of the dissertation, shows the degree of reliability and approbation of the results of the dissertation research.

The first chapter "**Development and status of the principle of good faith in German law"** is devoted to the historical and legal analysis of the development of the principle of good faith in German law.

Today the principle of good faith (*Treu und Glauben*) in German law is the leading principle of all legal relations both between equal subjects of law and between persons who are among themselves are in a relationship of power and subordination, i.e. in the scope of public law. According to the indisputable opinion prevailing today, *Treu und Glauben* is a general principle for the most different areas of law: the law of obligations, property law, labor law, family law, procedural law, public law, etc.[6]It was the successful experience of development and application of the principle of good faith in Germany that served as an example both for many national legal orders and for the development of acts of international unification, for example, for the UN Convention "On Contracts for the International Sale of Goods", the Principles of International Commercial Contracts (UNIDROIT Principles), the Principles of European contract law (*PECL*). However, the path to recognition of the principle was not easy. The danger, or vice versa, the positive meaning of the principle of good faith and its application are still assessed differently in the German legal literature. But the fact that *Treu und Glauben* hasan inestimable significance not only for civil law but for the entire legal system, is no longer disputed in German law. It is not uncommon to find statements that § 242 of the German Civil Code (hereinafter referred to as BGB) has become a principle that has taken over the entire legal life, or that it is a general scale that determines all private and public law. For a better understanding of the essence, meaning, content, and system of the principle of good faith and its significance for the legal order that is subordinate to it, it is necessary to have an idea of the historical development of the principle of good faith (*Treu und Glauben*) in German law.

The first paragraph **"The first stages of the development of the principle of good faith"** examines the legal categories related to the modern understanding of the principle of good faith in German law, in the historical periods from Roman law to the adoption and beginning of the German Civil Code.

An important conclusion from the above analysis, which is significant for the modern understanding of the principle of good faith, is that during the periods of both Roman law and the period of Middle Ages in the territories of modern Germany, *bona fides* and *Treu und Glauben* did not have clear content, did not represent some kind of standard of behavior that has certain general content. In both historical periods, to varying degrees, these categories were

[6]*Larenz K.* Lehrbuch des Schuldrechts. Bd. I: Allgemeiner Teil. 14. Aufl. München, 1987. S. 127.

aimed at ensuring the protection and implementation of the internal content of the legal relationship, in contrast to its formal external side. The definition of the internal content of the legal relationship was associated with issues of morality and ethics.

The periods of modern history following the period of the Middle Ages were characterized in Europe by the development and adoption of written codifications of private law. Since they were based on the works of lawyers who studied and consolidated Roman legal sources, the category of Roman law *bona fides*was included in the texts thereof. The rules on*bona fides*reflected the approaches to*bona fides*laid down in Roman law. It means that the mutual rights and obligations of the parties to a legal relationship should be determined and regulated not only by literal wordings but also by the principles of justice, the essence of a legal relationship, and moral and ethical criteria, such as honesty, decency. However, legal positivism, which was widespread at that time, resulted in the fact that these rules had no practical significance.

The developers of the German Civil Code (BGB) especially emphasized the need for making a rulethat would give more possibilities for interpretation.Such a rule could potentially be beneficial for civil law regulation. At the same time, it was pointed out that interpretational principles are needed to overcome the positivist approach, to deviate, if necessary, from the letter of the law. Also, when developing the code, the authors proceeded from the broad content of *bone fides*, which included not only the definition of rights and obligations but also cases of abuse of rights. When adopting §242 BGB, a clear distinction was made between the principle of good faith and the usual and customary business practices, that is, from certain standards of behavior that have developed in society in certain areas of social relations.

The First World War was a forced pushto turn the law from positivist jurisprudence to the jurisprudence of interests. German law developed further in this direction. The following statement of the famous German jurist R. Von Jering, made by him in 1852, is appropriate here: “War can have a very useful impact on the development of law. This may sound paradoxical, but it is true. War at the right time can bring more development in a few years than centuries of peacetime"[7]. The war and the cardinal changes in social and economic relations caused by it required the law to make corresponding changes in approaches to legal regulation. Positive legal regulation,due to its inertia, could not respond to the emerging challenges in a timely and adequate manner. But the existence of the principle of good faith enshrined in the law and certain theoretical research allowed the German legal order to provide more flexible legal regulation within the existing legal rules.

[7]*Jhering R.* v. Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung. 5. Aufl. Teil 1. Leipzig, 1891. S. 245.

In the first period of existence of the rule on the principle of good faith in the BGB, the most common theory was that external test criteria for de facto legal regulationwere considered and established as an ideal model for regulating social relations. The standards of correct behavior, i.e. love for one's neighbor, decency, honesty, and so on as components derived from the approach of the ideal model. However, later in the development of theory and practice, such idealistic approaches were softened, reinterpreted, and transformed into a general, conditional duty to take into account the rights and interests of another person. But the expression “the standard of good faith” is often still, especially in Russian law, mistakenly perceived as some kind of independent rule of objective law.

The second paragraph **"The period of the Weimar Republic as the most important stage in the development of the principle of good faith (*Treu und Glauben*)"** examines the period after the First World War, which was of the greatest importance for the development of the principle of good faith in German law and, as a consequence, in general for the subsequent development of this principle in continental European law and order. The loss in the war, its consequences, and the outbreak of a large-scale economic crisis became one of the main reasons that influenced the leap-forward development of the principle of good faith in court practice and theory. Those factors have significantly changed, first of all, the economic circumstances in which the parties to legal relations were, which entailed an urgent need to bring the actual and legal aspects of legal relations into conformity. The huge gap between the consequences of the application of positive, formal rules and the need for a different fair settlement of disputes in the context of the economic crisis as well as hyperinflation has become a critical point at which formal adherence to a positive rule has ceased to be perceived as a correct approach in law and law enforcement. On the example of these historical events, not only the legal community but, possibly, society as a whole, realized injustice, viciousness, and danger both for individual relations and for the legal order as a whole, the discrepancy between the letter of the law and its spirit, as well as between the goals of legal regulation and the consequences of positivist, formal law enforcement.

The development of court practice during the Weimar Republic has demonstrated the courts' acceptance of the theoretical developments on the principle of good faith, made in the first period after the adoption of the BGB[8]. The very principle of good faith has begun to be understood as a general legal principle that constitutes an inherent positive legal framework[9]. If the legal rule, when applied in a specific case, corresponds to this general principle, then the

[8]*Schmidt J.* // J. von Staudingers Kommentar zum BGB mit Einfürungsgesetz und Nebengesetzen. Buch 2: Recht der Schuldverhältnisse. Einleitung zu § 241–243. Aufl. 13. Berlin, 1995. § 242. Rn. 78.
[9]*Hamburger M.* Treu und Glauben im Verkehr Mannheim, 1930. S. 10–11.

legal regulation ends there. If the application of a rule leads in a particular case to a result contrary to this principle, it should be replaced by a legal result that corresponds to the principle of good faith. However, the provision of § 242 BGB does not constitute a general rule having priority over a special rule. It seems to run through the entire body of positive law. The subordination of certain rules to the principle of good faith should be understood in that sense.

The periods of the First World War and especially the Weimar Republic have had the greatest impact on the development of the principle of good faith. This period is characterized by the establishment of those directions in which this principle is being developed at present, not only in Germany but also in other legal systems, and acts of international unification. The following doctrines were developed at that period: the rationale for the legal relationship between the parties having additional and reciprocal obligations to take account of each other's rights and interests, pre-contractual liability, rules on abuse of rights, and unacceptable exercise of rights, etc. Another way of development of the principle of good faith was the extension of its scope to new legal issues in other branches of private law, such as property, labor, commercial law, company law, insurance, copyright, and procedural law. The application of the principle of good faith was not limited to private law. § 242 BGB has been applied in general and in public law areas, such as administrative law and public administration law, tax law, the law regulating public service relations law, etc.

It is concluded that it was during the war and post-war periods that the prevailing approach was established, which determined all the further development of the theory of the principle of good faith. According to this approach, the task of the principle is to check whether the existing formal legal regulation corresponds to the goals and objectives that the law as a whole has, and not only those that can be seen and deduced from a literal reading of objective rules.

The third paragraph, **"The Transformation of the content of the principle of good faith during the period of national socialism in the Third Reich",** examines the approaches to the principle of good faith in the period of National Socialism in Germany. This period was characterized by the use of existing legal tools for ideological purposes. As a result, the principle of good faith was also politicized.

In the literature, there is a widespread approach to good faith as an assessment of legal relations in terms of existing and prevailing social values in society. This approach served as the background for the development by legal scholars at that period of the role and content of the principle of good faith. The literature emphasized that the interpretation of the rule through objective public interests, as well as the difficulties in its dogmatic definition, benefited the

ideology of the Nazis[10]. Once the notion of good faith does not refer to the civil turnover of individuals but to the interests of the nation as a whole, the entire law itself changes without the need to change even a single positive statute[11]. Since the interests of the nation were determined by the ideology of the National Socialists, therefore, the dominant (only permitted) ideology should have determined the approach to the content of good faith: " In the present-day German state, the main driving force is the National Socialist movement. Therefore, the principles of this movement shall determine what is *Treu und Glauben*"[12]. However, there was no doubt that the judge was bound by the principle of good faith when applying the rules in a particular dispute under consideration. At the same time, in determining the scope of the principle, the judge should have been bound by National Socialist values. Based on this, attempts were made to redefine the nature of obligation relations in the context of the new ideology. The previously closed private legal system of obligations at that period had to be subject to the public interest, obligations had to be guided not only by the personal interests of the parties involved but also take into account the public interests[13]. Because of this approach, the role of contractual relations was to serve the great task of rational distribution of goods and property in the people's society (*Volksgemeinschaft*). Contracts then should not be contrary to the common good[14].

This approach was shared by a significant part of legal scholars of that period. They tended to find the basis for a National Socialist worldview in existing regulations. For example, §§ 826 and 242 of the BGB, suggest that the personal benefit should be excluded and that the general benefit should take precedence over the personal benefit. The ideaof inadmissibility of excessive use of one's rights led to the conclusion that the provisions of§ 242 of the BGB contain prescriptions against individual personal interests and, accordingly, the need to prioritize the public interests, which were determined based onNational Socialist ideology.

The politicization of the principle of good faith in the period of National Socialism and its use for ideological purposes in legal regulation shows that it can bring the application of formal rules into line with the objectives of legal regulation, which, in a given historical period,maybe mainly determined by values or ideologies which prevail in society. The purpose of legal regulation in the said historical period was to ensure the socially justified behavior of participants in legal relations. At the same time, what was approved by political ideology was socially justified. Ideology defined or replaced social values. Hence, the goals of legal

[10]*Looschelders D., Olzen D.* // J. von Staudingers Kommentar zum BGB mit Einführungsgesetz und Nebengesetzen. Buch 2: Recht der Schuldverhältnisse. Einleitung zum Schuldrecht § 241–243. Berlin, 2015. § 242. Rn. 66.
[11]*Haferkamp H.-P.* // Historisch-kritischer Kommentar zum BGB, Band II: Schuldrecht. Allgemeiner Teil. 1. Teilband: vor § 241–304. Tübingen, 2007. § 242. Rn. 71.
[12]*Schmitt C.* Fünf Leitsätze für die Rechtspraxis // JW 1933 (cit. ex: *Haferkamp //* HKK-BGB. § 242. Rn. 71).
[13]*Stolleis M.* Gemeinwohlformeln im nationalsozialistischen Recht. Berlin, 1974. S. 103–104.
[14]Ibid. S. 104.

regulation, or in other words, the spirit of the law, were determined by what the ideology implied, what followed from the ideology. And the principle of good faith in this historical period was used to ensure that the rules of formal, objective law ensure the results that the ideology of the National Socialists dictated.

The fourth paragraph **"Development of the principle of good faith after the Second World War"** is devoted to the analysis of the period of Germany's return to democratic values after National Socialism.

After the defeat of Hitler's Germany in the Second World War and the fall of the national socialist regime, the politicization of the principle of good faith also stopped. In the Federal Republic of Germany, the court practice has returned to the old approaches that were established and developed in the period of the Weimar Republic. The scale of the country's disaster, the devastation that affected both the life of all citizens and the economy as a whole, the rearrangement of many political, state, and public bodies, exceeded the consequences of the First World War. However, the importance of the principle of good faith during this period was less than during the period of the Weimar Republic, since the authorities of post-war Germany responded more quickly and adequately to the challenges that arose[15]. The existence of adequate, targeted, positive regulation has led to a smaller application of the principle of good faith in comparison with the period after the First World War, which also confirms the dependence of the appeal to the principle of good faith on the injustice of positive legal regulation. The period after the Second World War demonstrated that the return of society to the old social values restored the principle of good faith to the content and meaning it had before the National Socialists came to power. This confirms that the content of law and its spirit is determined by the values that prevail in society during the corresponding historical period.

Judicial practice and commentary literature were of great importance for the development of the principle of good faith in the post-war years. The courts continued to develop and apply various approaches that arose from the principle of good faith in the pre-war period. The commentators' task was to study, analyze, summarize, and systematize the results of court practice.In this respect, Staudinger's commentary dated 1961, devoted to only one paragraph of 242 BGB and counting more than 1,500 pages, is indicative. The commentaries served as an auxiliary tool for the judges to apply the relevant rules more clearly and made of sense. Thus, court practice and commentaries complemented each other and provided each other with information for further work. Analysis, synthesis, systematization, and generalization of the results of the court's law enforcement court activities have led to a more complete formation of

[15] *Medicus D. / Lorenz C.* Schuldrecht I Allgemeiner Teil, 21. Aufl. München, 2015. Rn. 131.

the theoretical background for the principle of good faith.At the same time, theoretical understanding and generalization were more practice-oriented and applied in nature, which made it possible to apply the principle in practice most effectively and with less arbitrariness. The applied doctrine in this period became an integral part of the principle of good faith.The application of the principle in practice was already unthinkable without that doctrine. The extensive doctrinal work, which is general and explanatory, has led to the de facto identification of well-established approaches to similar legal situations, some of which, in the process of reforming the law of obligations, have been given their positive form. Consolidation and systematization have led to the development of a doctrinal framework to define such practice-oriented functions of the principle of good faith as concretizing, complementary, restrictive, and correcting. During this period, the doctrine became an integral part of the principle of good faith.

The fifth paragraph **"Current state of legal regulation of the principle of good faith in German law"**examinescurrent approaches of legislation, doctrine, and judicial practice to the principle of good faith.

Large-scale amendments to the BGB, that came into force on January 1, 2002, also known as the reform of the law of obligations, formalized into independent positive legal regulation many areas of application of the principle of good faith that had been developed by many years of court practice and the dominant doctrine.Pre-contractual obligations and liability, part of additional obligations, the disappearance of the basis of the transaction, and issues of the unacceptability of performance of the obligation were transformed into independent rules of law.

Although large areas of regulation of obligations were removed from the immediate scope of § 242 BGB, the principle of good faith remained important not only for obligations but also for other areas of law. The determination of how to exercise rights and perform duties should still be viewed through the principle of good faith, i.e. through its concretizing function. The most important area of direct regulation of § 242 BGBis the issue of abuse of a right and improper exercise of a right, which is within the scope of the restrictive function. The importance of the principle of good faith for other areas of private law as well as for public law remained unchanged.

Despite the separation of additional protective obligations from § 242 BGB into a separate rule, their content remained closely related to the principle of good faith. And in fact, they remained part of it, whilesubparagraph 2 of § 241 BGB, beingan independent rule, is intended to express legal ideas inherent in and derived from the principle of good faith. The studies have shown that there is no clear line between the duties assigned in §241 BGB and those that remain formally within the scope of the rule on the principle of good faith (§242 of BGB). The difficulty of distinguishing between the duties from the concretizing and complementary

functions, between the additional ones related to the subject of the obligation and not directly related to it, and, accordingly, a clear separation of the scope of regulation of § 241 and §242 of the BGB confirm the conclusion that the content of both rules is one substance, i.e. the expression, the implementation of the principle of good faith. For a reason, the German literature emphasizes that the earlier developed doctrine is fully applicable to the new §241 BGB. Thus, the additional duties that have been singled out as a separate rule need to be considered in the context of the common matter, the system of good faith. This conclusion is important for those legal systems that have adopted additional obligations in their legislation outside the framework of rules on the principle of good faith.

The separation of pre-contractual liability in anindependentrulealso does not mean its separation from the principle of good faith and their separate application. First, the disposition of the rule of §311 BGB itself refers to §241 BGB, which is very closely related and is a continuation of §242 BGB. Second, the hypothesis of rule §311 BGB is open, which means that the legislator's goal is not to regulate certain specific relations, but rather to show the legal goal that should be achieved through legal regulation. Third, the institution of *culpa in contrahendo* has developed and acquired significance as a kind of legal tool in the hands of the principle of good faith. It has thus become valuable and should, therefore, be applied in practice within the framework of the doctrine and system of the principle of good faith.This should be understood by legal systems which, because of the popularity and success of the rules on pre-contractual liability, include the relevant rules in their legislation. The application of the rules on pre-contractual liability outside the context of the principle of good faith would not realizethe potentialof the principle or would entail a completely different legal result for which this institution was introduced into national law.

The majority of new rules wereincluded in the text of the law regarding the corrective function of the principle of good faith. During the reform of the law of obligations, thefollowing legal institutions were included in the text of the BGB: the early termination of continuing obligation for a compelling reason (§ 314 BGB),the disappearance of the basis of the transaction (§ 313 BGB), as well as some cases of impossibility of performance ofan obligation (§ 275 BGB).

The results of the research prove that all three rules (§§275, 313, 314 BGB) are based on the criterion of inadmissibility of further maintaining the obligation under the same conditionswithout any substantial changes. In turn, unacceptability is one of the constituent parts of the content of the principle of good faith. When the law establishes the fact of unacceptability, it states that the principle of *pactasundservanda*is no longer so immutable and must be ignoredina situation when the law considers it more important to protect the rights and interests

of the party for which the further performance of its duties becomes unacceptable. All three rules are intended to fulfillthe function of the principle of good faith in the correction of the legal relationship in a situation when compliance with formal rulesconflicts with the fact that the law cannot permit those legal effects,which follow from the application of such formal rules. The fact that these three rules are interrelated and do not have a clear distinction is a consequence of the overall uniform approach developed within the framework of the principle of good faith. The proximity and mixing of these three rules confirm that they are still nothing more but the implementation of the principle of good faith and should be applied within itssubstance, system, and doctrine.

Thus, all the new rules enshrined in the text of the law and developed from the principle of good faith, which materialize it, are not self-sufficient regulatory rules.These rulesare open rules, based on the evaluation factor, and require consideration of specific circumstances. They cannot be considered autonomously, apart from the principle of good faith. Although these rules are enshrined in the law separately, they are still expressions of legal ideas based on the principle of good faith. The principle of good faith is a legal category that differs from the categories of the usual formal system. Formal law (integral, complete rules) does not cope with the task of establishing correct, fair regulation as a matter of law. Therefore, the principle of good faith has emerged in parallel. And the rules, although included in the text of the law, which are a part of the principle of good faith, do not become rules of positive law in the usual, familiar sense. They continue to be part of this new legal substance of the principle of good faith.

The second chapter **"The principle of good faith in other national legal orders and actsofinternational unification"** is devoted to a comparative legal study of the development and status of the principle of good faith in continental European legal orders, as well as in private law acts of international unification.

The first paragraph, "**The principle of good faith in other national legal orders"**, analyzes certain continental European legal orders.

The study showed that French law, which had traditionally distanced itself from the principle of good faith in practice and had not recognized this principle, has recently turned its face to it. Some issues in France were resolved in practice through the principle of good faith, similar to German law, while some issues were resolved without reference to that principle, but the French approach coincided with the German approach both in content and consequences. Certain lines that French law had not previously recognized, were then compulsorily introduced into the legal system during the recent reform of civil law. As a result, French law generally followed substantively and systematically the lines of both German law and acts of unification.

Initially,Austrian law, like French law, reluctantly applied the doctrine of the principle of good faith. Many issues that under German law were resolved through *Treu und Glauben*in Austrian law were resolved through other legal means, for example, by applying by analogy approaches from other rules, but which allowed a meaningful different view of formal law, in cases where the legal consequences of formal enforcement did not correspond to the spirit of legal regulation. As in French law, the doctrine of a tacit waiver was invoked in some cases. Just as in France, the reason and motivation for seeking "different" legal solutions than those that follow from formal rules was the need to correct formal law enforcement if its legal consequences were inadequate. These reasons and motives are similar to the reasons for applying the principle of good faith in Germany. Indeed,under the influence of German law, the very principle of good faith has, since the beginning of the last century, become increasingly important in Austria, both in doctrine and in practice.

In Italian law, trends in the development of the principle of good faith coincide with those in French and Austrian law. Some issues from the traditional scope of the principle of good faith in German law are dealt with under different legal approaches, although the causes, motives, and desired results coincide with those of German law.The very principle of good faith under the influence of German law and its penetration into other legal systems is becoming more and more developed in Italy.

The experience of Swiss and Turkish law was interesting because the need for doctrine as an important tool for law enforcement and regulation was already reflected in legislation. This role of legal doctrine is particularly important and necessary in dealing with the substance of the principle of good faith.

What is common to all countries where the principle of good faith was not inherently determinative and developed is that their legal order nevertheless sought solutions for individual cases, where formal enforcement required correctness due to discrepancy in specific situations between the letter of the law and its spirit. The solution in such situations was the formation of separate legal approaches, for example, the doctrine of tacit waiver. In other cases, similar approaches were applied for a more equitable regulation of other legal situations. Many issues did not have their solutions, which led to the development of ideas and approaches based on the principle of good faithin these legal systems, as it was the case in German law.

An analysis of the experience of the implementation of the principle of good faith in European legal orders has shown that in each of them there are legal mechanisms and institutions which were developed to correct and prevent the situation of the contradiction of positive strict law to the goals of legal regulation in specific legal relations. Not in all legal orders, this is achieved only through establishing a general rule on the principle of good faith and rules

developed under this principle.In some cases, similar results are achieved throughother well-developed independent legal institutions.But all legal systems, including those that have not traditionally recognized and/or developed the principle of good faith, have recently recognized the necessity and effectiveness of this principle. German law in this trend has reached a dominant position, and the German principle of good faith (*Treu und Glauben*) is even called the «style-forming element»[16]. This is due to the broad development of the principle of good faith in German law and its impact both on the other legal orders and on the content of certain acts of international unification. The role of the German legal experience in the development of the principle of good faith in continental European legal orders is also confirmed in the Russian legal literature[17]. In addition to German law, there is also Swiss and Dutch law, where the principle of good faith plays an essential role and is a general legal principle not only declaratory but also from a practical standpoint. About Dutch law, it was interesting that the recent reform had turned from the traditional French model of limited acceptance of the principle of good faith to the German model. The Swiss experience is interesting not only because the principle of good faith played a key role in it from the very beginning of the Swiss Civil Code, but also because of the following reception of the Swiss Civil Code by Turkish law, which previously had completely different cultural and social traditions.

The analysis has shown that not all legal systems solve the problem of discrepancy between the letter and the spirit of the law only through establishing a general rule on the principle of good faith together with rules developed based on this principle. But those issues and problems that are not covered by existing national approaches start to resolve now through recognition and appropriate application of the principle of good faith.

The second paragraph **"The principle of good faith in acts of international unification"** examines how the principle of good faith is perceived in international private law acts of unification. The following documents were considered: the UN Convention "On Contracts for the International Sale of Goods", Principles of International Commercial Contracts (*UNIDROIT Principles*), Principles of European Contract Law (*PECL*), Model Rules of European Private Law (*Principles, Definitions, and Model Rules of European Private Law. Draft Common Frame of Reference – DCFR*), Common European Sales Law (*CESL*).

The successful development of the principle of good faith in German law, as well as in other legal orders, recognition of its invaluable role for legal regulation was reflected in acts of

[16]*Looschelders / Olzen //* Staudinger. § 242. Rn. 1223.
[17]*Shirvindt A.M.* The principle of good faith in the Civil Code of the Russian Federation and comparative law // Aequumius. From friends and colleagues to 50th anniversary of ProfessorD.V. Dozhdev.ed.-in-chief A.M. Shirvindt. M., 2014.S. 216.*Dozhdev D.V.* The principle of good faith in civil law. Chapter 12. In the book: Principle of formal equality and mutual recognition of the right. Collective monograph. / under general editorship ofV.V. Lapaeva, A.V. Polyakova, V.V. Denisenko. M., 2016. P. 148.

international unification. While the UN Convention "On Contracts for the International Sale of Goods" contained only rudiments of the principles of good faith, in later acts this principle has already become a self-evident general principle, being disclosed both in general rules and in special provisions on separate rules or legal institutions previously developed under the principle of good faith. On the whole, however, international instruments systematically and substantively reflect the German trends in the development of the principle of good faith.

The study showed that international acts and official commentaries thereto confirm the approach that good faith is a general principle not only because it is enshrined in the general rule as a general standard. Also,the principle of good faith is a substance that runsthrough and is embedded in legal regulation. Each legal rule should be considered in the context of the principle of good faith. The relation of the principle of good faith to legal regulation reveals the main content, purpose, and essence of this principle, which is the need to correct formal regulation in cases where the letter of the law is inconsistent with its spirit. Also, the analysis of international acts confirmed the conclusion that certain rules and regulations previously developed based on the principle of good faith are special examples of its implementation. They are not independent but constitute the principle's implementation as part of a system of the principle of good faith.

The third chapter of the dissertation**"Internal system and the normative content of the principle of good faith"** is devoted to the study and disclosure of the content of the internal system and the normative content of the principle of good faith.

The first paragraph **"Internal system of the principle of good faith**" examines the system of the principle and the content of the principle. A century of intensive development of the principle of good faith through jurisprudence, the theoretical understanding and systematization of the relevant issues carried out in the national legal orders, and in acts of international unification, made it possible to define adequately the internal system of the principle of good faith. The dissertation argues that the application of the principle of good faith and the rules and legal institutions related to it should be considered based on an internal system ofcertain practice-oriented functions of the principle of good faith: concretizing, complementary, restrictive, and corrective. Consideration of that system is the most accurate way of revealing the peculiarities of the meaningful interference of the principle of good faith in the legal regulation of civil legal relations. This systematic approach is reflected in the rules of Russian civil law.A proper understanding of the system of the principle of good faith should serve not only to facilitate the application of the principle in practice but also, no less important, to ensure legal certainty and stability, as well as predictability of the regulation of legal relations. Systematization is the methodological tool that helps to navigate in this difficult matter when making and justifying evaluation decisions. The functional domains of application, as a starting

point, direct to a particular group of homogeneous, similar legal relationships that require the intervention of the principle of good faith. Based on the approaches applied to a particular group, it is easier to understand a specific situation and find a reasonable solution for a particular dispute. The system may be understood through disclosure of the functions of the principle of good faith.

The purpose of the concretizing function is to specify the rights and obligations of participants in a legal relationship by defining how and in what way the rights and obligations of the parties to a legal relationship are to be exercised in a particular situation, based not only on the text, i.e. the letter of the relevant law, but also on its spirit. The determination of the content of rights and obligations should be based on the consideration and weighing of the rights and interests of both parties in a given situation. In other words, the specification is casuistic and cannot be determined by any external, objective standards, often referred to as a standard of good-faith behavior.

The purpose of the complementary function of the principle of good faith is also to determine the behavior of the parties to the legal relationship by how it should be determined according to the spirit of the law and legal regulation in a particular situation. The law, under the principle of good faith, cannot leave the parties to a legal relationship alone with the text, i.e. the letter of a rule of objective law applicable to given relationship. The principle of good faith here suggests that it is not always possible to be guided only by the literal text of the rules, it is necessary to look deeper, to see how, in a particular situation, the law, based on factual circumstances, should have regulated the relationship between the parties. The letter of the law cannot always fully express the content of the parties' behavior that follows from the literal reading of the text of the rule. To define that content more precisely, including those obligations which were not expressly stipulated in the text of the rule, the spirit of the law should also be examined, namely what the law would prescribe, having known all the factual circumstances of the particular situation. As with the concretizing function, the subsidiary tool here is the general obligation to take into account the rights and interests of the other party. For that reason, the additional obligations have to be defined, by taking into account,firstly, the rights and interests of the parties and, secondly, the factual circumstances of a particular situation.Therefore, it is also not possible to impose on the parties any additional obligations based on some external standard of good-faith behavior without taking into account mutual rights and interests and factual circumstances.

Through implementing a restrictive function, due to the principle of good faith, the scope of behavioral powers may be limited. This distinguishes the restrictive function from the concretizing and complementary functions, in which there is a question of determining the

content of the behavior of parties toa certain legal relationship. In other words, it is not a question of the existence of certain subjective rights and their content, but rather of the limitations of the subjective rights under formal rules.Whilethrough concretizing and complementary functions the is a kind of extension of the scope of rights and obligations, in comparison with the way they are established in formal rules, then here the vector is reversed. Exercise of existing rights may be limited. The reason for this limitation is the principle of good faith, which is intended to prevent situations of an unacceptable discrepancy between the letter of the law and its spirit in specific situations. As in the case of concretizing and complementary functions, only mutual, joint consideration, and weighing of the rights and interests of both parties to a legal relationship can serve as a basis for intervention. In doing so, the rights and interests of the parties to be taken into account and protected must be considered and determined in the light of and the context of the factual circumstances of a particular situation. Thus, it is also not possible to impose on a party an eventual obligation from the so-called external standard of good-faith behavior and further punish that person by limiting its subjective rights only because its behavior allegedly differed from some objective standards of good behavior.The key issue here, as with concretizing and complementary functions, is the protection of the rights and interests of the other party. If this other party does not suffer abnormally, atypically, i.e. in a way that goes beyond the normal consequence of exercising by a party of its formal subjective right, then the principle of good faith should not interfere, since there is no discrepancy between the letter and the spirit of the law.

When implementing the corrective function due to the principle of good faith, as well as when implementing the restrictive function, the subjective right of the party to the legal relationship may be limited. Such a limitation is permissible if the exercise of a formally available subjective right by the entitled party is, as a matter of law, not acceptable to the other party. The difference from the restrictive function is that the reason for limiting subjective right is not on the entitled party, but on the «suffering» party, or is caused by external circumstances. The reason for the intervention of the principle of good faith is the unacceptability of the continuation of the original legal relations for the «suffering» party, although formally the other party is entitled to demand such continuation. As a matter of law, such inadmissibility of the debtor’s continuing obligation should not be allowed. Therefore, the exercise of the creditor’s formal subjective right, based on *pactasundservanda*, should be limited. In all other respects, the conclusions drawn about the restrictive function are also relevant to the corrective function of the principle of good faith.

The second paragraph "**Normative content of the principle of good faith**" examines the regulatory content of the principle of good faith and its relationto other rules and legal principles.

The abstract, multidimensional nature of the legal substance of the principle of good faith does not allow us to say that it directly contains any specific, definite regulatory rules or objective, i.e., external standards of good behavior, called good-faith behavior. Whenconsidering the content of the principle of good faith, it should be more about how it affects legal regulation, as well as how this principle participates in it.

The principle of good faith is characterized and defined as a general clause and an evaluation concept. Based on this quality, it has no specific, precise content. Its distinctive feature is an abstraction. The abstractness of the content of the principle of good faith requires that it must be concretized for each case. Abstraction and the need for concretization make the process of legal regulation and law enforcement more complicated, which is a disadvantage of the principle of good faith. But the other side of the principle's abstract nature, i.e. the lack of clear content, is its advantage, as the principle is the tool for solving certain difficult tasks. These tasks include the adaptation of legal regulation based on the application of objective law, first, to changes in social values upheld in society, and second, to the specifics of certain factual situations. The implementation of these tasks determines the direction in which the content of the principle of good faith should be definedin a particular situation.

There are two main systems of legal regulation, individual and regulatory, and the latter has, in addition to advantages, certain disadvantages over the former. Thus, a regulatory system reduces the possibilities of individual resolutionof certain cases by taking into account the specific legal and factual circumstances of the case. Existing in continental legal systems, general clauses, evaluation concepts, and in this series the principle of good faith, allow the regulation to take into account and assess a particular situation when it falls outside the category of normal or typical, and, as a result, achieve an equitable legal result. In this sense, the principle of good faith, on the one hand, is part of the system of legal regulation and is of a general nature, it is not the rule for a specific, individual case, and is intended to participate in the regulation of a large, unlimited number of legal relations. On the other hand, its task is to correct or remedy the shortcomings of the regulatory system by applying elements of individual regulation in specific cases.

The principle of good faith is included in the text of the law as a rule that stipulates obligations to act in good faith, namely, to take into account the rights and interests of the other party. But it is not the usual rule. The abstract nature of the rule on the principle of good faith determines its difference from "ordinary" rules. The usual rules are considered to be norm-rules, i.e. having direct regulatory significance. The principle of good faith as a norm-rule has a two-level content.On the one hand, these rulesstipulate generally binding standards for an unlimited number of persons in the form of either a prescription, a prohibition, or a permit (first level). On

the other hand, these rules themselves, due to their lack of specificity, do not have definite content but require such an integral, legally relevant element as concretization (second level). The rules on the obligation to take into account the rights and interests of the other party in their passive state contain simultaneously all three types of rules: prescription, prohibition, and authorization. Which of these three rules becomes active depends on the specific situation and the concreteness of the duty. The so-called standard of good-faith behavior cannot constitute the content of the principle of good faith. The concept of the term "standard" means that such a standard implies standardized rules of behavior that are common to a large number of persons. Such rules of behavior, however, have specific content, specific rights, and obligations as accepted rules of social behavior. Based on this, the standard of behavior does not include what is abstract and can be specified only in an individual case, in other words, what is individual rather than standardized. The so-called standard of good-faith behavior is often equated with the obligation to take into account the rights and interests of another person. But such an obligationdoes not in itself, have clear content, is not specific, and does not imply a certain standard of conduct expected of any person. The abstract nature of the principle of good faith and the need to make it more specific for each case of law enforcement prevents the identification of this principle with the so-called standards of good-faith behavior.

The principle of good faith in civil law can be regarded as both as a norm-rule and as a norm-principle. As a legal phenomenon, it has a dual essence. On the one hand, it may beconsidered a norm-rule. On the other hand, it is considered as a legal principle, as the main principle in law. A rule and a principle may coincide in the same legal rule, but each has a role to play.

The principle of good faith, as a legal principle, may result in the application of a particular rule in a particular situation. This involves interfering with positive regulation by concretizing, complementing, restricting, or correcting it. Further reasoning is needed to justify this interference. In this regard, concerning the principle of good faith, it is particularly important to have a well-developed applied doctrine that would provide practical justification, simplify the application of the principle of good faith in the choice of a particular rule within the framework of the necessary adjustment of the applicable positive law.

The basic legal idea, which is laid down in the principle of good faith, is an expression of the necessity of ensuring the "correct" law. Suchlaw implies coincidence of the letter of the positive law coincides with the spirit of the law in a particular case of law enforcement. Since the result of law enforcement, even in the absence of the principle of good faith, must be meaningfully based on the unity of the letter and spirit of the law, the principle of good faith itself is in some way declarative, as opposed to other legal principles. The principle should

remind once more of the necessity to ensure the "correct" right in specific situations. But in practice, the seeming declarative nature does not prevent the principle of good faith from de facto fulfilling the most important function of ensuring the internal unity of law ("correctness" of law). At the same time, the principle of good faith affects the internal unity of the law not only at the level of law enforcement but also in the law-making process since many rules derived from the principle of good faith are adopted as positive law rules The principle of good faith, as the basic legal or regulatory principle which is aimed at establishing and implementing the content of the spirit of the law, has also a certain stimulating, educational value as a guideline and rule of proper social behavior.

The principle of good faith is intended to ensure justice in law enforcement.But here we talk about justice, as it was prescribed or implied by law and values generally accepted in society and supported by law, and not about justice, subjectively understood by a particular person and a particular judge. Thus, we are talking about justice, which is the content of the spirit of the law. At the same time, the"spirit of the law" in the dissertation is defined as the necessity to ensure that legal regulation of public relations will be based on the socially justified and socially approved behavior of the participants in legal relations towards each other, based on common sense and values that are relevant for a given historical period, and which could be expressed by the will of the legislator as a normative rule of the law.

The fourth chapter **"The principle of good faith and Russian law"** is devoted to the study of the development of the principle of good faith in Soviet and Russian law, as well as problems arising in theory and practice in the current period.

The first paragraph **"Historical aspects and the current stage"** analyzes the periods of development of the principle of good faith starting with the preparation of the draft of the Civil Code of the Russian Empire and up to the present time.

The first period of the introduction of the principle of good faith into Russian law was characterized by its inclusion in the draft Civil Code of the Russian Empire and the discussions around it among Russian legal scholars. This stage was influencedby German legal sources, which at that time paidmuch attention to the principle of good faith. Domestic lawyers faced similar issues and problems, which recently were discussed and resolved in German law. The Russian law presented the approach of German scholarson social values to be taken into account in the law enforcement. It was this approach that provided the theoretical basis for the subsequent development of the principle of good faith in German law, as well as in other national legal systems.

After the change of power in Russia in October 1917, the social, economic, and political life of the country became subordinate to the communist ideology. Previously existing in pre-

revolutionary Russia social values were replaced by values that formed the basis of the new ideology. In the conditions of subordination of all elements of social life to this ideology, legal regulation could not but be oriented and reflect ideological principles.As a result, in Russia after 1917, especially during the first periods of the establishment of the new government, the content of the spirit of the law was filled with ideological prescriptions. At the same time, the new civil legislation was generally based on the draft of the Russian civil code. That is, if the letter of the law was not changed much, then the priority spirit of the law has acquired a new, different content. As a result, without special efforts in the revision of the texts of laws in Soviet Russia, the country received qualitatively different civil law in a short time. Subsequently, German law followed a similar route after the National Socialists had come to power.

The study also showed that despite the politicization and ideologization of law and the planned economy in the Soviet period, at the theoretical level, Soviet civil scientists considered certain issues of the need to adjust the rules of formal law to specific circumstances to bring them in line with the goals of the general, non-political, legal regulation. But it cannot be said that the Soviet law has developed a doctrinal framework for the application of the principle of good faith or the legal approaches that form the current content of the principle.

At the present stage, the current Russian civil legislation (Article 1 (3,4), Article 6 (2), Article 10, Article 53 (2,3), Article 62 (4), Article 65.2 (4), Article 157 (3), Article 166 (2,5), Article 179 (2), Article 220, Article 307 (3), Article 431.1, Article 432 (3), Article 434.1, Article 450 (4), Article 450 (4, 5, 6), Article 451, etc.) contains rules that generally reflect the system of the principle of good faith in German law, acts of international unification. These rules should be understood, interpreted, given content, and applied based on that system that is classified according to the functional principle (concretizing, complementary, restrictive, and corrective functions). It should be emphasized separately that the system of the principle of good faith is not limited to the above-mentioned rules of the Civil Code of the Russian Federation. The very substance of the principle itself is much broader, and this should not be forgotten. Doctrine, of course, shall play an important role here. In German law, until recently, namely, before the reform of the law of obligations in 2002, the whole system of the principle of good faith including all modern legal institutions, rules, approaches, was formally based, in fact, on a single rule of § 242 BGB. The theory and court practice has served and now serve as the real basis for the principle. One of the main problems of Russian law is the lack of a relevant and, above all, applied doctrine devoted to the principle of good faith and the rules and legal institutions related to it and developed from it.

The second paragraph **"Problems of the theory and practice of the principle of good faith in Russian law"** is devoted to the identification and analysis of problems related to the understanding and application of the principle of good faith in theory and practice.

The study demonstrates how the principle of good faith can be limited, reduced only to deliberate abuse of the right, in case of following only the formal wording of the Article 10 of the Civil Code of the Russian Federation. According to this approach, as it follows from Article 10 of the Civil Code of the Russian Federation, subjective rights may only be restricted if they are exercised in bad faith. But at the same time, there is a whole layer of relationships, in which the guilt of a particular participant does not play a fundamental role. The dissertation substantiates that the principle of good faith is not only a means of punishing the guilty party and is not limited to cases of deliberate abuse of right. The principle of good faith has a broader content and purpose,and should also intervene in situations where factors unrelated to the subjective side create a significant imbalance between the parties to the legal relationship, or the performance of its duties becomes unacceptable to one of the parties for personal reasons.

The legal ideas emphasized in Article 307 (3) of the Civil Code of the Russian Federation, are of paramount importance for the entire civil law turnover, first of all, mediated by obligations. The duties of the parties to the obligation to take into account each other's rights and legitimate interests in the establishment, performance, and upon the termination of the obligation, and to provide mutual assistance necessary for the achievement of the purpose of the obligation, are the basic starting point, which provides the legal basis for the necessary interference of the principle of good faith in positive regulation by concretizing, complementing, restricting or correcting rights and obligations. The results of the study have shown that the complementary function of the principle of good faith, which relates toalmost every legal relationship, is not fully realized in Russian law. The above analysis of the theoretical and practical problems arising in the sphere of the complementary function of the principle of good faith in Russian law shows the need for a systematic approach to the legal substance of the principle of good faith. It seems that the absence of such an approachis due not least to the lack of relevant doctrine, without which it is difficult to understand the theoretical and practical aspects of the principle of good faith. For example, the obvious interrelated rules and legal ideas in it may be overlooked. Thus, the rule of Article 434.1 of the Civil Code of the Russian Federation on pre-contractual liability is often considered outside the context of Article 307 (3) of the Civil Code of the Russian Federation. Although the main idea of Article 434.1 of the Civil Code of the Russian Federation should be foundprecisely through Article 307 (3) of the Civil Code of the Russian Federation. As a result, the main part of relations to be regulated by Article 434.1 of the Civil Code of the Russian Federation fall out of the scope of this

Article.Consideration of Article 434.1 of the Civil Code of the Russian Federation in isolation from Article 307 (3) of the Civil Code of the Russian Federation leads to controversial conclusions about the tortious nature of pre-contractual liability. The lack of a systematic approach and relevant doctrine has led to the erroneous opinion that additional obligations arising after the termination of the obligation have no connection with it due to its termination. This leaves aside the approach that such additional duties are deemed to arise at the time of the existence of the obligation itself, but by their very nature continue to exist after the performance of the primary duties[18]. Also, the very content of additional obligations, understanding of their purpose and place in the system of legal regulation of legal relations is not sufficiently reflected either in theory or in practice, which directly affects the insufficiency of law enforcement to the additional obligations of the parties to the legal relationship.

When the complementary function is not fully realized due to the lack of theoretical research and, as a result, the lack of a systematic approach, the situation with the restrictive function is somewhat different. The main problem here is a lack of understanding of the goals and objectives of the principle of good faith in the sphere of this function. The theoretical and practical content comes from the textual wordings of the so-called rules-estoppels, only from the fact of the contradictory behavior of the party to the legal relationship. This ignores the principle of autonomy of the will of the parties, which allows a person to change their views, opinions, behavior. It does not take into account whether and to what extent the other partyto the legal relationship has suffered. That leads to a situation where the potential of the principle of good faith in the light of its restrictive function is not realized, and also many essential principles and institutions of civil law suffer (the exercise of the right at one's discretion and in one's interest, the time period of limitation of actions, and the invalidity of transactions).

The analysis of theoretical and practical approaches, in particular,the example of Article 451 of the Civil Code of the Russian Federation, demonstrates how Russian law, based only on the formal criterion of foreseeability,almost blocked the path to such an important consequence of the principle of good faith for civil law as the theory of substantial change in circumstances. The inadequacy of doctrine, the non-systematic approach to this institution, and, as a result, the consequent exaggeration of the meaning of the wording of the rule are one of the reasons why the corrective function of the principle of good faith, expressed in particular in the theory of substantial change of circumstances, does not work in Russian law.

In Russian law, it is a common misconception that the requirements of good-faith behavior, as it follows from Article 1 (3) of the Civil Code of the Russian Federation, as well as other rules, are themselves regulatory rules that lead to the restriction of the party’s rights only

[18]*Nam K.V.* The principle of good faith. System and Nonsystem. // Civil Law Review. 2019. № 1. P. 48.

on the ground that its conduct did not meet the requirements of good faith. In private and civil law, first of all, it is impossible to restrict the rights of one party to a legal relationship, if the rights and interests of the other party are not violated. Secondly, such an erroneous approach would destroy fundamental foundations of civil law such as the principle of autonomy of will, the institutions of invalidity of the transaction or the time period of limitation of actions, etc. Third, a direct imposition on each subject of civil turnover of the duty to act in good faith, as it follows from Article 1 (3) of the Civil Code of the Russian Federation, regardless of the content and respect for the rights and interests of each party to a relationship goes beyond the scope of civil rights and is in the sphere of public law. Such interference in private legal relations is not justified by the interests of civil law turnover or other public interests.

It is also a common misconception that the principle of good faith is often limited to some external objective standards of good behavior, determined either based on the characteristics of an average, honest person, or as a minimum threshold or, conversely, the maximum level of requirements to human behavior. The dissertation proves that this approach is erroneous. It is argued that it is impossible to formulate the external standards of "good-faith behavior" that could equally be applied to each specific situation or a large number of cases. Objective law rules are standard requirements. The circumstances of an individual dispute do not always allow them to be resolved using standardized templates. And the role of the principle of good faith is to depart from standards when necessary, rather than to create another standard.

It should, therefore, be noted that, on the one hand, Russian law, in keeping with modern legal trends, has embraced not only the principle of good faith itself but also many legal institutions based on it. On the other hand, it is concluded that the mere inclusion of the relevant rules in the text of the law is not sufficient for proper and correct enforcement, since the wording of the rules is often not very satisfactory. To realize the potential of these rules, which have been developed in foreign legal systems, for their correct understanding and application, it is necessary to carry out a relevant doctrinal study, that would be based on comparative legal analysis. This will allow for revealing the essence, content, and system of the principle of good faith and the rules based on it. Rules and regulations derived from the principle of good faith continue to be part of it and should be considered in its context and system. Otherwise, the content of the relevant rule is lost and its purpose is not achieved.

Consideration of the specificity of the legal relationship should be part of a systemic approach to understanding and applying the principle of good faith in practice. In law, as in medicine, where effective treatment depends directly on the correct diagnosis, the correct resolution of a legal problem depends to a large extent on how well the issues to be resolved

have been identified. The principle of good faith, as an integral part of legal regulation, requires taking into account the specifics of the relevant legal relations in the application of that principle.

The**Conclusion**summarizes the results of the research and contains the author's theoretical conclusions.

The principle of good faith as a legal category is completely different from traditional legal institutions and rules. The general purpose of the principle of good faith in law enforcement is to ensure that implementation of legal regulation shall be based on the unity of the letter and spirit of the law so that formal positive rules in specific situations do not diverge from the goals of legal regulation. At the same time, the principle of good faith in such situations is intended to meaningfully determine the goals of legal regulation. In this sense, the principle of good faith can be characterized as a means of legal materialization of the spirit of the law in certain cases of law enforcement.

The achievement of the goals of legal regulation concerning the principle of good faith is important in the sense that a set of written legal rules, however casuistic and numerous, cannot cover all the variety of real situations. But since the diversity of legal relations is significantit is impossible to propose the one principle of good faith as a prepared legal tool for each specific situation. The initial level of abstraction of the principle of good faith is such that its content is much easier to sense and understand without relying on some universal wording. Therefore, the mere introductionof references to the principle of good faith in the text of the Civil Code of the Russian Federation shall not lead to its automaticapplication, as the legislator who has adopted the relevant rules would have wished. The peculiarity of the legal substance of the principle of good faith is such that its practical application in certain cases requires a practice-oriented, applied doctrine based not only on theoretical grounds but also on the analysis and compilation of court practice. It is not the wording of the text of the laws on the principle of good faith or the rules based on it, per se, but the doctrine should constitute the content of the principle for each particular situation.Such doctrinal developments should become a priority in studies of the principle of good faith in Russian legal science.

The main findings and conclusions of the dissertation were reflected in the monograph and articles published in journals, includedin the list of peer-reviewed scientific journals recommended by the dissertation council of the National Research University Higher School of Economics:

The monograph:

1. The principle of good faith: development, system, problems of theory, and practice. M. Statute. 2019.

Articles

2. A substantial change of circumstances and gift Contract. // The Herald of Commercial Justice of Russia.2020. № 6.
3. Estoppel in the context of good faith principle. // The Law Journal. 2020. № 4.
4. Good faith principle as a legal principle. // The Herald of Commercial Justice of Russia. 2020. № 2.
5. Principle of good faith as rule. // The Herald of Commercial Justice of Russia. 2020. № 1.
6. Article 451 of the Civil Code of the Russian Federation and the doctrine of a substantial change of circumstances.// Civil Law Review. 2019. № 6.
7. Absence of intellectual property rights or when can the good faith principle help? // The Herald of Commercial Justice of Russia. 2019. № 6.
8. The principle of good faith. System and Nonsystem. // Civil Law Review.2019. №1.
9. Routine pre-contractual liability and contracts with protective effect for third parties.// The Herald of Commercial Justice of Russia. 2018. № 2.
10. Development of the good faith principle. Modern stage. Internal systematics. // The Herald of Commercial Justice of Russia. 2018. № 7.
11. History of the good faith principle in Germany from 1900 till 1945 // The Herald of Commercial Justice of Russia. 2018. № 6.
12. History of the principle of good faith (Treu und Glauben) before the adoption of the German Civil Code. // Lex Russica. 2018. № 5.
13. The principle of good faith: some problems of the doctrine's development // Civil Law Review. 2017. № 6.
14. Case concerning late filing for recovery of overpaid fees: the decision of the Supreme Court of Germany of 23.01.2014. // The Herald of Commercial Justice of Russia. 2018. № 4.
15. Impossibility to perform an obligation in German civil law // Civil Law Review. 2017. № 4.
16. Failure to perform for which both parties to an obligation are liable under German law of obligations. / Collection of articles on German law in Russian dedicated to the 30th anniversary of the German-Russian Bar Association. Issue 3. 2018.13.
17. The primary stages of the development of the principle of good faith (Treu und Glauben). / Collection of articles for the 100th anniversary of the birth of B.L. Haskelberg. M. 2018.

18. Abuse of law and the principle of good faith or contradictory behavior is not always estoppel. // Economic justice of the Far East. 2019. №3.