

Law Report: The Freedom of Contract

A contract is a bundle of enforceable promises. Promises have more than moral implications. Often times people act in reliance of the promise and spend time and resources based on trust in another person. Refusal to honor a promise causes financial damages and gives an unfair advantage to a breaching party. This creates a need for written agreements that will be enforced by the courts.

In contractual disputes, the most important piece of evidence is the contract itself. The parties involved in pre-contractual negotiations consider all related risks and circumstances existing as of the signing date and agree on the text that is acceptable for them. A task before the judge is to find out what is the meaning of each term and word of the contract in order to determine and enforce the parties' intent. They may use diverse methods of interpretation such as objective test, analyzing the common practice in certain field etc.

In practice very often, instead of trying to understand the meaning of the contract Georgian judges disregard the private autonomy and seek to rewrite contracts. They often try to come up with more "fair", "reasonable" or "moral" meaning of the contract even if the parties never intended or meant it.

In Shakespeare's Merchant

WHEN A JUDGE REFUSES TO ENFORCE A CONTRACT BASED ON VAGUE STANDARDS AND CONCEPTS, HE OR SHE VIOLATES THE BASIC PRINCIPLE OF FREEDOM OF CONTRACT.

of Venice, No one, not even the Duke who wanted to save Antonio doubted the validity of the bond. Antonio almost lost pound of flesh because of the contract he signed. In contrast, Georgian courts easily invalidate all kinds of agreements.

In one of its recent cases, the Supreme Court of Georgia held that "interpretation of the law should lead to fair and optimal resolution of the case." In the same case, the court ruled that the following wording of the contract was vague and therefore void: "for the purposes of development of restaurant chain, X paid USD XXX to Y in consideration of which X would receive reasonable proportion of shares and dividends from the companies." Both parties of the case and any reasonable person reading the contract knew what was meant by this text. The language of the contract was as simple and clear as it gets. One party paid money in consideration of which another promised shares.

However, the result that would follow the self-evident meaning of the contract was not the one that was deemed "fair" by the judges.

Another example is the case where the Tbilisi City Court and then Tbilisi Court of Appeals disregarded the explicit provision of a contract that excused performance of a party upon failure of another party to fulfill its side of the obligations, announcing the foundational article of the contract mere suggestion, or general declaratory statement.

Interpretation of the contract is very similar to the interpretation of law. A judge has no right to rewrite or amend the contractual conditions against the free will of the parties, just as judge has no right to amend the laws. A judge should not go beyond the specific exceptions from the freedom of contract as prescribed in the Civil Code. When a judge refuses to enforce a contract based on vague standards and concepts, he or she violates the

basic principle of freedom of contract. The party who was denied of the enforcement of a contract or a specific term of the contract in consideration of which he or she performed counter obligations and bore the risk, loses its confidence in the legal system. This will undoubtedly lead to adverse economic consequences that falls outside the scope of this article.

Above-mentioned issue is not unique to Georgian courts. Every legal system faces the problem of judicial activism. Judicial activism refers to judicial rulings that are suspected of being based on personal opinion, rather than on existing law. Once judges envision the possible "fair" outcome of the case they start to justify it by vague concepts to reach the desired result. In fact, analyses shall be conducted in reverse order. They should analyze the meaning of the contract and the law first and come up with the decision accordingly.

Currently, public hearings are conducted to select the nominees for the Supreme Court of Georgia. During the hearings, the question that was asked to almost all candidates was whether they would change the decision if the meaning of law leads to "unjust" results. The most of them answered that they would do whatever they consider was fair and equitable. This trend is a real threat not only for the freedom of contract but for ba-

sic democratic principles such as separation of powers as well. In a democratic society, no unelected person should adopt the laws. As Sir William Blackstone writes in his Commentaries on the Laws of England "law, without equity, though hard and disagreeable, is much more desirable for the public good, than equity without law; which would make every judge a legislator, and introduce most infinite confusion."

If this problem is not addressed in near future, the individuals and business entities will be able to enforce only those contracts that judges consider fair and equitable.

The Parliament and the High Council of Justice should start solving this problem by appointing the judges in the Supreme Court who respect the principles of freedom of contract and separation of powers. The importance and meaning of these principles should be taught and discussed in academic world more deeply and comprehensively. Judges and practicing attorneys who share the view that people should be free to enter into contracts should actively advocate for the freedom of contract.

BLC
Law Office



DAVIT TABATADZE



GOCHA OKRESHIDZE

People around the world express more support for taking in refugees than immigrants

The FINANCIAL – On balance, people around the world are more accepting of refugees fleeing violence and war than they are of immigrants moving to their country, according to a new analysis of public opinion data from 18 nations surveyed by Pew Research Center in spring 2018.

Across most countries surveyed, people are more supportive of accepting refugees than immigrants. The analysis comes as many countries grapple with a surge in refugees and migration amid the ongoing civil war in Syria and other armed conflicts in the Middle East. There were 258 million people living outside their country of birth in 2017 including roughly 20 million refugees, according to the United Nations.

For these questions, refugees are described as people "fleeing violence and war" while immigrants are described as people "moving to our country." There is no further specification for what the terms refugee and immigrant mean, and they may be interpreted in different ways by different respondents.

Across the 18 countries surveyed, a median of 71% of adults said they support taking in refugees fleeing violence and war. By contrast, a median of 50% said they support "more" or "about the same" number of immigrants moving to their country, a 21 percentage point difference.

The gap was largest in Greece, where 69% supported taking in refugees, compared with just 17% who supported more or about the same number of immigrants moving to



their country. In Germany, people were also much more likely to support taking in refugees (82%) than immigrants (40%).

In Japan, on the other hand, 81% supported more or about the same number of immigrants moving to their country, while a smaller share (66%) supported taking in refugees. Despite reaching its highest-ever foreign national population of 2.7 million in 2018, Japan's population is shrinking. Only China is expected to lose more people by the year 2100, according to recent UN population projections.

In the United States, public support for accepting refugees and im-

migrants was roughly equal in the 2018 survey (66% and 68%, respectively). In 2018, the U.S. resettled 23,000 refugees, down from 33,000 the previous year and a recent high of 97,000 in 2016. At the same time, new immigrant arrivals to the U.S. have also fallen.

In a separate Pew Research Center survey conducted in spring 2018, 51% of Americans said the U.S. "has a responsibility to accept refugees into the country," while 43% said it does not.

Attitudes toward refugees, immigrants are related to views of diversity

Across most countries surveyed,

more people favor diversity than oppose it. Globally, public attitudes toward accepting refugees and immigrants often differ depending on whether respondents see diversity as beneficial for their country (for more on how we measure attitudes toward diversity, see our April 2019 report). Overall, people in 14 of 18 countries surveyed were more likely to favor diversity than oppose it.

Those who oppose diversity in their country are less likely to support accepting immigrants and refugees

Commuting between regions of EU

In 2018, among the 220 million employed persons aged 20-64 years in the EU, 18.3 million, equivalent to 8.3 % of employed, were commuting from one region to another within their country of residence.

The highest rate of regional commuting in 2018 was recorded in Belgium and the United Kingdom, where more than one in five (21 % of employed each) persons commuted to work to a different region, followed by the Netherlands (17 %). Commuting was also relatively common in Denmark, Germany, Lithuania, Hungary and Austria where around 10 % of employed commuted to work in a different region.

The regions with the highest share of commuting were found in the London area in the United Kingdom: in Outer London – South (61 % of employed in that region), Outer London – East and North East (59 %), Inner London – East (53 %), Outer London – West and North West (48 %), followed by Prov. Brabant Wallon in Belgium (47 %).

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