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THE GOOD FAITH BASED APPROACH AS A LEGALLY ACCEPTABLE INTERVENTION IN FREEDOM OF CONTRACT TO PROTECT CONSUMERS' RIGHTS WHEN BANKS UNILATERALLY CLOSE ACCOUNTS

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ABSTRACT

This article assesses the permissibility of interference in private autonomy under the good faith principle when payment service providers unilaterally terminate contracts with consumers. The protection of the interests of such consumers is impeded by the formal application of legal rules and contractual terms, which ultimately contradicts public interests, including combating money laundering and terrorism financing. To overcome this conflict, the article proposes a doctrinal approach according to which the bank's right to withdraw from the contract unilaterally should be limited by the systemic and teleological interpretation of regulating rules in combination with the general civil principle of good faith, which, by analogy with the original source of the problem, is called a good faith based approach. One of the general frameworks for implementing this approach is respect for freedom of contract, which is limited by the non-discussion presumption, modern civil law

practice, and legal regulation of a consumer's interests. According to research based on EU and Latvian law, legal doctrine, and case law, there are also valid reasons to intervene in private autonomy that should be recognized as legally acceptable for restoring justice and contractual equality in favor of consumers.

KEYWORDS

Good faith, freedom of contract, private autonomy, de-risking, bank account closure, consumers rights

INTRODUCTION

The mass closure of payment accounts, justified by banks[1] based on a so-called risk-based approach,[2] has become a widely discussed problem of civil turnover.[3] Referring to the power of private businesses to determine the composition of their customers independently, payment institutions are able unilaterally to terminate contractual relations with any person without explanation.[4] It goes without saying that the letter of the law gives them such subjective rights. Of course, the condition for the emergence of such powers for payment services providers is their agreement to the contract, which is also signed by the service user. However, in practice, this becomes a kind of legal fiction, since, *de facto*, not a single payment service supplier would deny itself the opportunity to include such power into the framework contract drafted by its own attorneys.

Therefore, the protection of the interests of the client discarded by the bank (including his or her human rights) is stumped by the formal application of legal rules and contractual terms that ultimately act against the public interest, including combating money laundering and terrorism financing. As a result, the European banking sector has perceived and to some extent taken the so-called de-risking policy, which has been intensified at the international level when financial

[1] Within this paper, banks encompass any payment institutions as defined in Art. 1(1) and Art. 4(11) of *Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC* (Official Journal of the European Union, 2015, L 337) transposed to Latvian national law through Art. 1(2) of *Law on Payment Services and Electronic Money of the Republic of Latvia* (Latvijas Vēstnesis, March 17, 2010, No. 43).

[2] While the cause of these actions of banks could originate from a complex combination of factors, herein, money laundering risks clearly prevail. On the whole, overzealous account closure is motivated by a risk-based approach that was introduced by the Financial Action Task Force and included in financial sector regulations for almost all states, including the EU, of which Latvia is a member. In short, it implies anti-money laundering measures and combating the terrorism financing risks to ensure the mitigation of these risks (see, for example, "Guidance for a Risk-Based Approach. The Banking Sector," Financial Action Task Force (October 2014)).

[3] Although the EU authorities have attempted to protect consumers' interests from arbitrary actions of banks, including a directive to guarantee access to payment services via accounts with basic features (*Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features* (Official Journal of the European Union, 2014, L 257)), the human rights of the consumer, who has been rejected by the bank, remain deadlocked in the formal application of the legal rules. This problem is recognized at various levels (for more details see Aleksejs Jelisejevs, "Crucial Issues with Legal Protection of Consumers Human Rights when Banks Unilaterally Close Accounts," *Athens Journal of Law* 7, no. 4 (2021): 618).

[4] This position has also received some support in the case law of foreign courts. For example, according to Her Majesty's High Court of Justice in England, "Like any other private business, Barclays is entitled to choose its customers. Although heavily regulated in the public interest, banks are under no public law duty to make their services available to particular categories of customer" (*Judgment of Her Majesty's High Court of Justice in England of 5 November 2013 in case No HC13E04267 (Dahabshiil Transfer Services Ltd v. Barclays Bank PLC) and in case No. HC13E04616 (Harada Ltd., Berkeley Credit and Guarantee Limited v. Barclays Bank PLC)*, EWHC 3379 (Ch), para. 2)).

institutions terminate or restrict business relationships with clients to avoid rather than manage risks, to the point of absurdity.[5]

In fairness, we should note that such an approach to risk has become a completely understandable reaction of banking institutions to the unnatural function imposed upon them by the state of acting as analysts in the fight against crime. According to the law, payment service providers must bear this burden at their own expense and under the threat of very harsh sanctions.[6] Nevertheless, this is a poor consolation for clients who have been denied banking services for such reasons.

Obviously, in a state governed by the law, the individual's human rights must also be respected even if this individual acts criminally[7] (in particular, if he or she is involved in money laundering). At the same time, within the framework of the de-risking policy, banks are not concerned with any criminal behaviour of clients. In this regard, there is only the reluctance of the bank to delve into the unique situation of the non-standard customer, who is easier to declare undesirable.

This issue is well illustrated by a case from the Latvian Ombudsman[8] in which for a child left without parental care, one of the Latvian banks closed an account necessary to receive his survivor's pension. The account was closed for the sole reason that third parties had previously used this account for illegal purposes. Additionally, the bank did not even notify the police about the incident but deprived the minor of the right to access banking services based on actions for which the child himself had suffered.

From the viewpoint of legal regulations, this case involves the unilateral termination of the payment account contract by the bank against the will of the payment service user (Art. 55(3) of EU Directive No. 2015/2366[9] transposed to Latvian national law through Art. 67(3) of its Law on Payment Services and Electronic Money[10]). This context also allows speaking of the termination of business relations by the subject of the Latvian Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing[11] with its customer following

[5] See, for example, Louis de Koker, Supriya Sindh, and Jonathan Capal, "Closure of Bank Accounts of Remittance Service Providers: Global Challenges and Community Perspectives in Australia," *University of Queensland Law Journal* 36, no. 1 (2017): 119; "FATF Clarifies Risk-Based Approach: Case-by-Case, Not Wholesale De-Risking," Statement of the Financial Action Task Force (Paris, 23 October 2014); "Remarks by Acting Under Secretary Adam Szubin [USA] at the ABA/ABA Money Laundering Enforcement Conference" (Washington, DC, November 14, 2016).
[6] Gunārs Kūtris. "Iesaldēšana, arestēšana un konfiskācija: cilvēktiesības un kriminālprocesa intereses bankas kontos," *Jurista Vārds*, no. 39 (1149) (September 29, 2020): 16.
[7] *Ibid.*
[8] "Bērns – nevēlams bankas klients. Bērnu un jauniešu tiesības," Latvijas Republikas tiesībsarga (2020 gada ziņojums): 85.
[9] *Supra* note 1.
[10] *Supra* note 1.
[11] *Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing of the Republic of Latvia* (Latvijas Vēstnesis, July 30, 2008, No. 116).

Art. 28(2) of this Law (Art. 14(4) of EU Directive No. 2015/849[12]). To some extent, this issue applies to applying financial and civil legal restrictions to the subject of international and national sanctions under Art. 5 of the Law on International Sanctions and National Sanctions of the Republic of Latvia[13].

Consequently, the bank's obligations to dissolve business relations under anti-money-laundering requirements should be distinguished from its discretionary and optional right to terminate a payment service contract for de-risking. Although both of these cases ultimately mean the same legal construction of unilateral withdrawal from a contract by Art. 1589 of Latvian Civil Law[14], the first one does not raise many questions, because it is based on the mandatory rules of law and has an undisputed legitimate aim.

To the contrary, the unilateral closure of payment accounts by banks due to de-risking is in itself unsuitable for achieving legitimate goals concerning anti-money laundering and terrorist financing[15]. In fact, such actions on the part of financial institutions can indirectly contribute to committing such crimes[16], "as the termination of account relationships has the potential to force entities, and persons into less regulated or unregulated channels."[17]

As I have mentioned in my previous research,[18] by analogy (*extra legem*) with the EU's legal regulation of politically exposed persons[19] the risk-based approach regarding high-risk customers should be of a preventive and not a criminal nature. That is why there are quite justified reasons to limit the high-risk customers' rights (up to refusal to make their money transfers) in the due diligence process against them while their business relationship with payment service providers remains active. But if the provider terminates contractual relations with any such customer based on this risk, then it is directly contrary to the letter and spirit of anti-money laundering regulations.

Of course, it is important to stress that the payment service users involved in a commission of a criminal offence or other such misconduct, and who are

[12] *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC* (Official Journal of the European Union, 2015, L 141).
[13] *Law on International Sanctions and National Sanctions of the Republic of Latvia* (*Latvijas Vēstnesis*, February 15, 2016., No. 31).
[14] *Civil Law of the Republic of Latvia [Civillikums]* (Valdības Vēstnesis, No. 41, February 20, 1937).
[15] Aleksejs Jelisejevs. "Crucial Issues with Legal Protection of Consumers Human Rights when Banks unilaterally Close Accounts": 169; in: *A Contemporary Anthology of Law* (Athens: Athens Institute for Education and Research, 2022).
[16] Louis de Koker, "Aligning anti-money laundering, combating of financing of terror and financial inclusion: questions to consider when FATF standards are clarified," *Journal of Financial Crime* 18, no.4 (2011): 361 and 368; Ian McKendry, "Banks Face No-Win Scenario on AML 'De-Risking," *American Banker* (November 17, 2014).
[17] Statement of the Financial Action Task Force, *supra* note 5.
[18] Aleksejs Jelisejevs, *supra* note 3: 624.
[19] Preambular paragraph 66 of *Directive (EU) 2015/849* (*supra* note 12).

subsequently cut off by the bank, cannot rely on the foreseeable negative effects on their rights when appealing a unilateral termination of contractual relations.[20]

1. AN APPROACH BASED ON GOOD FAITH

To overcome the above-mentioned conflict, I have previously proposed a doctrinal approach according to which the bank's right to withdraw from the contract unilaterally should be limited by the systemic and teleological interpretation of regulating rules in combination with the general civil principle of good faith, which, by analogy with the original source of the problem, is called the good faith based approach.[21]

The content of the legal norms that give the bank this power should be interpreted[22] and, possibly, detailed[23] exclusively under this general principle, which constitutes the basis for the entire legal structure, and reflects its spirit.[24] The contractual provisions of the bank's right to withdraw from the contract without the client's consent and, more importantly, the implementation by the bank of this subjective right in each specific case would not only require compliance with the conditions specified in these legal norms *per se*, but also compliance with the entire legal system and even the existing regulatory order in general.[25] I believe that this is the only way to ensure public interests reasonably and restore confidence in the banking system. *Per contra*, excessive legal positivism and a passion for a literal interpretation of these normative texts[26] only lead to unfairness in the business relations of banks with clients that undermine this trust.[27]

At the same time, no features of legal regulation for the prevention of money laundering and terrorism financing may justify abandoning this approach since the relevant rules of special legislation also requires the bank to act in good faith when

[20] Aleksejs Jelisejevs, *supra* note 15: 175.
[21] Aleksejs Jelisejevs, "Good Faith-Based Approach as a Way to Protect Payment Service Consumers' Rights when Banks Unilaterally Terminate Contractual Relations," Collection of materials XXII International Scientific Conference of Turiba University (Riga, April 21-22, 2021); Aleksejs Jelisejevs, *supra* note 3.
[22] Aleksander Peczenik, "Principles of Law: The Search for Legal Theory," *Rechtstheorie* no. 2 (1971): 31-32.
[23] Daiga Rezevska, *Vispārējo tiesību principu nozīme un piemērošana* (Riga: Daiga Rezevska, 2015), 99-100.
[24] See, for example, Daiga Iļjanova [Rezevska], "Vispārējo tiesību principu funkcionālā nozīme rakstīto tiesību normu piemērošanā," *Scientific Papers, University of Latvia [Juridiskā zinātne. Latvijas Universitātes Raksti]* Vol. 719 (Law) (2007): 71.
[25] See Diāna Apse, "Tiesību palīgavoti un Satversmes tiesa," *Scientific Papers, University of Latvia [Juridiskā zinātne. Latvijas Universitātes Raksti]* Vol. 703 (Law) (2006): 12; Edgars Meļķisis. "Satversmes tiesas spriedums. Valsts nekustamā īpašuma aģentūras lietā saistībā ar tiesību vienotības principu," *Likums un Tiesības* 1, no. 1 (1999): 24.
[26] See Aleksander Peczenik, *On Law and Reason* (Dordrecht: Kluwer, 1989), 41.
[27] See Diāna Apse. "The Influence of Subsidiary Sources of Law on the Quality of Legal Acts in the Legislative Process and the System of National Governance," Collection of research papers in conjunction with the international scientific conference 'The Quality of Legal Acts and its Importance in Contemporary Legal Space' (Riga, October 4-5, 2012): 56.

terminating business relations with a client (Art. 40(3) of the Latvian Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing[28]).

Under the general principle of good faith, which forms the basis of civil law regulation (in Latvia, it is Art. 1 of the Civil Law[29]), everyone may exercise his or her subjective rights considering the reasonable interests of others only.[30] Good faith, therefore, requires that participants in civil legal relations reckon with each other; behave fairly, honestly, and reasonably; earn trust; are mutually correct, loyal, and reliable; keep their word; cooperate with counterparties; provide information to counterparties; [31] do not abuse their rights; [32] refrain from unreasonable and unjustified behavior; and do not harm counterparties or others.[33] Acting in good faith, each party must do everything necessary to ensure the proper performance of the mutual obligation (contract) to protect other parties against possible damages.[34] In a broader sense, the principle of good faith requires people to exercise subjective rights and perform duties not formally but derived from the meaning and purpose of these rights and duties.[35]

At the same time, the good faith tenet does not give the court the authority to create new rules or to adapt and adjust each legal situation based only on general

[28] *Supra* note 11.
[29] According to Art. 1 of *Civil Law of the Republic of Latvia* (*supra* note 14) "Rights shall be exercised and duties performed in good faith" (All translations from Latvian into English are by the author of the present work unless otherwise noted).
[30] See, for example, some doctrinal sources: Kaspars Balodis. "Labas ticības principa loma mūsdienu Latvijas civiltiesībās," *Likums un Tiesības* 4, no. 9 (2002): 280 (later, Kaspars Balodis, *Ievads civiltiesībās* (Riga: Zvaigzne, 2007), 141); Hans Brox and Wolf-Dietrich Walker. Allgemeiner Teil des BGB. Vol. 34 (Munich: Carl Heymanns, 2010), 640; Christian von Bar, *Towards a European Civil Code*, 4th revised and expanded edition, ed. Arthur Hartkamp, Martijn Hesselink, Ewoud Hondius, and Edgar du Perron (Boston: Kluwer Law International, 2011), 288; *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 4 October 2006 in case No. SKC–540*, 4; *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 12 March 2020 in case No. C68278418*, para. 3(1); *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 17 December 2019 in case No. C04169414*, para. 7.1(2); *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 18 December 2018 in case No. C73346818*, para. 6.5(2) and others.
[31] Evija Slicāne, "Labas ticības princips un tā piemērošana Latvijas civiltiesībās," *Jurista Vārds*, no. 6, (February 6, 2007): 5-13; Emily M. Weitzenböck. "Good Faith and Fair Dealing in Contracts Formed and Performed by Electronic Agents," *Artificial Intelligence and Law* 12 (2004); Reiner Schulze, ed., *Bürgerliches Gesetzbuch, Handkommentar*, Vol. 9. (Baden-Baden: Nomos, 2017), 220; Günter H. Roth, *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, Bd. 2 (Munich: Schuldrecht Allgemeiner, 2015), § 242.
[32] Mīrons Krons, "Civillikuma pirmais pants (Laba ticība kā tiesiskas rīcības kritērijs)," *Tieslietu ministrijas Vēstnesis* no. 2 (1937): 298; Kaspars Balodis, "Labas ticības principa loma," *supra* note 30; Hans Michael Riemer, *Die Einleitungsartikel des Schweizerschen Zivilgesetzbuches (Art. 1–10 ZGB). Eine Einführung* (Bern: Stämpfli, 2003), § 5, Rn. 7.
[33] Bernhard Berent, *et al*. "Lettlands Zivilgesetzbuch vom 28. Januar 1937": 39; in: *Ernst Plates* (Riga: Einzeldarstellungen, 1938); Mīrons Krons, *supra* note 32: 291; Hans Michael Riemer, *supra* note 32, § 5, Rn. 3; Irene Kull, "European and Estonian Law of Obligations—Transposition of Law or Mutual Influence," *Juridica International* IX/2004 (University of Tartu, 2004): 38; Reiner Schulze, *supra* note 31.
[34] Evija Slicāne, *supra* note 31; Hans Brox and Wolf-Dietrich Walker, *Allgemeines Schuldrecht*, Vol. 44 (Munich: C. H. Beck, 2020), no. 80; Karl Larenz, *Lehrbuch des Schuldrechts Band I Allgemeiner Teil*, Vol. 14 (Munich: C. H. Beck, 1987), 138-140; Reiner Schulze, *supra* note 31, § 242, Rn. 2; Jörn Eckert, *Schuldrecht: Allgemeiner Teil*, Vol. 4 (Baden-Baden: Nomos, 2004), no. 108.
[35] Günter H. Roth, *supra* note 31.

considerations of fairness.[36] It does not allow it to change the legal consequences arising from a law or a legal transaction freely and unpredictably, since legal security, stability, and certainty could be shaken and trust in the law and freely pledged word could be excluded.[37]

That is why one of principal general measures of my good faith based approach for the above issues with unilateral closure of bank accounts is respect for freedom of contract and valid reasons for intervention in private autonomy, which form the subject matter for this article. This scientific research covers contractual relations of banks with consumers; that is, natural persons who are acting for purposes that are outside their trade, business, craft, or profession (as defined by Art. 2(2) of EU Directive 2011/83/EU[38] and Art. 1(3) of the Consumer Rights Protection Law of the Republic of Latvia[39]). The special stature of these individuals determines the research conclusions, which may not be directly applicable to other types of payment service due to a significant difference in their legal regulation and the actual role in contractual relations.

The task of interpreting legal norms is based on judicial practice and legal doctrine. When a judge is faced with a problem of interpretation of a specific case, that judge considers proposals for solving this from the point of view of legal doctrine.[40] At the same time, the above issues have not yet found their direct solution within case law. The legal literature also has not offered a uniform scientific answer to this problem. However, it is quite evident that both legal science and judicial practice have universal tools that are indeed sufficient to overcome this legal conflict. On this basis, I have made an attempt to develop an idea for the doctrinal interpretation of this issue, which I hope will open the way to a discussion on the legal plane that will be able to create the foundation for developing a uniform approach to its ultimate solution. I used a hypothetico-deductive model as a principal toolkit for this research. In addition, comparative legal and systemic structure analysis methods assisted my argument, within which doctrinal interpretation and construction were deployed to analyze this issue.

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[36] Mīrons Krons, *supra* note 32: 299; *Judgment for Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 16 December 2020 in case No. C30501917*, para. 6.3(2); *Judgment for Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 12 March 2020*, *supra* note 30, para. 6.3(2).

[37] Reiner Schulze, *supra* note 31, § 226, Rn. 1; Kaspars Balodis, *Ievads civiltiesībās*, *supra* note 30, 148; *Judgment of Department for Civil Cases of the Supreme Court of the Republic of Latvia of 27 October 2017 in case No. C09020614*, para. 11(2).

[38] *Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council* (Official Journal of the European Union, 2011, L 304).

[39] *Consumer Rights Protection Law of the Republic of Latvia* (Latvijas Vēstnesis, April 1, 1999, No. 104/105).

[40] Daiga Iljanova, *supra* note 24: 62.

2. CONTRACTUAL FREEDOM AND GOOD FAITH

Ever since the Roman Empire, civil law has been defined by core principles of private autonomy[41] and contractual freedom.[42] Today these principles provide for the right of counterparties freely to choose to enter or not to enter any contract, to select the counterparties and the manner in which to conclude a contract, the content of the contract to provide for, in what form to do it, etc. (for example, Art. 1511 of Latvian Civil Law).

Ultimately, all this leads to the maxim of *pacta sunt servanda*, developed by the scholars of canon and natural law,[43] which was successfully defined by Art. 1103 of the 2016 French Civil Code as "lawfully entered contracts take the place of the law for those who have made them."[44] In Latvian Civil Law, this postulate is enunciated by its Art. 1587, under which the contract, which has been concluded legally, imposes on the counterparty the obligation to perform that which has been promised. In this context, it is evident that a contractual clause freely and legally defined by the parties, which gives one of the parties (or each of them) the subjective right to terminate such a contract unilaterally, must have the force of law for every contractual party and be respected by the parties, third persons, the state, and society throughout the lifetime of the contract.

The law of contracts should primarily provide a framework within which individuals may operate, and it does not usually serve a protective function.[45] In this regard, requirements of good faith behavior in themselves should also not exclude trust in a freely given word. Both Latvian case law[46] and its legal doctrine[47] agree with this approach. That is why there must be justified reasons to interfere in private autonomy, which the civil law norms do not restrict but rather encourage to increase public confidence in the stability and binding force of executed contracts. These causes may include the incompatibility of the behavior of civil affairs

[41] Of course, the idea of autonomy was only developed in legal science in the 19th century. However, its application to Roman law cannot be considered anachronistic or unhistorical (see, for example, Iván Siklósi, "Private Autonomy and Its Restrictions in Roman Law: An Overview Regarding the Law of Contracts and Succession," *Elte Law Journal* 2 (2019): 9).
[42] *Voluntas mater contractuum est*—[contractual] will is the mother of conventions.
[43] See Iván Siklósi, *supra* note 41: 11.
[44] In French "Les contrats légalement formés tiennent lieu de loi à ceux qui les ont faits" (Art. 1103 of Civil Code of France amended by Ordinance No. 2016-131 of 10 February 2016, Art. 2). Before this reform of French contract law, the same wording was contained in Art. 1134 of the Civil Code, which was developed in and had remained unchanged since Napoleon's time.
[45] Reinhard Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, 3rd ed. (Oxford: Oxford University Press, 1996), 58.
[46] See, for example, *Judgment of Department for Civil Cases of the Latvian Supreme Court Senate of 17 December 2019*, *supra* note 30, para. 7.1(2).
[47] For example, Osvalds Ozoliņš, "Jaunā Civillikuma ievads. Raksti par Prezidenta K. Ulmaņa Civillikumu": 4-6; in: *Tieslietu Ministrijas Vēstneša* (Riga: Tieslietu ministrijas izdevums, 1939).

participants or the legal transaction terms with the socially prevalent (generally accepted) views on good faith actions, justice, or moral values.[48]

By law, a payment service provider may unilaterally terminate a contract with a consumer for an indefinite period and close the account only if such a right is accorded by the contract (Art. 55(3) of EU Directive No. 2015/2366,[49] which was transposed to Latvian national law through Art. 67(3) of its Law on Payment Services and Electronic Money[50]).

Therefore, to allow the correction of the subjective right of the bank by the good faith principle, first it is necessary to determine whether the genuine autonomy of the client's will was protected and his or her free consent was given to such a contractual condition, and second, whether this contractual condition contradicts good faith and fairness in the generally accepted understanding.[51]

3. FREE CHOICE ABSENCE

In the broadest sense, today the free choice to conclude or not to conclude a payment account contract with banks or other authorized payment service providers is significantly limited by the state itself and the civil circulation rules it adopts.

In particular, the state restricts and prohibits transactions with hard cash. For example, under Art. 30(8) of the Latvian Law on Taxes and Fees,[52] individuals, who do not engage in economic activity (i.e., consumers), are not allowed to make hard cash transactions the value of which exceeds EUR 7,200 (irrespective of whether the transaction comprises a single operation or several operations). Any cash transactions related to the alienation of immovable properties are prohibited as well (Art. $30(1^6)$[53]). Many state duties, taxes, and public services payments may be made only by cards or bank transfers.[54] Without a presence in the banking network, it is generally not possible to receive some services, including social services, etc.

The current state regulation essentially imposes non-cash money use in civil circulation without any alternatives for some situations, wherein the absence of

[48] See, for example, *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 12 March 2020*, *supra* note 30, para. 6.4.
[49] *Supra* note 1.
[50] *Supra* note 1.
[51] Of course, the fundamental element for such an interference with the free expression of the parties' will should also become the identification of contradictions in respect to the exercise of this subjective right by the bank in each specific case, but this is a subject for another paper.
[52] *Law on Taxes and Fees of the Republic of Latvia* (Latvijas Vēstnesis, February 18, 1995, No. 26) (as amended by law of November 12, 2016 (Latvijas Vēstnesis, December 10,2016, No. 241)).
[53] *Law on Taxes and Fees of the Republic of Latvia* (as amended by law of 03.04.2019) (Latvijas Vēstnesis, April 12, 2019, No. 75).
[54] See, for example, payment details for public services of Office of Citizenship and Migration Affairs of Latvia at https://www.pmlp.gov.lv/en/how-pay-ocma-services.

access to cashless means of payment significantly complicates or even makes impossible the everyday existence of human beings in modern society.

As I have already mentioned in previous publications,[55] possession, exercise, and disposal of non-cash money without the involvement of a bank (or other authorized payment service provider) is impossible because of their legal status of incorporeal things or intangible property (*res incorporates*).[56] In substance, only obligation rights (claims) of the client against the bank (records in the bank's accounting system regarding the deposit on the client's account) can be used by the client exceptionally through transferring these rights (claims) from the former creditor (payer) in favor of a new one (payee). Non-cash money, therefore, is governed by the civil law provisions regarding cession (assignment of rights)[57] but not by ownership rules.[58] Strictly speaking, non-cash money, like any other incorporeal thing, cannot be the subject of ownership *per se*, but the exercise of any client's rights in respect to them ultimately depends on the bank's affirmative actions in the form of payment services. Accordingly, in the absence of a contractual relationship with the bank (or other authorized payment service provider), the client is unable to possess, use, and dispose of non-cash money, which cannot exist outside the confines of the banking system.

Consequently, we have sufficient reason to assert that banks (like other payment service providers) are now not just ordinary corporate entities, but also bearers of a systemically important function within society and civil relations. Their payment services and bank accounts have become an irreplaceable and integral element in the life of almost every person.

Of course, there are many payment service providers, so consumers have a certain freedom in choosing the bank with which they can conclude contracts to open payment accounts. At the same time, all Latvian banks, without exception, have included in their framework contracts identical conditions that endow the financial institution with the right to terminate the relationships unilaterally and without providing a reason.[59] In other EU states similar conditions prevail, since it would be rather strange to admit the possibility that other European banks could use the right in a different way than the abovementioned Art. 55(3) of EU Directive No. 2015/2366 granted them.

[55] See, for example, Aleksejs Jelisejevs, *supra* note 3: 628.
[56] See, for example, Art. 841(2) of Latvian Civil Law, which took this concept from Roman law.
[57] Karlis Balodis, *Ievads civiltiesībās*, *supra* note 30, 111.
[58] Andris Grūtups and Erlens Kalniņš, *Civillikuma komentāri. Trešā daļa. Lietu tiesības, īpašums*, 2. izd. (Riga: Tiesu namu aģentūra, 2002), 20.
[59] See, for example, *Swedbank General Terms of Transactions No. R-18235*, dated 25 September 2020, § 10.1; *SEB Bank General Terms of Transactions*, in Force from 3 January 2020, § 13.3; *Citadele Bank General Terms of Transactions No. VDN/NO-S-FJ-LV-0819.10-LV*, in Force from 14 September 2019, §§ 96 and 97; *Luminor Bank General Terms of Transactions*, in Force from 1 September 2020, § 65, and others.

Hence, *de facto*, a consumer has *a priori* no avenue to choose a bank where the bank would not have the right to terminate the account contract unilaterally. The legal literature[60] has already expressed the opinion that in view of consumer protection, such a situation is unjustified.

4. NON-DISCUSSION PRESUMPTION

When examining the client's ability to determine and/or influence the contract's content with the bank, it becomes apparent that he or she is not able to do so. The fact is that contracts for payments and other banking services are usually standard rules drawn up in advance by the financial institutions, and that consumers are not given the option to influence the content of these contractual terms.[61] The law[62] provides this model of contractual regulation (framework contract) as the only possible one that must be recognized as justified in respect to the specifics of legal relations in payment services. However, only two options are available to the client: either to conclude the contract on the terms offered by the bank or not to conclude the contract at all.[63] *Ex facte*, this does not mesh with the principle of autonomy of the client's will in determining the content of the contract with the bank.

This conflict is common in all payment relationships, but with respect to payment service users with consumer status, a special regulation should be applicable as well. It states that if the contract is drawn up in advance, contractual terms are always considered mutually non-negotiated. Therefore, the consumer has no capability to influence such terms (for example, Art. 6(5) of the Latvian law on consumer rights protection[64]). This approach is confirmed both by Latvian legal literature[65] and in its case law,[66] where for a standard contract with a consumer, the non-discussion presumption (in Latvian, *līguma neapspriešanas prezumpcija*)

[60] Baiba Vītoliņa, *Patērētāju tiesību aizsardzības pamati* (Riga: Apgāds Zvaigzne, 2015), 96, who also noted that "it is essential that offers also be made available on the market with different terms of contract, and it must be possible for the consumer to choose them."
[61] See, for example, *Judgment of the European Court of Justice of 27 June 2000 in joined cases Océano Grupo Editorial SA v. Rocío Murciano Quintero (C-240/98) and Salvat Editores SA v. José M. Sánchez Alcón Prades (C-241/98), José Luis Copano Badillo (C-242/98), Mohammed Berroane (C-243/98), Emilio Viñas Feliu (C-244/98)*, EU:C:2000:346, para. 25; *Judgment of the European Court of Justice (Fourth Chamber) of 4 June 2009 in case Pannon GSM Zrt. v. Erzsébet Sustikné Győrfi (C-243/08)*, EU:C:2009:350, para. 22.
[62] See, for example, Chapter 3 of EU *Directive No. 2015/2366* (*supra* note 1); Chapter VIII of the Latvian *Law on Payment Services and Electronic Money* (*supra* note 1).
[63] This situation is entirely in line with the universal approach described by the doctrine for contractual relations with any consumers (Baiba Vītoliņa, *supra* note 47, 96-97).
[64] *Supra* note 26.
[65] See, for example, Baiba Vītoliņa, *supra* note 60, 101.
[66] For example, *Judgment of Department for Administrative Cases of the Supreme Court Senate of the Republic of Latvia of 7 March 2006 in case No. SKA-59*, para. 15.1; *Judgment of Department for Civil Cases of the Supreme Court of the Republic of Latvia of 30 June 2017 in case No. C33439211*, para. 7(2); *Judgment of Department for Civil Cases of the Supreme Court of the Republic of Latvia of 14 September 2016 in case No. C10100611*, para. 7.1(6).

has been formulated. Thus, a standard contract is invariably treated as undiscussed.[67] This axiom is not cancelled by the possibility of discussing each contractual condition,[68] by a clearly expressed confirmation of the consumer's familiarization with the standard terms of the contract,[69] or even his or her consent to them. Consequently, consumer protection legislation provides for an exception from the general rules for concluding a contract.[70] As a matter of fact, this legal regulation limits the principle of freedom of contract in the consumer's interests.[71]

Obviously, the fact that the bank's right to withdraw from the contract unilaterally, as a contractual condition, was not discussed with the client, and is actually imposed upon him or her, is not a violation of law, but only a prerequisite for the application of the law.[72] In this case, the assessment subject should be either the potential unfairness of this contractual clause itself correlated with special requirements for consumer protection (such as Art. 6(3) of Latvian law on consumer rights protection)[73] or wrongful exercise of the bank's power under this contractual condition from the point of view of good faith (Art. 1 of Latvian Civil Law).[74]

However, the implementation of any of these options leads to an imbalance between the payment service consumer and provider that, according to the Court of Justice of the European Union,[75] may only be corrected by positive action unconnected with the actual parties to the contract. That is why in this situation court intervention in private autonomy and contractual freedom to protect the rights of the bank's client is not only allowed, but also required within the system laid down by European law to protect consumers' interests.[76] Using the principle of good faith as a tool and yardstick for such permitted intervention seems the most

[67] Baiba Vītoliņa, *supra* note 60, 102.
[68] *Judgment of Department for Administrative Cases of Supreme Court Senate of the Republic of Latvia of 7 March 2006*, *supra* note 66, para. 14(2,3).
[69] Gints Zadraks. "Direktīvas 93/13/EEK par netaisnīgiem noteikumiem patērētāju līgumos nepieciešamā reforma," *Likums un Tiesības* no. 4 (2005): 103.
[70] Baiba Vītoliņa, *supra* note 60, 101.
[71] Friedrich Kessler, "Contracts of Adhesion—Some Thoughts About Freedom of Contract," *Columbia Law Review, 43* (1943): 640.
[72] Baiba Vītoliņa, *supra* note 60, 104.
[73] The unnegotiated contractual condition may not be prejudicially found as unfair. To draw such a conclusion, it is necessary to establish one of the grounds referred to in special legal rules for consumer protection (in Latvia, Art. 6(3) of the Consumer Rights Protection Law) that, contrary to the requirements of good faith, create a material inconsistency in the contractual rights and obligations of the parties against a weaker consumer (see, for example, *Judgment of Department for Civil Cases of the Latvian Supreme Court of 14 September 2016*, *supra* note 66, para. 7.1(6)).
[74] The good faith requirement includes a general principle of fair and open behavior. It means that the contractual terms must be clear and readable. Clauses that could be disadvantageous to the consumer or to which he or she has to pay more attention should be sufficiently emphasized. However, transparency alone is not enough to consider that the requirement of good faith has been met. Good faith should be required for service in respect to both the content of the contractual rules and the way in which these rules are expressed and applied (for example, Baiba Vītoliņa, *supra* note 60, 108).
[75] *Judgment of the European Court of Justice of 27 June 2000*, *supra* note 61, para. 27; *Judgment of Judgment of the European Court of Justice (Fourth Chamber) of 26 October 2006 in case Elisa María Mostaza Claro v. Centro Móvil Milenium SL (C-168/05)*, EU:C:2006:675, para 26.
[76] At the level of a universal approach, Latvian case law has supported this stand as well (*Judgment of Department for Administrative Cases of the Latvian Supreme Court Senate*, *supra* note 66, para. 12(2)).

acceptable option, even based on the logic of private autonomy and freedom of contract forming the platform for their substance.

5. JUSTICE AND CONTRACTUAL EQUALITY

If the contractual clauses on the bank's power to withdraw from the contract unilaterally are defined so broadly that they are not limited by any conditions and permit the financial institution to act in bad faith in principle, then these clauses should be invalidated because they are unjust *a priori* (in Latvia, such contractual conditions would contradict Art. 6(8) of Consumer Rights Protection Law). The legal doctrine[77] has already expressed the opinion that when assessing the fairness of a contractual term, we must take into consideration not only how this condition is currently applied, but also how it could be applied in the broadest interpretation possible. Indeed, some contractual clauses are so broadly defined that they can only conflict with consumer rights in certain cases. However, even if in practice the contractual rule is not applied in bad faith and, moreover, even if there is no intention of using it in an unfair manner, such a rule may nevertheless be considered unfair just because it could be applied in bad faith or unfairly for some cases.

This situation could be fully and precisely illustrated by the example of a contract that provides a very general power of an undertaking to withdraw from the contractual relations when there are violations by the consumer. According to the legal literature supported by judicial practice, the undertaking can use such a contractual clause both fairly (when the consumer severely infracts his or her obligations) and unfairly (if the consumer has committed only minor breaches of the contract).[78] It is not permissible for a supplier to waive essential obligations just because a consumer does not comply with any minor provision or follow a particular procedure.[79] Accordingly, when unilaterally terminating a contract with a consumer, assessing the supplier's good faith is at the very core of the consumer protection system.

Among other things, this clearly follows from the fact that under the law, a divergence of contractual conditions with good faith requirements puts the consumer at a disadvantage, which entails the injustice of this condition, due to its conflict with the principles of legal equality, which, by turn, leads to the nullity of this condition, which is not in force from the moment of concluding the contract (Art. 5(2§5) and Art. 6(3§1) of the Consumer Rights Protection Law of the Republic

[77] Baiba Vītoliņa, *supra* note 60, 108.
[78] *Ibid*.
[79] *Judgment of Department for Civil Cases of the Latvian Supreme Court Senate of 30 June 2017*, *supra* note 66, para. 7.

of Latvia). We can see that the legislator did not establish an exhaustive list of unfair contractual terms but declared good faith as a general guideline by which it is possible *expressis verbis* to determine the characteristic signs of a violation regarding legal equality to apply legal norms, which have been designed to eliminate injustice within the terms of the contract with the consumer.[80]

So, the principle of good faith is intended to ensure fairness in the supplier's relationship with the consumer. This assertion is entirely consistent with the essence of contractual relations between a bank and its clients. In turn, the principle of a fair trial, guaranteed by international law and national constitutional rules (in Latvia it is Art. 92 of the Constitution), means a fair adjudication of each specific case by the court with a fair judgment.[81] According to the Latvian Constitutional Court, the grammatical application of legal rules is not sufficient to achieve a fair verdict. To achieve justice, a judge should also use other methods to interpret these legal rules, including systemic and teleological methods.[82] This means assuming, in the interest of fairness, the application of both *intra legem* and *extra legem*.

As recognized in Latvian legal literature[83] and its court practice,[84] if it appeared that the literal application of the legal rule that governs the respective issue would lead to a manifestly unfair result, the court must find a fair solution for this case via interpreting the special legal rule in conjunction with the principle of good faith (Art. 1 of Latvian Civil Law). At the same time, this legal rule regarding the exercise of civil rights and the performance of civil duties in a good-faith manner is inherently linked to the special protection against the contractual imbalance of the consumer and service provider[85] (see Art. 5(2§5) and Art. 6(3§1) of the Consumer Rights Protection Law of the Republic of Latvia[86]). That is why on the subject of regulating a bank's right to close a consumer's account unilaterally, an intervention of the court in the contractual relationships through the adoption of corrective measures under the good faith requirements is not just permitted by law but is also the judge's duty to restore justice and contractual equality.

[80] *Judgment of Department for Administrative Cases of the Latvian Supreme Court Senate of 7 March 2006*, *supra* note 66, para. 13.2
[81] See, for example, *Judgment of Constitutional Court of the Republic of Latvia of 4 February 2003 in case No. 2002-06-01*, para. 3(1).
[82] *Ibid*., para. 3(2).
[83] Kaspars Balodis, "Labas ticības principa loma," *supra* note 30.
[84] *Judgment of Department for Civil Cases of the Latvian Supreme Court Senate of 17 December 2019*, *supra* note 30, para. 7.4(5).
[85] See, for example, *Judgment of Department for Civil Cases of Supreme Court of the Republic of Latvia of 12 March 2013 in case No. SKC-108/2013*, para. 13(4).
[86] *Judgment of Department for Civil Cases of Supreme Court of the Republic of Latvia of 17 December 2012 in case No. C12153910*, para. 7.3(4,6).

CONCLUSIONS

Based on the above reasoning, due to the modern civil circulation realities and its rules adopted by a state, a payment service consumer has significantly limited freedom in choosing to enter or not to enter contractual relations with a bank. Moreover, for the consumer there is no real opportunity to influence these contractual terms at all. With respect to such kinds of contracts, the non-discussion presumption has been established by the law itself. All of this leads to a contractual imbalance against the consumer that can be corrected exclusively by court proceedings—that is, by positive actions of a judge as a person unconnected with the actual parties to the contract. A tool and yardstick for such influence over contractual relations is good faith declared by the legislator as a general guideline to eliminate injustice and restore legal equality in favor of the consumer.

Therefore, when examining unilateral closure of the consumer's payment account by the bank, a court has not only the option but also the duty to intervene in these legal relationships by interpreting or even correcting both contractual conditions and actual use of the bank's subjective rights under the good faith requirements. So, in this case, the court's intervention in the private autonomy based on a good faith approach has a valid reason. The framework contract interpretation and correction favoring the payment service consumer respects freedom of contract. It should be recognized as legally acceptable to restore justice and contractual equality.

At the same time, in view of justice, even if a bank has acted in violation of the good faith principle, the special public functions imposed upon it by the state should release it from any responsibility when the account closure comes as a predictable consequence of the consumer's misconduct which is directly or indirectly related to money laundering or the financing of terrorism.

BIBLIOGRAPHY

1. Apse, Diāna. "Tiesību palīgavoti un Satversmes tiesa." *Scientific Papers. University of Latvia [Juridiskā zinātne. Latvijas Universitātes Raksti]* Vol. 703 (Law) (2006): 7–20.
2. Apse, Diāna. "The Influence of Subsidiary Sources of Law on the Quality of Legal Acts in the Legislative Process and the System of National Governance." Collection of research papers in conjunction with the international scientific conference 'The Quality of Legal Acts and its Importance in Contemporary Legal Space' (Riga, October 4-5, 2012): 56–68.

3. Balodis, Kaspars. "Labas ticības principa loma mūsdienu Latvijas civiltiesībās." *Likums un Tiesības* 4, no. 9 (2002): 279–286.
4. Balodis, Kaspars. *Ievads civiltiesībās*. Riga: Zvaigzne, 2007.
5. Berent, Bernhard, Herbert Ehlers, G. Blaese, Carl von Schilling, and T. Zimmermann. "Lettlands Zivilgesetzbuch vom 28. Januar 1937." In: *Ernst Plates*. Riga: Einzeldarstellungen, 1938.
6. "Bērns – nevēlams bankas klients. Bērnu un jauniešu tiesības." *Latvijas Republikas tiesībsarga* (2020 gada ziņojums) // www.tiesibsargs.lv/uploads/content/tiesibsargs_2020_gada_zinojums_final_1613044295.pdf.
7. Brox, Hans, and Wolf-Dietrich Walker. *Allgemeines Schuldrecht*. Vol. 44. Munich: C. H. Beck, 2020.
8. Brox, Hans, and Wolf-Dietrich Walker. *Allgemeiner Teil des BGB*. Vol. 34. Munich: Carl Heymanns, 2010.
9. De Koker, Louis, "Aligning anti-money laundering, combating of financing of terror and financial inclusion: questions to consider when FATF standards are clarified." *Journal of Financial Crime* 18, no.4 (2011): 361–386 // https://doi.org/10.1108/13590791111173704.
10. De Koker, Louis, Supriya Sindh, and Jonathan Capal. "Closure of Bank Accounts of Remittance Service Providers—Global Challenges and Community Perspectives in Australia." *University of Queensland Law Journal* 36 no. 1 (2017): 119–154 // https://ssrn.com/abstract=3094277.
11. Eckert, Jörn. *Schuldrecht: Allgemeiner Teil*. Vol. 4. Baden-Baden: Nomos, 2004.
12. "FATF Clarifies Risk-Based Approach: Case-by-Case, Not Wholesale De-Risking." Statement of the Financial Action Task Force (Paris, October 23, 2014) // www.fatf-gafi.org/documents/documents/rba-and-de-risking.html.
13. "Guidance for a Risk-Based Approach. The Banking Sector." Financial Action Task Force (October 2014) // http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Banking-Sector.pdf.
14. Grūtups, Andris, and Erlens Kalniņš. *Civillikuma komentāri. Trešā daļa. Lietu tiesības, īpašums.* 2. izd. Riga: Tiesu namu aģentūra, 2002.
15. Iļjanova [Rezevska], Daiga. "Vispārējo tiesību principu funkcionālā nozīme rakstīto tiesību normu piemērošanā." *Scientific Papers. University of Latvia*

[Juridiskā zinātne. Latvijas Universitātes Raksti] Vol. 719 (Law) (2007): 59–75.

16. Jelisejevs, Aleksejs. "Crucial Issues with Legal Protection of Consumers' Human Rights when Banks Unilaterally Close Accounts." *Athens Journal of Law* 7, no. 4 (2021): 617–634 // DOI: 10.30958/ajl.7-4-11.
17. Jelisejevs, Aleksejs. "Crucial Issues with Legal Protection of Consumers Human Rights when Banks unilaterally Close Accounts": 163–180. In: *A Contemporary Anthology of Law*. Athens: Athens Institute for Education and Research, 2022.
18. Jelisejevs, Aleksejs. "Good Faith-Based Approach as a Way to Protect Payment Service Consumers' Rights when Banks Unilaterally Terminate Contractual Relations." Collection of Materials XXII International Scientific Conference of Turiba University (Riga, April 21-22, 2021): 59–67 // https://www.turiba.lv/storage/files/xxii-conference-2021.pdf.
19. Kessler, Friedrich. "Contracts of Adhesion - Some Thoughts About Freedom of Contract." *Columbia Law Review* 43 (1943): 629–642.
20. Krons, Mīrons. "Civillikuma pirmais pants (Laba ticība kā tiesiskas rīcības kritērijs)." *Tieslietu ministrijas Vēstnesis* no. 2 (1937): 270–301.
21. Kull, Irene, "European and Estonian Law of Obligations—Transposition of Law or Mutual Influence." *Juridica International* IX/2004 (University of Tartu, 2004): 32–44.
22. Kūtris, Gunārs. "Iesaldēšana, arestēšana un konfiskācija: cilvēktiesības un kriminālprocesa intereses bankas kontos." *Jurista Vārds* no. 39 (1149) (September 29, 2020): 16–19.
23. Larenz, Karl. *Lehrbuch des Schuldrechts Band I Allgemeiner Teil*. Vol. 14. Munich: C. H. Beck, 1987.
24. McKendry, Ian. "Banks Face No-Win Scenario on AML 'De-Risking." *American Banker* (November 17, 2014) // https://www.americanbanker.com/news/banks-face-no-win-scenario-on-aml-de-risking
25. Meļķisis, Edgars. "Satversmes tiesas spriedums. Valsts nekustamā īpašuma aģentūras lietā saistībā ar tiesību vienotības principu." *Likums un Tiesības* 1, no. 1 (1999): 22–24.
26. Ozoliņš, Osvalds. "Jaunā Civillikuma ievads. Raksti par Prezidenta K. Ulmaņa Civillikumu." In: *Tieslietu Ministrijas Vēstneša, 1. burtnīcas pielikums*. Riga: Tieslietu ministrijas izdevums, 1939.

27. Peczenik, Aleksander. "Principles of Law: The Search for Legal Theory." *Rechtstheorie* no. 1 (1971): 17–36.
28. Peczenik, Aleksander. *On Law and Reason*. Dordrecht: Kluwer, 1989.
29. "Remarks by Acting Under Secretary Adam Szubin [USA] at the ABA/ABA Money Laundering Enforcement Conference" (Washington, DC, November 14, 2016) // https://www.treasury.gov/press-center/press-releases/Pages/jl0608.aspx.
30. Rezevska, Daiga. *Vispārējo tiesību principu nozīme un piemērošana*. Riga: Daiga Rezevska, 2015.
31. Riemer, Hans Michael. *Die Einleitungsartikel des Schweizerschen Zivilgesetzbuches (Art. 1–10 ZGB). Eine Einführung*. Bern: Stämpfli, 2003.
32. Roth, Günter H. *Münchener Kommentar zum Bürgerlichen Gesetzbuch*. Bd. 2. Munich: Schuldrecht Allgemeiner, 2015.
33. Schulze, Reiner, ed. *Bürgerliches Gesetzbuch, Handkommentar*. Vol. 9. Baden-Baden: Nomos, 2017.
34. Siklósi, Iván. "Private Autonomy and Its Restrictions in Roman Law: An Overview Regarding the Law of Contracts and Succession." *Elte Law Journal* 2 (2019): 9–15.
35. Slicāne, Evija. "Labas ticības princips un tā piemērošana Latvijas civiltiesībās." *Jurista Vārds* no. 6 (February 6, 2007): 5-13.
36. Vītoliņa, Baiba. *Patērētāju tiesību aizsardzības pamati.* Riga: Apgāds Zvaigzne, 2015.
37. Von Bar, Christian. *Towards a European Civil Code*. 4th revised and expanded edition. Ed. Arthur Hartkamp, Martijn Hesselink, Ewoud Hondius, and Edgar du Perron. Boston: Kluwer Law International, 2011.
38. Weitzenböck, Emily M. "Good Faith and Fair Dealing in Contracts Formed and Performed by Electronic Agents." *Artificial Intelligence and Law* 12 (March 2004): 83–110 // DOI: 10.1007/s10506-004-1908-0.
39. Zadraks, Gints. "Direktīvas 93/13/EEK par netaisnīgiem noteikumiem patērētāju līgumos nepieciešamā reforma." *Likums un Tiesības* 7, no. 4 (68) (2005): 103–107.
40. Zimmermann, Reinhard. *The Law of Obligations. Roman Foundations of the Civilian Tradition*. 3rd ed. Oxford: Oxford University Press, 1996.

LEGAL REFERENCES

1. *Citadele Bank General Terms of Transactions No. VDN/NO-S-FJ-LV-0819.10-LV*. In Force from September 14, 2019 // https://online.citadele.lv/pwww/apps/p/agreement_doc/language/LV/location/LV/residence/RN/service/VDN/type/JF/?filename=agreement.pdf.
2. *Civil Law of the Republic of Latvia [Civillikums]*. Valdības Vēstnesis, No. 41, 20 February 1937.
3. *Consumer Rights Protection Law of the Republic of Latvia*. Latvijas Vēstnesis, No. 104/105, 01.04.1999.
4. *Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC*. Official Journal of the European Union, L 337, 2015.
5. *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC*. Official Journal of the European Union, L141, 2015.
6. *Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council*. Official Journal of the European Union, L 304, 2011.
7. *Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features*. Official Journal of the European Union, L 257, 2014.
8. *Judgment of Constitutional Court of the Republic of Latvia of 4 February 2003 in case No. 2002-06-01* // www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-06-01_Spriedums.pdf.
9. *Judgment of Department for Administrative Cases of the Supreme Court Senate of the Republic of Latvia of 7 March 2006 in case No. SKA-59* //

https://at.gov.lv/files/uploads/files/archive/department3/2006/ska59-2006.pdf.

10. *Judgment of Department for Civil Cases of Supreme Court of the Republic of Latvia of 17 December 2012 in case No. C12153910* // https://at.gov.lv/downloadlawfile/701.
11. *Judgment of Department for Civil Cases of Supreme Court of the Republic of Latvia of 12 March 2013 in case No. SKC-108/2013* // http://at.gov.lv/downloadlawfile/3002.
12. *Judgment of Department for Civil Cases of the Supreme Court of the Republic of Latvia of 14 September 2016 in case No. C10100611* // http://www.at.gov.lv/downloadlawfile/186.
13. *Judgment of Department for Civil Cases of the Supreme Court of the Republic of Latvia of 27 October 2017 in case No. C09020614*. LV:AT:2017:1027.C09020614.1.S.
14. *Judgment of Department for Civil Cases of the Supreme Court of the Republic of Latvia of 30 June 2017 in case No. C33439211* // https://at.gov.lv/downloadlawfile/5210.
15. *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 12 March 2020 in case No. C68278418*. LV:AT:2020:0312.C68278418.8.S.
16. *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 16 December 2020 in case No. C30501917*. LV:AT:2020:1216.C30501917.11.
17. *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 17 December 2019 in case No. C04169414*. LV:AT:2019:1217.C04169414.5.S.
18. *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 18 December 2018 in case No C73346818*. LV:AT:2018:1218.C73346818.10.S.
19. *Judgment of Department for Civil Cases of the Supreme Court Senate of the Republic of Latvia of 4 October 2006 in case No. SKC–540* // https://www.at.gov.lv/downloadlawfile/3475.
20. *Judgment of Her Majesty's High Court of Justice in England of 5 November 2013 in case No HC13E04267 (Dahabshiil Transfer Services Ltd v. Barclays Bank PLC) and in case No. HC13E04616 (Harada Ltd., Berkeley Credit and Guarantee Limited v. Barclays Bank PLC)*. EWHC 3379 (Ch) // http://www.brickcourt.co.uk/news-attachments/LWT_2013_11_31877320.pdf).

21. *Judgment of the European Court of Justice (Fourth Chamber) of 26 October 2006 in case Elisa María Mostaza Claro v. Centro Móvil Milenium SL (C-168/05)*. EU:C:2006:675.
22. *Judgment of the European Court of Justice (Fourth Chamber) of 4 June 2009 in case Pannon GSM Zrt. v. Erzsébet Sustikné Győrfi (C-243/08)*. EU:C:2009:350.
23. *Judgment of the European Court of Justice of 27 June 2000 in joined cases Océano Grupo Editorial SA v. Rocío Murciano Quintero (C-240/98) and Salvat Editores SA v. José M. Sánchez Alcón Prades (C-241/98), José Luis Copano Badillo (C-242/98), Mohammed Berroane (C-243/98), Emilio Viñas Feliu (C-244/98)*. EU:C:2000:346.
24. *Law on International Sanctions and National Sanctions of the Republic of Latvia*. Latvijas Vēstnesis, No. 116, 15.02.2016.
25. *Law on Payment Services and Electronic Money of the Republic of Latvia*. Latvijas Vēstnesis, No. 43, 17.03.2010.
26. *Law on Taxes and Fees of the Republic of Latvia*. Latvijas Vēstnesis, No. 26, 18.02.1995 (as amended by law of 23.11.2016, Latvijas Vēstnesis, No. 241, 10.12.2016, and by law of 03.04.2019, Latvijas Vēstnesis, No. 75, 12.04.2019).
27. *Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing of the Republic of Latvia*. Latvijas Vēstnesis, No. 116, 30.07.2008.
28. *Luminor Bank General Terms of Transactions*. In Force from September 1, 2020 // www.luminor.lv/sites/default/files/docs/noteikumi/luminor-general-business-terms-01-09-2020.pdf.
29. *Ordinance No. 2016-131 of French Republic of 10 February 2016* // www.legifrance.gouv.fr/loda/id/LEGIARTI000032006591/2016-10-01/.
30. *SEB Bank General Terms of Transactions*. In Force from January 3, 2020 // www.seb.lv/sites/default/files/web/files/prod_doc/VDN_LV.pdf.
31. *Swedbank General Terms of Transactions No. R-18235*. Dated September 25, 2020 // www.swedbank.lv/static/pdf/about/terms/visparejie_darijumu_noteikumi_25092020_LAT.pdf.