**SUMMARY**

**Key Words**: principle of freedom of contract, limitation of freedom of contract, principle of protection of the weak party, principle contra proferentem

**Subject matter**: Freedom of contract and its limits

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**The relevance of the research topic** Legislators are regularly faced with the question of the admissibility of certain restrictions on contractual freedom, adopting laws in the field of regulation of banking, trade, energy, consumer relations and many other areas of economic turnover. At the same time, the decisions taken by the legislator cannot rely on any serious comprehensive scientific research due to their absence, which, of course, does not contribute to the formation of an adequate legal regulation of contractual turnover.

But even more often, Russian courts have to deal with hundreds of questions about the admissibility of restrictions on freedom of contract in determining the admissibility of unnamed contracts, monitoring the fairness of contracts of accession, challenging transactions, or simply in assessing the validity of certain formally legal, but clearly unfair or unfair contractual terms. All this creates a demand for a comprehensive study of issues related to the implementation of civil turnover of contractual freedom and the definition of its limits.

**The purpose of the work:** scientific substantiation of the conditions for the implementation of the principle of freedom of contract, identification of the grounds for limiting the operation of the principle of freedom of contract and the study of the limitations of the principle of freedom of contract, which is based on the moral criterion.

**Objective:**

- determine the content of freedom for civil law relations;
- disclose the content of the principle of freedom of contract;
- consider the grounds for limiting the freedom of contract;
- to analyze judicial practice in disputes related to the restriction of freedom of contract;
- to study the application of the theological interpretation of civil law by the Russian arbitration courts as a prerequisite for ensuring contractual freedom.

**The theoretical and practical significance of the research** that the conclusions and statements contained in it can be applied in teaching the course of civil law and in the process of legislative work.

**Results of the study:**

1. The freedom of the subject as its legal status implies the need to consolidate in the legislation the possible behavior of the subject: to acquire property, to inherit and bequeath property, to engage in entrepreneurial activity, to choose a place of residence, etc. This freedom of the subject may not be limited, except in the case and in the manner prescribed by law. The subject himself, as a General rule, can not completely or partially give up his freedom. The peculiarity of this freedom is that its implementation depends not only on the will and discretion of the subject, but also on the availability of appropriate, including economic conditions.

2. The principle of freedom of contract in modern law is understood as set out in the law the possibility for participants of civil turnover, acting of their own free will and in their interest, freely and without coercion, to choose their counterparties, establishing with them relations of obligation and to choose the type of the concluded contract and determine its terms and conditions. The effect of this principle does not affect those mandatory requirements of the legislation that establish mandatory rules for the parties, since any contract must comply with the requirements of the law (article 422 of the civil code). Freedom of contract, like any freedom, may be restricted by law and is not absolute.

3. It is proved that freedom of contract is characterized by the same features as any legal freedom. On the one hand, freedoms cannot be arbitrarily prohibited or denied; on the other – freedom has certain limits, both common to all legal freedoms and its own limitations – for each of them.

4. It is concluded that the content of the principle of freedom of contract is revealed through a set of its elements, the number of which varies in research. The author proposed as the main elements of the freedom of contract to allocate: 1) freedom of decision on the conclusion of the contract; 2) freedom of choice of the counterparty; 3) freedom of choice of the type of contract (provided or not provided by law); 4) freedom of determination of the terms of the contract. Additional elements of freedom of contract include freedom to choose the place and time of conclusion of the contract, freedom to modify and terminate the contract, etc.
5. It is shown that the freedom of the form of the transaction is not included in the contractual freedom. Having fixed in Art. 421 of the civil code the principle of freedom of contract, the legislator did not mention the freedom of its form, and the broad interpretation of the law in this part, in our opinion, is impossible. Obviously, the freedom of form of a civil contract under Russian law consists in the fact that its parties have the right to "strengthen" its form by concluding their contract in a notarial form, at a time when a simple written form was required, or to conclude a contract in writing, when an oral form was sufficient for its conclusion. In this sense, in Russia, the freedom of form of the Treaty has not yet fulfilled its economic functions.
6. It is shown that the principle of freedom of contract, including the freedom of termination and modification of the contract, is faced with the principle of the law of obligations – the principle of stability of the contract. Thus, restrictions on the freedom of contract extend to the freedom to change (or terminate) it. The current rules for the admissibility of an agreement to amend the contract are not immutable, since (we mean paragraph 1 of article 450 of the civil code) a different situation can be created by a civil law codification act, another law or contract.
7. It is proved that the interpretation of the contract contra proferentem is subject to the principle of freedom of contract and is considered as an auxiliary, secondary means of interpretation (last resort), which is used by the court only if it is impossible to establish the actual will of the parties on the basis of traditional methods of interpretation and analysis of external circumstances.
8. The principle of contra proferentem (against the professional) holds a special place among all methods of contract interpretation and is an interpretation of a controversial or contradictory condition in favor of the counterparty of the Contracting party. The courts apply this principle if there are two different (reasonable) interpretations, regardless of which one is more reasonable. First, the rule is intended to put the party that has made the ambiguity at a disadvantage. Second, the rule of contra proferentem is aimed at protecting the reasonable expectations of the party who had a choice when drafting a contract (including choice of language and wording).

**Recommendations:**

1. It is necessary to extend the mechanism of protection of the weak side to persons engaged in business activities, determining the strong side of the outcome of their real opportunities to influence the formation of contractual terms, reflecting the relevant recommendations in the Resolution or generalization of judicial practice of the Judicial Board on economic disputes of the armed forces.
2. Add article would article. 431 of the civil code part three, stating it in the following wording:
"If the rules contained in parts one and two of this article do not make it possible to determine the content of the contract, then the disputed or contradictory condition shall be interpreted in favor of the counterparty of the party that made the contract taking into account the reasonable expectations of the party that had no choice in drawing up the contract."
3. To add point 2 of article 428 of the civil code with the paragraph three, having specified
"The courts in resolving disputes arising from contracts, PI establishing unfair contractual terms does not apply them.»