

Contractual freedom in contract law (With special emphasis on the construction contract)

Teuta Beka

Abstract

A contract is an agreement between two or more persons who intend to establish, change or extinguish a legal-civil relationship. Civil legal relations between the parties to the contractual law are regulated based on the principle of autonomy of the will of the parties. Legal entities by freely manifesting their will regulate a civil legal relationship. Regarding the autonomy of the will, the legal doctrine does not have a unique position. Voluntary autonomy is explained more as a philosophical concept. Freedom of contract represents the possibility for the parties of their own free will to regulate their mutual relations. Restriction of contractual freedom has been done with imperative norms, with rules of morality and rules of good habits. Restriction of contracting freedom is oriented in terms of the possibility of choosing the contracting party, restriction in terms of content through adhesion contracts and in formal contracts through the form of contract, which includes consent to enter into the contract. Free restriction of the contracting of the party in case of concluding the contract is mostly expressed in the construction contract. The construction contract is a very formal contract and the non-implementation of the legal provision regarding the form of the contract brings the invalidity of the contract. These contracts in contemporary law are known as standard contracts which are previously drafted by one of the parties. These contracts are known as “take it or leave it” and the contracting party is not allowed to change the content but must enter into the contract as it is.

Keywords: contract, contractual freedom, construction contract, autonomy of the will, standard contract.

Full Text: [PDF](#)



This work is licensed under [Creative Commons Attribution 3.0 License](#).

Academic Journal of Business, Administration, Law and Social Sciences ISSN 2410-3918 (print)

ISSN 2410-8693 (online)

Copyright © IIPCCCL-International Institute for Private, Commercial and Competition law