Global Conference on Multidisciplinary Research and Innovation
Hosted Online from Berlin, Germany
Date: 2nd June, 2026
Website: https://econferencia.com

LEGAL AMBIGUITY AND MARKET PERCEPTION OF UNFAIR TERMS IN COMMERCIAL CONTRACTS: EMPIRICAL AND DOCTRINAL REFLECTIONS FROM UZBEKISTAN

Khayriddin Nuriddinov
Doctoral student (PhD), Tashkent State University of Law
Republic of Uzbekistan, Tashkent
E-mail: khayriddinnuriddinov@gmail.com

Abstract
This article explores the problem of legal uncertainty surrounding unfair terms in commercial contracts in Uzbekistan. Although national legislation formally upholds principles of contractual freedom and equality, business practices reveal a persistent imbalance in bargaining power. Based on empirical survey data and doctrinal analysis, the paper identifies common examples of unfair clauses, highlights the absence of clear legal standards for their regulation, and compares Uzbekistan's framework with European legal models. The findings point to a legal vacuum and emphasize the need for systematic reform, including the codification of fairness criteria and the development of preventive legal mechanisms.

Keywords: Unfair terms, commercial contracts, contractual imbalance, freedom of contract, legal uncertainty, empirical legal study, Uzbekistan, legal reform, consumer protection, bargaining power.

The ongoing development of market institutions and entrepreneurial activity in Uzbekistan, set against the backdrop of a transforming legal system, underscores the urgent need to re-evaluate the regulatory framework governing contractual relations between economically unequal parties. Although the principles of party

equality, contractual freedom, and autonomy of will are formally enshrined in national legislation, legal practice reveals a consistent pattern of contractual imbalance resulting from the inclusion of terms that disadvantage the weaker party. This issue is exacerbated by the absence of a statutory definition of "unfair terms" within Uzbekistan's civil legislation, as well as the lack of clear procedural mechanisms for identifying and correcting such provisions. The resulting legal uncertainty significantly hampers the ability to protect economically weaker contracting parties in practice.

In the face of this ambiguity, businesses struggle to accurately assess the legal and financial implications of entering into agreements—particularly in situations where one party possesses dominant market or bargaining power. Without established standards or reliable judicial benchmarks for evaluating the fairness of contractual terms, parties are left without guidance, increasing the potential for arbitrary interpretation and weakening trust in legal institutions.

In practical terms, the business community perceives unfair terms as a source of unpredictable and potentially serious risk. The absence of clear criteria for early risk assessment and the lack of established dispute resolution procedures often force entrepreneurs either to accept unfavorable terms without challenge or to forgo potentially profitable deals. As a consequence, a form of legal passivity emerges—market actors, even in the presence of clear imbalance, often refrain from seeking redress due to concerns about time, cost, and reputational consequences associated with litigation.

The principle of freedom of contract is traditionally regarded as a cornerstone of civil law, as it ensures the autonomy of the parties and allows for flexibility in the structuring of legal obligations. However, within the sphere of commercial relations, the application of this principle often results in a substantial imbalance—particularly in interactions involving parties with significant economic disparity. In

such scenarios, the party with superior bargaining power is frequently in a position to impose terms that extend beyond the boundaries of good faith, reasonableness, and fairness.

Although the legal system of Uzbekistan formally recognizes the principle of legal equality between contracting parties, this norm frequently clashes with the practical realities of contract formation. The official commentary to the Civil Code emphasizes that legal equality must be upheld regardless of the parties' social or economic status, or any organizational or hierarchical subordination. No civil law subject has the authority to dictate terms to another.[1] Yet, this abstract formulation of equality highlights a deeper issue: when one party persistently finds itself in a structurally weaker position, it calls for a critical reassessment and adjustment of the legal framework to restore substantive contractual balance.

As A.G. Karapetov aptly observes, legal intervention in the domain of contractual autonomy is justified only when the unfairness of a given term reaches a degree where the moral imperative to rectify the imbalance outweighs the intrinsic value of personal freedom.[2] This perspective provides a clear basis for distinguishing between acceptable forms of contractual inequality and those situations where the severity of injustice necessitates state involvement to protect the weaker party.

To obtain empirical insights into the prevalence of unfair terms in commercial contracts, an online survey was conducted between March and April 2025 among members of the business community. The questionnaire was distributed through various online platforms and was available in both Russian and Uzbek languages. A total of 19 respondents participated in the study, including 10 legal professionals, 2 entrepreneurs, and 7 individuals not directly involved in contractual practice.

[1] Commentary on the Civil Code of the Republic of Uzbekistan. Vol. 1 / Edited by Kh. R. Rakhmankulov, Sh. M. Asyanov. – Tashkent: Ministry of Justice of the Republic of Uzbekistan, 2020.
[2] Karapetov, A.G. Main Trends in the Legal Regulation of the Termination of Breached Contracts in Foreign and Russian Civil Law: Doctor of Legal Sciences Dissertation. – Moscow, 2013. – p. 23.

This respondent composition enabled the collection of both expert legal opinions and perspectives from business actors and external observers engaged with commercial activity.

According to the results, 84.2% of participants reported encountering unfair terms either regularly or occasionally. Specifically, 7 respondents indicated frequent exposure to such terms, while 9 selected the option "sometimes." Only three participants stated they had not encountered unfair terms in their professional experience.[3]

These findings suggest that unfair contractual terms are perceived by the majority of participants as a persistent and systemic phenomenon. This pattern points not only to structural issues in contract enforcement but also to the limited availability of effective legal remedies for protecting weaker parties under the current regulatory framework.

Several respondents noted the inclusion of obligations in contracts that were not directly related to the subject matter of the transaction. Among the examples cited were mandatory annual fees for the use of equipment and additional clauses in real estate transactions requiring payment for services not covered by the sale agreement itself. This practice of broadly incorporating ancillary obligations—without offering the other party the ability to opt out without losing access to the primary service—raises serious concerns in terms of fairness and reasonableness.

In addition, some respondents described situations where one party referred to internal regulations or organizational policies that were neither annexed to the contract nor disclosed to the counterparty, and which could be unilaterally amended. This effectively places the other party in a structurally disadvantaged

[3] Nuridinov, Kh.A. Results of the Online Survey "Unfair Terms in Commercial Contracts: Perception and Protection." Conducted from March 1 to April 30, 2025. The questionnaire and collected data are in the author's possession.

position, as performance becomes contingent on external rules that are subject to arbitrary change.

Finally, a significant number of participants reported that the use of standard form contracts was often accompanied by a prohibition on making any modifications—even when such templates failed to reflect the actual terms agreed upon by the parties. Under conditions of limited bargaining power, this results in de facto coercion to accept pre-drafted terms, undermining the principle of contractual freedom and disrupting the balance in the formation of obligations.

These examples indicate a systemic pattern of contract design that shifts risks, duties, and control to the benefit of the stronger party. Such practices underscore the need for both doctrinal elaboration of the criteria for unfair terms and normative intervention aimed at restoring parity in commercial contract negotiations.

The European legal framework for protecting against unfair terms is grounded in Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. According to Article 3(1) of the Directive, a contractual term is deemed unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer.[4]

The preamble to the Directive emphasizes that consumers are often in a weaker position, as contract terms are typically pre-formulated and presented on a take-it-or-leave-it basis, without any real possibility of individual negotiation. As the Court of Justice of the European Union (CJEU) has noted in its case law, the primary objective of this legal instrument is "not merely to eliminate individual unfair terms, but to restore the actual balance between the parties."

This approach reflects a high level of normative and institutional maturity within the EU's legal system, where protection of the weaker party is achieved not only

[4] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts // OJ L 95, 21.4.1993, p. 29–34.

through formal legal standards but also by taking into account the factual imbalance in bargaining positions and the limitations on the weaker party's freedom of choice. Such a model could serve as a valuable reference for legal reform in the Republic of Uzbekistan, where comparable safeguards have not yet been fully implemented at the legislative level.

However, when assessing the relevance of introducing such mechanisms into the national legal framework, it is advisable to consider not only foreign models but also the practical realities emerging from Uzbekistan's commercial environment. For instance, the results of the survey indicate that the consequences of incorporating unfair terms into commercial contracts are perceived by respondents as significant not only in economic terms, but also in legal and business dimensions.

The most frequently cited consequence was financial loss, mentioned in nearly half of the completed questionnaires. Such losses arise both during contract performance—where one party is compelled to incur disproportionate costs—and upon termination of contractual relationships, which is often accompanied by penalty clauses, withholding of payments, and other financial burdens.

The analysis of respondents' answers regarding preventive measures revealed that practices aimed at avoiding unfair terms in commercial contracts tend to be predominantly reactive and individualized. The most frequently mentioned actions included conducting legal reviews of contracts prior to signing and attempting to renegotiate unfavorable clauses with the counterparty. Each of these measures was cited by six respondents, indicating their relative accessibility and applicability in real-world business settings.[5]

[5] Nuridinov, Kh.A. Results of the Online Survey "Unfair Terms in Commercial Contracts: Perception and Protection." Conducted from March 1 to April 30, 2025. The questionnaire and collected data are in the author's possession.

Equally noteworthy is the fact that some respondents explicitly indicated the absence of any protective measures. Open-ended responses included statements such as "I do nothing" or "it's useless," which may reflect both a lack of legal awareness and a general skepticism toward the effectiveness of existing mechanisms. This attitude appears to be particularly common among small business owners, who often face limitations in accessing qualified legal assistance. As a result, the overall picture suggests that although basic legal self-protection tools are available, they are used selectively, and the effectiveness of such measures largely depends on the parties' legal awareness, economic status, and ability to assert their interests prior to contract conclusion. This inconsistency in self-protective practices stems not only from subjective factors—such as legal literacy and access to legal resources—but also from the objective legal uncertainty present in the current regulatory framework.

This issue became the focus of a separate part of the survey, which aimed to capture how market participants perceive the existing legal basis for regulating unfair terms. The findings revealed a widespread sense of ambiguity and inadequacy. When asked whether Uzbekistan's legislation contains a clear definition and criteria for unfair terms, the vast majority of respondents selected either "partially" or "no." Not a single participant expressed confidence that such standards are sufficiently established in the current legal system.

Based on the above, it can be concluded that Uzbekistan's current legal framework lacks direct regulatory mechanisms for addressing the inclusion of unfair terms in commercial contracts. This gap creates an objective need for both doctrinal development and the institutionalization of fairness standards within contractual relations.

The responses collected demonstrate a strong demand from business actors for systematic and effective protections against contractual inequality. Given the

previously identified legislative gaps and the absence of a formal legal institution for recognizing unfair terms, the respondents' concerns appear not only predictable but also well-founded.

In addition to legislative reform, the respondents implicitly call for a comprehensive approach that combines judicial and preventive mechanisms, including:

- the codification of fairness criteria and development of enforcement tools;
- partial implementation of standard-form contracts with mandatory minimum protections;
- enhancement of legal awareness among business entities;
- development of alternative dispute resolution procedures.

Empirical data from the online survey revealed both the most common types of unfair terms and how they are perceived by market participants. The use of one-sided sanctions, imposition of extraneous obligations, and restriction of contractual freedom reflect a structural imbalance in business-to-business relationships—particularly where parties differ in economic strength. The results clearly point to the inadequacy of current legal protections, which are largely reactive in nature and not supported by preventive safeguards. International legal doctrine also emphasizes that the recognition of a contractual term as unfair should not automatically invalidate the entire contract.

As M. Farina notes, "if an unfair term is substantial, it is necessary to consider the consequences of its removal. And, as has been shown, it is the national legal systems that must define the criteria governing whether a contract may continue to operate without the unfair term in a manner consistent with EU law".[6] This approach highlights the importance of a systematic mechanism that allows

[6] Farina M. Unfair Terms and Supplementation of the Contract // European Review of Private Law. – 2021. – Vol. 29. – No. 3. – P. 456.

contractual relations to be preserved while eliminating legal disproportion. However, neither the current legislation nor the judicial practice of the Republic of Uzbekistan presently provides direct provisions for classifying contractual terms as unfair or for applying specific legal consequences to them.

The results of the conducted empirical study confirm the existence of a consistent practice of including terms in commercial contracts that disrupt the contractual balance in favor of the stronger party. Respondents' perception of such terms as unfair, combined with the absence of clear legal criteria for their identification and consequences under national law, points to a legal vacuum in this area. The identified shortcomings of the current regulatory framework, the limited availability of preventive mechanisms, and the dominance of judicial remedies all highlight the need for a systematic reconsideration of approaches to regulating contractual relations in business transactions. Thus, the empirical data clearly demonstrate both the relevance of the issue and the insufficiency of existing regulation. These findings provide a foundation for further in-depth analysis of civil-law mechanisms aimed at safeguarding parties from unfair contractual terms, as addressed in the following sections.

LIST OF USED LITERATURE

1. Nuridinov, Kh.A. Results of the Online Survey "Unfair Terms in Commercial Contracts: Perception and Protection." Conducted from March 1 to April 30, 2025. The questionnaire and collected data are in the author's possession.
2. Commentary on the Civil Code of the Republic of Uzbekistan. Vol. 1 / Edited by Kh. R. Rakhmankulov, Sh. M. Asyanov. – Tashkent: Ministry of Justice of the Republic of Uzbekistan, 2020.

3. Karapetov, A.G. Main Trends in the Legal Regulation of the Termination of Breached Contracts in Foreign and Russian Civil Law: Doctor of Legal Sciences Dissertation. – Moscow, 2013. – p. 23.
4. Farina M. Unfair Terms and Supplementation of the Contract // European Review of Private Law. – 2021. – Vol. 29. – No. 3. – P. 456.
5. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts // OJ L 95, 21.4.1993, p. 29–34.