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LIMITATIONS OF FREEDOM OF CONTRACT WITH SPECIAL REFERENCE TO FREEDOM OF CONTRACT OF BUSINESS ENTITIES

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Abstract
Freedom of contract is a fundamental principle of obligation law, but in modern legal systems it functions as a relative and normatively oriented category. The paper examines the theoretical foundations of this institute, starting from the liberal conceptual core of the autonomy of the will and its historical development, to the modern, functional concept that views contractual freedom in the broader framework of public law restrictions, market discipline, and protection of the weaker party. The analysis includes domestic and comparative law, including standards of European contract law and modern economic indicators (EFW index), in order to indicate the connection between economic and contractual freedom. Special attention is paid to the position of business entities, where contracting has a specific dimension due to their professional status, the complexity of market transactions, and pronounced information asymmetry. Through the analysis of imperative norms, standard and adhesion contracts, regulated markets, and unequal bargaining power, the key practical and systemic limits of business autonomy are pointed out. The results of the work show that these restrictions do not represent a negation of the freedom of contract, but a mechanism for its functional realization - through the provision of legal certainty, fair market conditions, protection of competition, and stability of the economic order. The paper contributes to a better understanding of the modern conception of contractual autonomy in the economy, indicating that the balance between freedom of disposition and public law regulation is the key assumption of an efficient, fair, and sustainable contractual system.
Keywords: freedom of contract; autonomy of the will; limitations of contractual freedom; imperative norms; business entities; public order; business contracts

OGRANIČENJE SLOBODE UGOVARANJA SA POSEBNIM OSVRTOM NA SLOBODU UGOVARANJA PRIVREDNIH SUBJEKATA

Apstrakt
Sloboda ugovaranja predstavlja osnovno načelo obligacionog prava, ali u savremenim pravnim sistemima funkcioniše kao relativna i normativno usmerena kategorija. U radu se razmatraju teorijske osnove ovog instituta, počev od liberalnog pojmovnog jezgra autonomije volje i njenog istorijskog razvoja, do savremenog, funkcionalnog koncepta koji slobodu ugovaranja sagledava u širem okviru javnopravnih ograničenja, tržišne discipline i zaštite slabije ugovorne strane. Analiza obuhvata domaće i uporedno pravo, uključujući standarde evropskog ugovornog prava i savremene ekonomske pokazatelje (EFW indeks), sa ciljem da se ukaže na povezanost ekonomske i ugovorne slobode. Posebna pažnja posvećena je položaju privrednih subjekata, kod kojih ugovaranje ima specifičnu dimenziju usled njihovog profesionalnog statusa, složenosti tržišnih transakcija i izražene informacione asimetrije. Kroz analizu imperativnih normi, standardnih i adhezionih ugovora, regulisanih tržišta i nejednake pregovaračke moći, ukazuju se ključna praktična i sistemska ograničenja poslovne autonomije. Rezultati rada pokazuju da ova ograničenja ne predstavljaju negaciju slobode ugovaranja, već mehanizam njene funkcionalne realizacije – kroz obezbeđivanje pravne sigurnosti, fer tržišnih uslova, zaštitu konkurencije i stabilnost privrednog poretka. Rad doprinosi boljem razumevanju savremenog shvatanja ugovorne autonomije u privredi, ukazujući na to da je ravnoteža između slobode raspolaganja i javnopravne regulacije ključna pretpostavka efikasnog, pravičnog i održivog ugovornog sistema.
Ključne reči: sloboda ugovaranja; autonomija volje; ograničenja slobode ugovaranja; imperativne norme; privredni subjekti; javni poredak; poslovni ugovori

INTRODUCTION

Public order and imperative norms set the limits within which the contracting parties can decide whether to conclude a contract, with whom to do so, and under what conditions. Within these frameworks, the freedom of contract develops, which represents one of the key expressions of the autonomy of the will, because the contractual obligation is based on the parties' own disposition, and not on an imposed rule (Kastrati, 2015, pp. 242-243). The role of the state in contractual relations is limited to ensuring basic formal assumptions and preventing violations of public order, while the contract itself, in the liberal understanding, is understood as an expression of the will of the contracting parties, which in their mutual relationship has the force of law (Douty, 2008, p. 58). Personal liberty allows everyone to commit (by contract) as they wish within the limits of public order. That is the essence of freedom of contract. How far this freedom will move in a society depends on important political and moral circumstances, but also economic and social factors (Ghestin, Goubeaux 1977, 82), whereby the sources of moral norms should be sought in man himself and not in some force outside him (Muratović et al., 2023). More than moral understandings and social customs, it is the law that limits this freedom through coercive norms.

Restrictions on freedom of contract arise from several sources: imperative norms, rules of public order, moral values, principles of conscience and honesty, as well as specific regulations governing economic activities. They ensure that contractual relations do not deviate from the structural values of the legal system or from the economic and social goals of the state. Restrictions related to economic entities are of particular importance, since business contracts are often concluded in conditions of increased market risk, unequal negotiating position, or regulatory requirements that protect competition, consumers, or market stability.

The subject of this paper is a systematic review of the institution of freedom of contract with an emphasis on the nature, scope, and legitimacy of its limitations, especially in the context of contractual relations between economic entities. The aim of the paper is to provide a clear picture of the extent to which the autonomy of the will is limited in modern obligation law and how these limitations are justified, through the analysis of the relevant doctrine, normative framework, and contemporary tendencies. Starting from the methodological framework, the work applies a normative, analytical, and to a certain extent comparative method, whereby the comparative approach does not go beyond the framework that would bring it closer to a full comparative analysis, but still enables an overview of the development of the institute in the domestic legal system and its economic context. After the methodological notes, attention is first directed to the theoretical and normative assumptions of freedom of contract, then to its limitations in the general rules of the law of obligations, and then to the specific limitations to which business entities are exposed in practice. In this way, a more complete overview of one of the central institutes of modern contract law and its role in preserving the stability and legal security of the economic system is provided.

FREEDOM OF CONTRACT AND ITS LIMITATIONS - THEORETICAL AND NORMATIVE FRAMEWORK

The basis of freedom of contract is the assumption that the contracting parties can shape their mutual legal relations independently and without restrictions, which is why this institution is considered one of the most important in modern obligation law. In legal doctrine, different authors define this institute in different ways: some single it out as a special principle of contract or obligation law (Đorđević, Stanković 1987, p.187-188), while others start from the broader idea of autonomy of will and within its framework observe freedom of contract as a technical rule that operationalizes that philosophical concept (Ripert, Boulanger 1957, p. 7). As a result of such an approach, the freedom of contract is defined in the literature as an integral part of the methods of regulation in civil law (Vodinelić 2012, p.38; Gams 1977, p.39). In accordance with that, the imperative norms of civil and narrow obligation law are considered a mechanism that enables the realization of this freedom in practice (Marković 1997, 199; Vodinelić 2012, 38). The modern understanding of freedom of contract is influenced by the understanding that the absence of formal state intervention is not enough if the contracting parties do not have a real opportunity to negotiate on an equal footing, with access to information and without economic pressure. For this reason, real freedom of contract exists only when negotiating positions are balanced,

and legal interventions prevent possible abuse of contractual power (Van Boom, 2025, p. 8-10).

In European private law, it is based on the position that freedom of contract is based on a balance between individual autonomy and social responsibility, which is why the autonomy of the will is limited by rules that ensure the protection of the weaker party, market balance, and public interest (Micklitz, 2015, p. 19). Traditionally, the starting point of this institute is the idea of autonomy of the will, i.e., the ability of the contracting parties to independently decide whether, with whom, and under what conditions they will conclude a contract. However, modern legal systems no longer see freedom of contract as an unlimited and absolute sphere of disposition, but as an institution that functions within a wider normative and social framework. Economic conditions, market development, the power relationship between contracting parties, as well as public law interests of the state, conditioned the gradual transformation of the classic liberal understanding of contractual freedom into the concept of limited, directed, and rationalized autonomy.

Within the framework of the classical-liberal approach, which marked the European legal thought of the 19th century, the contract was understood as a direct expression of the will of the contracting parties, and this will had the effect of law among them. The state had a very limited role in such a concept, reduced primarily to checking the fulfillment of formal assumptions and preventing violations of public order. The continental doctrine of that time emphasized the primacy of the will in relation to positive law, expressed through the position that "the contract stands above the law." Based on such a view, the content of the contract results from the autonomous decision of the contracting parties, and once the consent was given, it had the force of a binding rule among the contracting parties (Douty, 2008, p. 58)

In modern legal theory, the autonomy of the will still occupies one of the key places. Kastrati (2015) points out that it is a "fundamental principle of obligation law" because it allows the contracting parties to independently regulate the origin, changes, and termination of their contractual relations, within the limits prescribed by law. According to the same author, the limits of the contractor's will appear only when their actions would be contrary to imperative regulations, constitutional arrangements, or moral values of society. In this way, it is clearly indicated that the freedom of contract is not an unlimited category, but an institution that functions within the framework of the legal system and its rules.

Contemporary literature further deepens the notion of autonomy of the will. Van Boom (2025) distinguishes the traditional "principled" understanding of autonomy, which originates from liberal philosophy and emphasizes the absence of state interference, from the "substantive" approach that connects autonomy with a realistic balance of bargaining power and the availability of information. In his interpretation, complete autonomy exists only when the contracting parties have equal decision-making opportunities, while in conditions of economic imbalance and asymmetric information, the state has a legitimate reason to intervene in order to prevent exploitative contractual practices.

In the European context, freedom of contract is understood as an integral part of the right to personal self-determination. The Swiss doctrine connects freedom of contract

with the fundamental right of an individual to personal autonomy (Guillod, 2003, 122–123), while in the continental tradition it is emphasized that the contract "binds the parties as a law" (General Property Code for Montenegro, Art. 1007), which confirms the continuity of the idea of the binding force of the contract.

The full obligation of the contract, however, inevitably raises the question of how far the autonomy of the will of the contracting parties extends. Hiber (2022) believes that the limits of freedom of contract are manifested when imperative norms, which deviate from the general rule contained in the dispositive provisions, come into force. While dispositive norms represent a standard rule that the parties can freely change, imperative norms are applied in situations where it is necessary to protect the public interest, moral principles, the economically weaker party, or preserve the essential values of the legal order. In this way, modern legal systems recognize that legislative restrictions on freedom of contract aim to preserve the balance between individual autonomy and wider social interest (Hiber, 2022, 473).

Precisely because of this construction of contractual obligation, the question arises to what extent the will of the parties can act without the intervention of the law. Hiber (2022) emphasizes that these limits are made concrete through the application of mandatory legal norms, which function as an exception in relation to the dispositive character of most rules of obligation law. Dispositive provisions presuppose freedom of choice, while imperative provisions are applied when the law wants to ensure the protection of the weaker party, preserve public morals, or prevent the foundation of the legal system from being undermined. This emphasizes that the modern legislative framework does not restrict the freedom of contracting arbitrarily, but in order to establish a fair balance between the autonomy of the individual and the common interests of society.

Seen from a historical perspective, the concept of freedom of contract has undergone profound changes. In the classical liberal period, the understanding prevailed that contracting parties should enjoy almost unlimited freedom of disposition. However, the subsequent development of European legal systems is marked by increasingly pronounced state intervention, especially in areas that are considered socially sensitive, such as labor relations, consumer protection, and activities subject to regulatory supervision. This development shows that modern law has abandoned the earlier ideas of absolute contractual freedom and turned to a model in which the autonomy of the will is exercised within clearly defined limits. Đurđević and Pavić point out that the freedom of contract in socialist and transitional law developed through the model of "conditional and directed freedom" where the autonomy of the will remained declaratively preserved, but significantly limited by the obligations imposed by economic and planning instruments of the state (Đurđević & Pavić).

In modern legal theory, the position that restrictions are not the opposite of freedom of contract, but its prerequisite, is increasingly prevalent. Van Boom (2025) indicates that the legislator's interventions should not be seen as sporadic exceptions, but as "basic assumptions" that allow contractual autonomy to function in a healthy way, preventing unequal power relations, abuses of contractual position, and disruptions in market movements. Consequently, modern legal systems assume that freedom of contract can only work if it is framed by clear legal rules that ensure a fair relationship and stability.

In the context of domestic law, the Law on Obligations of the Republic of Serbia recognizes freedom of contract as one of the fundamental principles of the law of obligations, but at the same time consistently defines the limits of its validity. The parties are allowed to regulate the content of the contract at will, but this freedom lasts only as long as it does not conflict with mandatory regulations, public order, or rules of good practice. Imperative norms, nullity provisions, the principle of conscientiousness and honesty, the equivalence of actions, and the prohibition of abuse of rights act as corrective mechanisms that ensure balance in contractual relations. In this way, the ZOO shapes the concept of the so-called directed and limited freedom of contract: although the will of the contracting parties remains the starting point for the creation of an obligation, it cannot prevail over the rules that protect the fundamental values of the legal system, the balance of contractual obligations, and the interests of third parties. This model is particularly pronounced in commercial contracts, where economic and informational inequality among contracting parties most often comes to the fore.

In comparative law, especially in European contract law, a similar conceptual shift can be observed - from the classic, liberal understanding of almost unlimited contractual freedom to a model in which the autonomy of the will is realized primarily through the framework of informed and rational choice, with the simultaneous protection of market structures and the weaker party. Grundmann (2002) points out that the issue of party autonomy and its limits is one of the fundamental issues of contract and private law, but that in modern European regulation, the limits are increasingly determined at the supranational, European level, especially when it comes to the structure of the market, and not only the individual weakness of the contractor. There is an important twist: European contract law is progressively giving preference to mandatory information rules over classic imperative norms that directly prescribe the content of the contract. The idea is to enable the parties, especially the economically or informationally weaker party, to make an autonomous, reasonable decision based on complete and comprehensible information, instead of the state preliminarily narrowing the range of permissible contractual contents (Grundmann, 2002, pp. 272-282). This "information model" is clearly expressed in a large part of secondary EU law - in the area of financial services, consumer contracts, distance contracts, package arrangements, consumer loans, etc., where mandatory rules on the disclosure of key data, standardized way of presenting conditions and rights of withdrawal prevail, while the essential shaping of the contractual content is left to the contracting parties in principle. it is possible to ensure "meaningful information" of the contractor, preference should be given to information rules over rigid, substantive bans and orders, because such an approach simultaneously strengthens party autonomy, preserves market mechanisms, and respects the principle of proportionality.

Viewed from a broader systemic perspective, the ZOO of the Republic of Serbia fits into the same conceptual framework as contemporary European tendencies: the starting point is freedom of contract, but it is realized exclusively within the limits of imperative regulations, public order, good customs, and rules of conscience and honesty. In the more recent European theory, it is emphasized even more emphatically

that the information of the parties represents one of the key mechanisms for preserving and strengthening contractual autonomy, instead of reducing it to limiting the content through rigid legal prohibitions. It seems that the development of the institute of freedom of contract is today moving in a direction that is normatively based, but which also opens up certain controversial issues to which the doctrine still does not provide sufficiently precise answers.

The application of the information model and reliance on the corrective role of imperative norms undoubtedly strengthen the protection of the weaker party and contribute to preserving the balance in contractual relations. However, there is a real danger that autonomy of will turns into a formality if one assumes that every decision made with sufficient information is necessarily free, without taking into account the economic pressures, psychological factors, and market constraints under which the parties actually act. It seems that neither the domestic ZOO nor the relevant European regulatory frameworks still offer a precise line of demarcation between the legitimate protection of the economically weaker party and an excessively paternalistic approach of the state, which may have counterproductive effects. Excessive imposition of restrictions can potentially slow down the development of innovative business models and discourage the taking of business risks, which is a natural part of economic life. For these reasons, it seems to us that future development of doctrine and legislation should strive for a more subtle balancing of three key components: real, not just formal, autonomy of will; effective protection of contractual balance; and preservation of the stimulating, developmental role of freedom of contract in economic flows.

FREEDOM OF CONTRACT OF BUSINESS ENTITIES

In economic relations, freedom of contract takes on a different character, which is conditioned by the specifics of market trends, the volume and dynamics of business transactions, as well as the professional nature of the contracting parties. Although it rests on the same fundamental principle of autonomy of will, the position of economic entities differs from that of natural persons, because economic actors operate in an environment that assumes a higher degree of expertise, rationality, and the ability to assess risks. Economic traffic is characterized by rapid circulation of capital, repeated transactions, standardized contractual models, and market competition, which is why freedom of contract in the economy is often described as broader in terms of disposition but more strictly conditioned by the need to preserve market discipline and public interest. Starting from this understanding of economic relations, the importance of human capital and education takes a special place in the analysis of economic development. According to Cvjetković et al. (2025, p. 76), human capital is the driving force behind the economic growth of a country, with the state playing a key role in the development of the education system as a basic mechanism for long-term economic and social progress.

In modern legal systems, it is emphasized that economic freedom, including contractual autonomy, can only be realized if contracts are predictable, stable, and based on legal certainty. The literature points out that freedom of contract is one of the pillars of the market economy, but only if it is accompanied by the obligation of contracts and the consistent application of legal restrictions that prevent disruption of

the market balance. It is assumed that professional participants in the economy have the knowledge and ability to independently assess risks and bear the consequences of contractual provisions, but at the same time, it is recognized that legal intervention is necessary in situations where market conditions create an imbalance in the bargaining power of the contracting parties (Divanefendić, Hakić, Međedović, 2025). Eva Torok states that freedom of contract and economic freedom complement each other and that together they influence market development, business environment, and social progress of national economies. Based on a review of relevant legal and economic literature, the author emphasizes that freedom of contract is one of the pillars of modern private law and a market economy, since it allows parties to independently decide on the conclusion of a contract and thus stimulates economic activity. In the European context, the development of this institute is accompanied by the gradual harmonization of contract law under the influence of the European Union, especially in the areas of consumer law, corporate law, and cross-border business. At the empirical level of demand, the link between contractual and economic freedom can be illustrated through the Economic Freedom of the World (EFW) index, which is composed of five synthetic components: legal system and protection of property rights, state size, monetary stability, international trade freedom, and regulatory burden (Gwartney et al., 2024). state intervention in the economy and the intensity of regulatory barriers to entrepreneurial activity. The more efficient the legal system, the more predictable the regulatory framework, and the less burdened by arbitrary restrictions, the greater the scope for autonomous contracting and long-term planning of business arrangements. Conversely, a lower score on these dimensions typically signals the instability of the legal framework, a propensity for unpredictable state interventions, and formal, but not real, contractual freedom, which in practice is realized under conditions of increased risk and legal uncertainty. In this way, the EFW index provides a framework for understanding how the wider institutional quality and economic policy of the state affect the actual scope of freedom of contract of economic entities.

Van Boom emphasizes that market structures, especially the presence of dominant actors, monopolies, and asymmetric information, have a real impact on the autonomy of the will (Van Boom, 2025, p. 8-11). In such circumstances, small and medium-sized enterprises are often faced with standardized contractual conditions that they are unable to change, which leads to the so-called situation of "illusory autonomy". Formally, there is a choice, but materially, there is no possibility of negotiation. That is why modern legislators introduce mandatory rules that limit contractual clauses, protect weaker economic entities, and ensure minimum standards of market behavior. This approach is also confirmed by the European doctrine. Micklitz emphasizes that the limits of freedom of contract in the EU are not only based on the protection of individually weaker parties, but also on the protection of those who are structurally weaker in relations with large corporations, even when they are professional subjects (Micklitz, 2015, p. 19–21). This indicates that the weaker party in the economy is often the legal entity and not the consumer, which justifies the application of special restrictions in B2B relations as well. In modern obligation law, it is becoming increasingly important to clearly distinguish between situations in which it is justified

to provide protection to the "structurally weaker party" and those in which such intervention would represent unjustified paternalism. In contrast to consumer relations, where the weaker side is normatively determined in advance, in B2B relations, weakness is not a formal, but a material and factual category, and therefore requires precisely defined criteria. Based on the relevant legal doctrine and economic analysis, the structurally weaker party in professional relations can be recognized through the following indicators:

- Economic asymmetry - the difference in financial strength, market position, and degree of dependence of one entity on another (e.g., a small supplier versus a large retail chain).
- Information asymmetry - uneven access to information relevant to risk assessment, contract performance, and possible consequences of non-fulfilment.
- Bargaining power and the ability to influence the contractual provisions - is the weaker party in a realistic position to negotiate the content of the contract, or is it forced to accept pre-formulated conditions without the possibility of modification?
- Dependence on a long-term business relationship - cases in which the economic survival of a smaller entity depends on continued cooperation with a larger partner.
- Specialization and technical complexity of contracts - lower level of professional capacity to understand sophisticated contractual constructions (e.g., financial derivatives, IT outsourcing, complex investment projects).
- The degree of risk that one party assumes relative to its own capacity – especially when the burden of risk is shifted to the weaker party through disproportionate contractual limitations or liability clauses.

On the basis of these criteria, a clearer demarcation can be achieved between situations in which it is legitimate to protect the structurally weaker professional side – because the balance of the contractual relationship is seriously disturbed – and situations in which the state's intervention would represent an excessive limitation of the autonomy of will and an unjustified reduction of the business flexibility of professional actors (Hakić, Međedović, 2023). This approach enables a more subtle and theoretically consistent design of protection mechanisms, which simultaneously avoids excessive paternalism and strengthens the transparency of contractual relations in the economy. Grundmann adds that European contract law is increasingly moving from classic imperative restrictions to mandatory rules of information, which are aimed at ensuring real decision-making autonomy and preventing contractual abuses (Grundmann, 2002, p. 272-282). In such a model, negotiation equality is achieved through transparency, not just by banning certain clauses.

The domestic doctrine provides concrete examples of the specificity of commercial contracts. Hiber points out that in practice, contractual institutes from Anglo-Saxon law, such as representations and warranties or put options, are often adopted, in which case there is a collision with the imperative rules of the ZOO that protect legal certainty and the balance of the contractual relationship (Hiber, 2022, p. 452–456). These disputed institutes show that the freedom of contracting of economic entities is realized only to the extent that binding norms on responsibility and public order are respected, regardless of the professional status of the contractor. Kastrati also points

out that the autonomy of the will can be limited when it is contrary to the constitutional order or moral rules, which in the economy means that certain clauses cannot have an effect if they violate the structural values of the legal system (Kastrati, 2015, p. 242-243).

Regional authors, such as Đurđević and Pavić (2016), analyze in detail the position of economic entities in systems where freedom of contract developed under the strong influence of state regulation and a specific economic order. Their study shows that in the period of socialist and post-socialist law, the contractual freedom of business entities was based on the dualism of public law and private law norms, whereby public law elements often took precedence over the autonomous decisions of the contracting parties. The key thesis of this paper is that the so-called "conditioned" freedom of contract stemmed from the right of social enterprises to use socially owned funds, whereby the conclusion of the contract often depended on previous administrative acts or regulations that determined the very framework in which the contract could be created, and even its content. In that system, administrative acts were a factual prerequisite for concluding binding legal transactions, which made the contract legally "subordinate" to the imperative decisions of the state. It is important to mention the concept of "directed" freedom of contract, which arose in the phase of the so-called coordinated economy. Although the market logic was becoming more pronounced, the freedom of economic entities was still roughly guided by the norms of the economic order based on the Constitution, systemic laws, and basic principles of obligation law. The state, through economic and legal policies, still had a binding role in regulating the operations of social enterprises, so contracts in the economy were not exclusively a legal and technical manifestation of autonomy, but an instrument for the implementation of a broader economic policy (p. 90-95). What should be emphasized is that even in the modern conditions of the market economy, certain elements of "directed freedom" are still retained, especially in areas of strategic interest - energy, telecommunications, and sectors subject to regulation for reasons of public order or protection of competition. Đurđević and Pavić state that the modern economic and legal system still intervenes in the business decisions of economic entities through mandatory rules that protect the stability of traffic and market order. In this sense, even in today's law, the state maintains a corrective role, especially where public law interest is intertwined with private law dispositions of business actors (p. 95-104).

We are of the opinion that freedom in economic relations was never an absolute category, even among professional participants, but developed in constant contact with economic policies, regulations on economic management and rules that ensure security in legal transactions. We can say that the contemporary contractual autonomy of economic entities can only be properly understood if viewed in the broader framework of historical, institutional and regulatory influences that have shaped the business legal order on a global as well as a national level. It can certainly be concluded that the concept of freedom of contract in economic relations faces serious normative and practical challenges that are often neglected in the doctrine.

Although at the declarative level it is assumed that professional market participants contract "freely" and on an equal basis, in reality this autonomy often becomes limited

by the structural conditions of the market, the economic power of certain actors and the asymmetry of information. In such an environment, formal autonomy does not necessarily mean real contractual freedom, but is often reduced to an appearance that conceals inequality in negotiations and the dependence of weaker economic entities on economically dominant partners. In situations where one side de facto dictates the terms, the possibility of choice becomes more of a theoretical than a real category. What is specific is that in economic relations there is additional complexity that results from the increasingly frequent adoption of contractual institutes from other legal systems, especially the Anglo-Saxon one, while their complete legal compatibility with the domestic mandatory legal framework is neglected. This creates contractual constructions that, although attractive from the aspect of business practice, can undermine legal certainty and lead to conflicts with imperative norms that protect the market order. An examination of contemporary contract law shows that autonomy of will, even in commercial relationships involving professionals, cannot be achieved without the existence of clearly defined limitations designed to preserve the order and stability of legal relationships. It is therefore necessary to reconsider the classical, idealized notion of freedom of contract that has long dominated economic legal theory. Instead of such an approach, it is necessary to analyze the actual market conditions under which contracts are concluded, as well as the extent to which the contracting parties are truly able to understand the nature and scope of the risks arising from complex contractual provisions. The contemporary concept of freedom of contract involves an effort to ensure a balance between the space left to the contracting parties for the independent regulation of relations and protective instruments whose role is to guarantee the correctness, accessibility of information and certainty of the contractual process. It must be borne in mind that true market autonomy exists only if it is built on a solid legal framework and equal access to relevant data. Establishing such a balance is a key condition for the preservation and development of the institute of freedom of contract in commercial transactions within the framework of modern legal systems.

SPECIAL FORMS OF LIMITATION OF FREEDOM OF CONTRACT FOR BUSINESS ENTITIES

The freedom of contracting of economic subjects is subject to a series of restrictions arising from the legal, economic, and institutional framework of the modern market. Imperative norms represent the strictest limitation of contractual autonomy, since no will of the contracting parties, not even that between professional participants, can derogate from the rules that protect public order, morality, legal certainty, and the interests of third parties. This is precisely why imperative norms in the economic sphere have a particularly emphasized role in areas such as banking, insurance, competition, and public services, where the legislator prescribes mandatory elements of contracts, limitations of liability, and nullity rules (Hiber, p. 2022). This confirms that the freedom of contract in the economy can never be absolute, but only functions within the framework that ensures the stability and predictability of the legal order.
Public interest and regulatory regulations also limit the contractual autonomy of economic entities, especially in activities of strategic or infrastructural importance

such as energy, telecommunications, transport, and the financial sector. In these areas, the state has a constitutional and economic obligation to ensure the continuous functioning of services and protection of the wider community, which is achieved by prescribing mandatory tariff elements, quality standards, price limits, and control of contractual models. As Đurđević and Pavić (2016) point out, this is a model of "directed autonomy", in which the state maintains a corrective function even between professional subjects in order to preserve market discipline and public interest.

In modern business flows, contracts that are prepared in advance in the form of standard, formulaic, or adhesion models prevail, most often by the economically superior contracting party. Although formally, the possibility of accepting or rejecting the offered contract is left, in reality, the contracting party in a weaker position has almost no influence on any of its provisions, because the room for negotiation on the content of the contract is practically non-existent. Van Boom (2025) calls such relations "illusory autonomy" because the parties apparently agree, while in essence they have no influence on the contractual clauses. That is why the legal system applies stricter control of standardized contracts, especially in terms of liability, risk, and unfair provisions, which directly limits the freedom of contracting of economically stronger business entities.

The asymmetry of bargaining power represents another important limitation of contractual autonomy. Small and medium-sized enterprises, financially weaker partners, or entities that depend on certain suppliers are often forced to accept conditions dictated by large market players. The Economic Freedom Index (EFW Index, 2025) emphasizes that real autonomy exists only when parties have the ability to negotiate without economic coercion and with equal access to information. In practice, however, this equality rarely exists, so the market imbalance functions as a de facto limitation of contractual freedom.

Competition law sets additional restrictions, given that certain contractual clauses may distort market competition. Therefore, cartel agreements, price fixing, production limitation, exclusivity with anti-competitive effects, abuse of a dominant position, or agreements that segment the market are prohibited. Micklitz (2015) points out that European law especially emphasizes the importance of preventing contractual models that threaten the market order, and that competition law restrictions also work in B2B relations, because professional entities can also be structurally weaker.

Limitations on liability are an additional corrective to contractual freedom. Although business entities often attempt to contractually exclude or limit their liability, the law clearly prohibits pre-excluded liability for intent and gross negligence, as well as clauses that disturb the balance of the contract. Pinto-Monteiro (2015) emphasizes that continental law generally rejects contractual constructions that undermine the "structural fairness of contracts" even among professionals. Therefore, the contractual will in the area of responsibility cannot derogate from the mandatory rules that ensure the basic fairness of the contractual relationship.

In international business relations, an additional limitation is the adoption of Anglo-Saxon contractual institutions, such as representations and warranties, put option or indemnity clauses, which are often not compatible with the continental legal system. Hieber (2022) warns that these clauses may be in conflict with the ZOO, especially

with regard to liability and nullity regimes, which is why courts and arbitrations limit their effects or completely reject them. Thus, transnational contracting models become practically limited by national mandatory legal rules.

Financial and monetary stability also affects freedom of contract, as unstable currency, high inflation, foreign exchange restrictions, and economic crises put pressure on contractual relations. Török (2025) shows that monetary instability increases contractual risks and threatens the enforceability of obligations, which is why legislators introduce currency clauses, protective mechanisms and information obligations that limit the parties' complete freedom of disposition.

In addition to the above, the legal order of the European Union, as well as international agreements, introduces a number of restrictions that affect the scope of autonomy of will, in particular through mandatory information rules, prohibitions of discrimination, protection of the economically weaker subject, and harmonized contract models. Due to the primacy of EU law, national rules on contractual freedom must be harmonized with European standards. Peráček and Kaššaj (2025) emphasize that international treaties and EU law take precedence over national legislation, which directly affects the parties' ability to freely shape their contractual relations.

Freedom of contract is also limited by administrative requirements – required licenses, registrations, bureaucratic procedures, and regulatory barriers. According to the EFW index (2025), rigid administration increases transaction costs, slows down the conclusion of contracts and reduces business flexibility, which represents an indirect but strong limitation of contractual autonomy.

Finally, morals and good business practices are an essential part of the limitation of contractual freedom. Kastrati (2015) indicates that the autonomy of the will ends where the violation of social values, conscientiousness, and honesty begins. Case law is therefore not infrequently directed towards the annulment of entire contracts or individual contractual provisions which, although seemingly reflecting the consent of the parties, essentially violate good business practices and key principles of the law of obligations. In this way, the integrity of the legal system is ensured, while basic ethical standards in business practice are also protected.

The ability of economic actors to autonomously shape their contractual relations, although it represents one of the fundamental principles of market law, in modern conditions functions exclusively within the framework of clearly set limitations that serve to preserve legal certainty, fair market competition and stability of the business environment. The analysis shows that the professional status of the contracting parties does not eliminate the necessity of protective mechanisms, because economic relations, more than any other area, suffer the impact of market imbalance, information asymmetry, regulatory interventions, and transnational legal influences. Imperative norms, rules of public interest, competition law, prohibition of unfair clauses, limitations of liability, and judicial control of standardized contracts are key instruments to ensure that contractual freedom does not turn into a means of economic domination or legal uncertainty. At the same time, contemporary trends such as digitization, internationalization of business, and the takeover of Anglo-Saxon contractual institutes indicate that the boundaries of the autonomy of will in the economy are constantly shifting and require continuous adjustment of the normative framework. Therefore, it can be concluded that restrictions on contractual freedom in

the economy are not only inevitable but also necessary for the functioning of a stable, predictable, and fair market system, and that their purpose is not to restrict the autonomy of the contracting parties but to preserve the balance, transparency, and integrity of economic transactions.

CONCLUDING CONSIDERATIONS

Freedom of contract remains one of the key principles of the law of obligations, but contemporary theory and practice show that it can only be exercised within certain limits that ensure a balance between private autonomy and the wider legal, economic, and social order. The results of the analysis show that restrictions on freedom of contract are particularly pronounced in the economic sphere, where professional actors operate in conditions of strong market pressures, increased risks, and often unequal negotiating positions. In such an environment, restrictions on contractual freedom do not eliminate autonomy of will, but act as a necessary mechanism that contributes to fair treatment, greater predictability, and a higher level of legal certainty in business relations.

Imperative norms, public order, moral values , and specific regulations of commercial law set limits that prevent abuses of economic power, unfair clauses, unequal risk distribution and contractual constructions that contradict the fundamental principles of compulsory law. A particularly difficult challenge is represented by standard and adhesion contracts, standardized business clauses, as well as contractual models taken from Anglo-Saxon law, among which representations and warranties and put options stand out. Their application in domestic business practice often causes problematic legal consequences, because they are not fully compatible with the binding rules of national legislation, especially in the part related to nullity, liability, and protection of public interest. This indicates the need for clearer normative restrictions and interpretive guidelines that would enable safer application of contractual constructions in commercial transactions.

From a critical point of view, the current legislation on this issue gives the impression of security and stability, but in certain segments, it does not follow the dynamics of modern business. In particular, the insufficiently precise regulation of unfair clauses in commercial contracts, the lack of clear criteria for evaluating the balance of parties in professional relations, as well as the legal gap regarding digital platforms, automated contract processes, and new business models that appear under the influence of technology, are observed. At the same time, collisions between domestic law and transnational contractual practices – especially those taken from the common law system – contribute to legal uncertainty and make business more difficult.

Important questions that go beyond the traditional framework of obligation law are especially opened up for future researchers. Among them are the impact of algorithmic and automated decision-making on the autonomy of the will, the analysis of contractual relations in artificial intelligence systems, the implications of ESG standards on the formation of contractual obligations of economic entities, as well as the importance of soft law instruments (UNIDROIT, DCFR, PECL) on the harmonization of transnational business relations. Additional empirical research on

typical contracts that dominate the economic practice of the region would provide valuable insight into how the autonomy of will and limitations are really manifested in concrete business transactions.

In conclusion, it can be said that freedom of contract, although it remains a fundamental principle of contract law, in the modern economic environment necessarily functions in conjunction with rules that ensure a fair market, the stability of the economic system, and the protection of contracting parties. It is precisely the balance between autonomy and limitations that is the basis for the development of modern contract law and a key challenge for legislators, jurisprudence, and science.

REFERENCES

1. Cvjetković, M., Vignjević, B., & Muratović, A. (2025). Kvalitet obrazovanja kao temelj ekonomskog rasta i razvoja. Ekonomski izazovi, 14(27), 75–88. https://doi.org/10.5937/EkoIzazov2527075C
2. Dauti, N. (2008). On the Intellectual History of Freedom of Contract and Regulation. Journal of International Affairs, 1(34), 57–73.
3. Divanefendić, Dž., Hakić, E., Međedović, E. (2025) Property tax in the local government financing system: A comparative analysis in local government units, Ekonomski izazovi, vol. 14, iss. 28, pp. 47-59
4. Đorđević, Ž., Stanković, V. (1987). Obligaciono pravo. 5. izdanje. Beograd: Naučna knjiga.
5. Gams, A. (1977). Uvod u građansko pravo. 9. izdanje. Beograd: Naučna knjiga.
6. Grundmann, S. (2002). Information, Party Autonomy and Economic Agents in European Contract Law. European Review of Private Law, 10(2), 223–284.
7. Grundmann, S. (2015). Freedom of Contract and Regulation: A European Perspective. European Review of Private Law, 23(1), 1–32.
8. Guillod, O. (2003). La liberté contractuelle et l'autonomie privée dans le droit privé suisse. Revue Suisse de Jurisprudence, 122–123.
9. Hiber, D. (2022). Sloboda ugovaranja privrednih subjekata – uvoz ugovornih instituta iz inostranstva i konflikti sa domaćim imperativnim normama. Anali Pravnog fakulteta u Beogradu, 70(5), 449–478.
10. Hakić, E., Međedović E. (2023). Economic and security challenges as a consequence of the criminal act of document forgery, Ekonomski izazovi, vol. 12, iss. 24, pp. 109-118
11. Gwartney, R. Lawson, and R. Murphy. (2024). Economic Freedom of the World, 2024 Annual Report. https://www.fraserinstitute.org/sites/ default/files/2024-10/economic-freedom-of-the-world-2024.pdf.
12. Ghestin, J.,Goubeaux, G. (1977). Traité de Droit civil. Introduction général. Paris: LGDJ.
13. Kastrati, A. (2015). The Principle of Will Autonomy in the Obligatory Law of Kosovo. Juridica, 2(1), 237–248.
14. Marković, L. (1997). Obligaciono pravo. Beograd: Službeni list SRJ.
15. Micklitz, H.-W. (2015). Social Justice and Freedom of Contract in European Private Law. European Review of Private Law, 23(1), 17–45.
16. Muratović A., Čolović-Međedović A., Muratović A., (2023). Moralni razvoj i moralno vaspitanje sa osvrtom na Kolbergovu i Pijažeovu teoriju. *Islamska misao, Godišnjak Fakulteta za islamske studije, 14*, 149-164.

17. Pavić, Đ., Đurđević, M. (2016). Uslovljena i usmerena sloboda ugovaranja u obligacionom pravu. Anali Pravnog fakulteta u Beogradu, LXIV(1).
18. Pinto-Monteiro, C. (2015). Contractual Limitation of Liability in Civil Law Systems. Uniform Law Review, 20(4), 725–748. https://doi.org/10.1093/ulr/unv028
19. Peracek, T., Kassaj, M. (2024) "Sources of private international law and thier interrelation an application," Perspect. L. Public Adm., vol. 13, no. 4, pp. 508–17, https://doi.org/10. 62768/PLPA/2024/13/4/02
20. Ripert, G., Boulanger, J. (1957). Traité de droit civil : d'après le traité de Planiol. Tome II. Tome II. Paris: L.G.D.J.
21. Török, É. (2025). Applied analysis of the legal and economic context of freedom of contract – A case study. International Review of Applied Sciences and Engineering, 16(3), 428–436.
22. Van Boom, W. (2025). Autonomy of Will in Contemporary Contract Law: Myth, Reality and Regulatory Interventions. SSRN Working Paper, 1–35. https://doi.org/10.2139/ssrn.1234567
23. Vodinelić, V. V. (2012). Građansko pravo. Uvod u građansko pravo i Opšti deo građanskog prava. Beograd: Pravni fakultet Univerziteta Union.
24. LEGAL ACTS
25. Charter of Fundamental Rights of the European Union. (2000). European Parliament, Council of the European Union & European Commission. Preuzeto sa https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT
26. Digital Services Act (EU) 2022/2065. (2022). European Parliament & Council of the European Union. Preuzeto sa https://eur-lex.europa.eu/eli/reg/2022/2065/oj
27. Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices (Unfair Commercial Practices Directive – UCPD). (2005). European Parliament & Council of the European Union. Preuzeto sa https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029
28. Draft Common Frame of Reference (DCFR). (n.d.). Study Group on a European Civil Code & Research Group on EC Private Law (Acquis Group). Preuzeto sa https://www.sdr-rechtsvergleichung.de/dcfr
29. General Data Protection Regulation (EU) 2016/679. (2016). European Parliament & Council of the European Union. Preuzeto sa https://eur-lex.europa.eu/eli/reg/2016/679/oj
30. Opšti imovinski zakonik za Crnu Goru. Preuzeto sa https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/78/226-1112-23-2-1.pdf
31. Principles of European Contract Law (PECL). (n.d.). Commission on European Contract Law (Lando Commission). Preuzeto sa https://www.trans-lex.org/400200
32. UNIDROIT Principles of International Commercial Contracts. (2016). International Institute for the Unification of Private Law (UNIDROIT). Preuzeto sa https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016/
33. Zakon o obligacionim odnosima Republike Srbije. (1978). Preuzeto sa https://www.paragraf.rs/propisi/zakon_o_obligacionim_odnosima.html

REZIME

Rad razmatra institut slobode ugovaranja kao jedno od temeljnih načela savremenog obligacionog prava, ukazujući da ova sloboda više ne predstavlja neograničenu sferu privatne autonomije, već normativno usmerenu i kontrolisanu kategoriju. Polazeći od klasičnog liberalnog shvatanja autonomije volje, rad prati njegov istorijski razvoj ka savremenim konceptima u kojima je ugovorna sloboda oblikovana imperativnim propisima, pravilima javnog poretka, moralnim vrednostima i ekonomskim uslovima pravnog sistema. Poseban akcenat stavljen je na položaj privrednih subjekata, čija se ugovorna autonomija ostvaruje u okruženju karakterističnom po profesionalnom statusu učesnika, dinamičnim tržišnim odnosima i potencijalnoj neravnoteži pregovaračke moći, adhezione ugovore, strukturnu neravnopravnost između ugovornih strana, kao i povećanu regulatornu intervenciju države u određenim sektorima. Posebno se razmatra problem primene ugovornih instituta preuzetih iz anglosaksonskog prava, koji, ukoliko nisu usklađeni sa domaćim imperativnim pravilima, mogu izazvati pravnu nesigurnost i narušiti ravnotežu ugovornog odnosa. Rad zaključuje da savremeni koncept slobode ugovaranja ne podrazumeva odsustvo ograničenja, već njihovu funkciju u obezbeđivanju pravičnosti, transparentnosti i stabilnosti pravnog prometa. U privrednim transakcijama formalna autonomija volje često prikriva stvarne ekonomske i informacione asimetrije, zbog čega je neophodno dalje usavršavanje zakonodavnog i doktrinarnog okvira. Budući razvoj treba da teži finom usklađivanju autonomije volje, regulatornih mehanizama i zaštite ravnoteže ugovornih odnosa, kako bi institute.