

SPECIFIC CONSIDERATIONS IN THE INTERPRETATION OF CONTRACTS

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Abstract: *The interpretation of contracts represents a core aspect of private law, impacting how contractual obligations are understood and enforced. This paper examines the interpretation of contracts within the framework of Romanian law, as outlined in the Romanian Civil Code. A comparative analysis is provided, contrasting Romanian principles with European Union law and the Anglo-Saxon approach, particularly as seen in the legal systems of the United Kingdom and the United States. This will help elucidate both the similarities and differences in contractual interpretation across these jurisdictions, with a focus on the legal terminology and doctrines that underpin these systems.*

Key words: *interpretation, concordant will of the parties, systematic interpretation, interpretation of doubtful clauses*

1. Introduction

The interpretation of a contract is a complex operation that involves identifying and applying specific rules to determine the concordant will/intent of the parties, by employing systematic rules of interpretation, so that the contract may produce the legal effects anticipated by the parties at the time of its conclusion.

Thus, the interpretation of contracts is a key element in ensuring that agreements are enforceable and that the intentions of the contracting parties are upheld. Under Romanian law, particularly within the framework of the Romanian Civil Code, contract interpretation revolves around principles such as good faith, common intention, and favor *validitatis*. This project will provide a detailed analysis of the legal rules governing contract interpretation, using doctrinal analysis, case law, and comparative studies.

2. Legal Framework: Key Provisions of the Romanian Civil Code

The primary articles governing the interpretation of contracts under the Romanian Civil Code are Articles 1266 to 1269, which lay down the following principles:

Regarding the primacy of common intention, Article 1266 emphasizes that the primary goal of contract interpretation is to determine the common intention of the parties, which takes precedence over the literal wording of the contract. For example, a Romanian court,

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faced with a dispute over the vague term "adequate delivery time", will prioritize the intention that both parties had during the formation of the contract, including correspondence or negotiation history. In this regard, Article 1266 of the Romanian Civil Code stipulates that contracts shall be interpreted according to the concordant will of the parties and not according to the literal meaning of the terms. In determining the will of the parties, regard shall be had, *inter alia*, to the purpose of the contract, the negotiations between the parties, their established practices and their conduct after the conclusion of the contract.

Therefore, the Romanian legal system primarily adopts a literal approach to contract interpretation. In accordance with the aforementioned legal text, the terms of a contract should be understood in their plain, ordinary meaning unless a different interpretation is clearly intended. This approach emphasizes the importance of the actual wording of the contract.

This principle ensures that contracts are interpreted based on the actual wording used by the parties, thus providing certainty and predictability. Courts will look to the language of the contract itself before turning to external evidence, applying what is known as the plain meaning rule. Courts typically refrain from deviating from the literal text unless ambiguity exists. However, if a term is susceptible to multiple interpretations, Romanian judges are permitted to employ secondary interpretative tools to ascertain the intended meaning.

In cases where a strict literal interpretation would produce an unreasonable or inequitable outcome, Romanian courts may invoke this principle to align the interpretation with the contract's overall purpose. For example, if the literal wording of a term contradicts the obvious business logic or commercial context of the contract, the court will give precedence to the intent.

In the common law system of the United Kingdom, the courts traditionally apply the literal rule, which closely parallels the Romanian Civil Code's approach to literal interpretation. The plain meaning rule holds that contract terms should be interpreted based on their ordinary meaning, without recourse to external evidence unless the language is ambiguous or unclear.

Furthermore, the Romanian Civil Code also introduces systematic interpretation, meaning that each clause must be read in the context of the entire contract. Clauses are to be interpreted by reference to each other, giving each clause the meaning which follows from the contract as a whole (Article 1267). This prevents contradictory interpretations and ensures consistency. Example: If a financial clause contradicts a penalty provision, the court will analyze both in light of the entire contract, avoiding an isolated reading of individual sections.

When ambiguity exists in a contract, Article 1269 of the Romanian Civil Code favors the debtor, particularly in adhesion contracts, where terms are imposed by one party on another. This principle serves to protect weaker parties from unfair contract terms. For example, a consumer disputes the terms of a mobile phone service contract. Since the service provider drafted the contract and ambiguity exists, the court will interpret the contract in the consumer's favor, limiting any excessive obligations.

The Romanian Civil Code also allows for the consideration of customary practices and the parties' past conduct in interpreting contracts. Thus, if a contract lacks clarity, Romanian courts may refer to industry practices or customary usage. This is common in specialized industries, such as construction or shipping [e.g. a clause in an international shipping contract might refer to "FOB", (free on board) which has a well-defined meaning in trade that can clarify obligations regarding delivery and risk transfer].

Regarding established practices, paragraph 2 of article 1266 of the Romanian Civil Code also mandates that, in the case of long-term contractual relationships, the past conduct of the parties can inform the interpretation of vague or ambiguous terms (e.g. if a buyer and seller have a history of interpreting "prompt payment" as payment within 30 days, a court would consider this established practice in the interpretation of future contracts).

In cases where multiple interpretations are possible, Romanian law encourages the one that maintains the validity of the contract. The principle of favor *validitatis* reflects the preference for sustaining the contract and avoiding nullification due to minor ambiguities. For example, a contract for the sale of goods might have an unclear payment schedule. Rather than invalidating the entire contract, the court will prefer an interpretation that keeps the agreement enforceable, thus preserving the parties' intentions.

Good faith constitutes a fundamental principle underlying the interpretation of contracts, pursuant to the provisions of Article 1170 of the Romanian Civil Code. Thus, Romanian law requires that both the execution and interpretation of contracts are guided by good faith.

This principle, ensures fairness in contractual dealings and aims to prevent abuse. Courts consider good faith when deciding if one party is exploiting ambiguities in the contract. Good faith serves as a safeguard against opportunistic behavior in contractual relationships, with this principle being aligned with broader European civil law traditions, where fairness and equity are central to contract law.

In practice, Romanian courts may use this principle to set aside overly rigid interpretations that would lead to an unjust result. For instance, in cases where one party attempts to rely on a technicality or ambiguity, courts may (re)interpret the contract to ensure compliance with the equitable expectations established by good faith.

In conclusion, the principle of good faith underlies the interpretation process, requiring that courts and parties seek uphold fairness and honesty in fulfilling contractual obligations.

In contrast, the Anglo-Saxon systems have traditionally been more reluctant to impose broad obligations of good faith, although this is changing, especially in the US under the Uniform Commercial Code (UCC) and in certain areas of English law.

3. Comparative Analysis. Case Law Comparison

The Romanian Civil Code shares similarities with other civil law systems such as the French Civil Code and the German BGB, particularly in prioritizing the common intention of the parties over literal interpretation.

The UNIDROIT principles highlight the importance of good faith and fair dealing in contract interpretation, echoing the Romanian provisions. They also allow for trade usage

and prior conduct to inform interpretation, similar to Articles 1268 and 1269 of the Romanian Civil Code.

Comparative studies of contract interpretation in different jurisdictions often reveal how courts handle ambiguity. For example, French law also prioritizes the parties' common intention and systematically interprets clauses within the entire contract context. In German law, the BGB similarly protects weaker parties in standard-form contracts, aligning with the Romanian favor *debitoris* rule.

Within the European Union, contract law is influenced by both national legal systems and supranational directives and regulations. While the EU has not fully harmonized contract law, there are certain common principles that inform contractual interpretation across member states.

Regarding the principle of good faith (Article 4:108 of the Principles of European Contract Law - PECL), much like Romanian law, the PECL emphasizes good faith and fair dealing. This principle is embedded in both the interpretation and execution of contracts across the EU.

Also, Directive 93/13/EEC on Unfair Terms in Consumer Contracts specifically addresses the interpretation of consumer contracts and mandates that ambiguous terms be interpreted in favor of the consumer. It aligns with the *contra proferentem* rule found in many member states, including Romania.

Applying the principle of uniform interpretation, the European Court of Justice (ECJ) emphasizes uniform interpretation of EU law, meaning that national courts must interpret contracts consistently with EU directives and regulations, where applicable. The ECJ often employs a purposive approach to interpretation, considering the objectives of EU law.

On the other hand, the Anglo-Saxon legal tradition, as represented in the United Kingdom and the United States, differs in several ways from both the Romanian and European models, with a greater emphasis on precedent and commercial pragmatism.

Under common law in the UK, the primary method of interpreting contracts is the literal rule, focusing on the ordinary meaning of the words. The courts give effect to the contract's plain meaning, provided there is no ambiguity.

In the United States, the "parol" evidence rule restricts the introduction of extrinsic evidence to alter or add to the terms of a written contract. This contrasts with the more flexible approach in civil law jurisdictions, including Romania, where intent can be inferred from surrounding circumstances. In conclusion, the "parol" evidence rule restricts the introduction of extrinsic evidence to modify or contradict the terms of a written contract. However, courts may allow external evidence to clarify ambiguities, especially in the context of the parties' intent.

Both UK and US courts recognize the importance of interpreting contracts in a commercially reasonable manner. In the UK, the case of *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] established that courts should consider the context and business sense of contracts. Similarly, the US courts often adopt a pragmatic approach, especially in commercial disputes. Courts may apply a business efficacy test to ensure that contracts are interpreted in a manner that aligns with commercial realities. This allows for flexibility in interpretation when the literal meaning may lead to unreasonable or impractical outcomes.

In contrast, the Anglo-Saxon systems have traditionally been more reluctant to impose broad obligations of good faith, although this is changing, especially in the US under the Uniform Commercial Code (UCC) and in certain areas of English law. In the United States, the Uniform Commercial Code (UCC) allows for more flexible contract interpretation, especially in commercial transactions. The UCC encourages consideration of the parties' intent and circumstances surrounding the contract's formation. A key feature of contract interpretation in the UK is the doctrine of business efficacy, which allows courts to imply terms into a contract when necessary to make the contract work in practice. If the contract would otherwise be ineffective or nonsensical, the courts may interpret the terms in a way that aligns with the underlying business logic of the transaction.

The *contra proferentem* rule is a common thread across the jurisdictions discussed. Both the EU and Romanian law apply this rule in favor of the weaker party, while in the US and UK, it is often applied in commercial contracts where one party has drafted the terms.

Finally, while Romania and the EU allow for a teleological approach, interpreting contracts according to the parties' intent and the purpose of the contract, the Anglo-Saxon tradition, particularly in the UK, tends to adhere more strictly to the literal meaning of contractual terms unless there is clear ambiguity.

4. Practical Application in Drafting Contracts

Contract drafters must focus on clear language and precise terms to prevent future disputes. Ambiguities that could lead to litigation or unfavorable court interpretations should be avoided by defining terms explicitly. For example, if a contract refers to "reasonable efforts", it should specify the timeframe and obligations associated with those efforts to avoid subjective interpretation.

Additionally, including standard clauses on dispute resolution, jurisdiction, and force majeure in compliance with the Romanian Civil Code and international principles can minimize the risk of misinterpretation. For example, a force majeure clause that accounts for specific risks relevant to the industry (natural disasters, labor strikes, etc.) ensures clarity on when the parties are excused from performance.

Regarding the pre-contractual phase, detailed negotiation records should be maintained, as they can serve as evidence of the parties' true intent during contract formation. This is particularly relevant for complex agreements involving multiple parties or international elements.

5. Conclusion

The interpretation of contracts varies significantly across legal systems, reflecting different philosophical foundations and historical developments. Romanian law, rooted in the civil law tradition, balances textual interpretation with considerations of good faith and intent. European Union law introduces supranational principles that emphasize consumer protection and uniformity across member states.

Meanwhile, the Anglo-Saxon tradition prioritizes the plain meaning of contracts, with some flexibility for business pragmatism. Understanding these differences is crucial for

practitioners and scholars alike, particularly in an increasingly globalized legal environment.

Romanian courts actively engage in interpreting contracts, particularly in cases involving disputes. Judges assess not only the language of the contract but also the intent of the parties and the context in which the contract was formed. Romanian case law has illustrated the application of these principles. For example, in cases where a contract is unclear, courts may reference the parties' negotiations or conduct to ascertain their intent.

Courts often face challenges when interpreting ambiguous clauses. The reliance on literal meaning can sometimes lead to outcomes that do not reflect the parties' original intentions. Thus, balancing literal interpretation with a contextual understanding is crucial.

In consumer contracts, the Romanian law requires special consideration of the consumer's perspective. Courts may interpret ambiguous terms in favor of the consumer to ensure fairness and protect weaker parties in contractual relationships.

The Romanian Civil Code's rules on contract interpretation provide a robust framework that balances party autonomy with fairness and good faith.

By focusing on the common intention of the parties, favoring interpretations that uphold the contract's validity, and considering established practices, the Romanian legal system ensures that contracts are both enforceable and equitable. These provisions align with broader European legal traditions, allowing Romania to participate in cross-border contracts with a consistent and predictable legal framework.

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