

THE TURKISH AND AZERBAIJANI LAWS ON UNFAIR COMPETITION VIA STANDARDISED TERMS OF CONTRACT - ASSESSMENTS AND SUGGESTIONS

*Ece Deniz Gunay & Gozde Engin Gunay

Faculty of Law-Commercial Law Department, Social Sciences University of Ankara,
Ulus Campus 06050 Ankara, Turkey.

Corresponding author: ecedeniz.gunay@asbu.edu.tr

Received: 05.01.2020

Accepted: 28.11.2020

ABSTRACT

This paper presents a comparative analysis between Turkish and Azerbaijani law systems and it attempts to evaluate whether the usage of standardised terms of contract in a way that causes the infringement of the principle of good faith forming unfair competition. Standardised terms are pre-prepared without negotiating with the other contracting parties. The paper highlights that the two countries have strong connections, especially in economic and commercial terms which render even more important convergence of legal regulations. In this respect, upon examining the regulations on standardised terms and unfair competition and considering the fact that the two systems have similar approaches regarding standardised terms, the paper suggests that the usage of standardised terms in a manner that violates good faith should be qualified as unfair competition under Azerbaijani law in accordance with Article 55/1(f) of the Turkish Commercial Code. The paper assesses the issue in conjunction with the Turkish Commercial Code, Turkish Code of Obligations, the Civil Code of Azerbaijan (*Mulki Mecelle*) and Code on Unfair Competition. The scope of the protection that is envisaged in the relevant Turkish and Azerbaijani codes is studied from consumers' and merchants' aspects, respectively. The paper inter alia assesses that protecting all market participants is the most effective way to provide market balance. The paper aims to contribute to the improvement of the economic relations of Turkey and Azerbaijan via its suggestion on harmonising the two law systems in terms of unfair competition regulations.

Keywords: Banks, merchant-consumer, principle of good faith, standardised terms of contract, unfair competition.

Cite as: Gunay, E. D., & Gunay, G. E. (2021). The Turkish and Azerbaijani laws on unfair competition via standardised terms of contract – Assessments and suggestions. *Journal of Nusantara Studies*, 6(1), 309-322. <http://dx.doi.org/10.24200/jonus.vol6iss1pp309-322>

1.0 INTRODUCTION

Rapidly growing commercial activities have taken the competition to a different level. When it comes to a free-market economy, one must state that competition may take place not only among traders but also among all market participants. Within this context, standardised terms of contract that cause unfairness should be dealt with from a competition law point of view. Standardised terms of contract are the pre-prepared terms that are envisaged to be used multiple times without negotiating to the other party to a contract. In Turkish and Azerbaijani laws, standardised terms of contract are defined as such in a similar way. They are constructed on the *take it or leave it* mentality. The usage of these pre-prepared terms imposes the possible risk on the other party to the contract as these terms are formulated in his/her absence. It is possible to encounter these terms in every aspect of life as causers to market imperfection. The unilateral preparation process of these terms violates the reciprocity principle of contracts according to which parties must ensure that terms are mutually and freely agreed.

In everyday life, independent of being a trader or a consumer, a person uses banking facilities. An individual who makes an application for a loan often faces a pre-prepared, printed loan agreement. Most of the time, customers sign these agreements without the chance to read carefully, and at times although reading them, they do not have the chance to alter them solely with the intention to benefit from the loan. These clauses that are prepared in the absence of the other party to a contract are mostly to the detriment of the other party and hence, hinder the smooth operation of markets (Dogancı, 2018). Due to the usage of standardised terms in the mentioned way, the principles of equality and contract justice among the parties to a contract are also harmed. In order to restore market balance, providing a judicial review mechanism is crucial. Considering all these effects of standardised terms of contract, it would be necessary to handle the issue within unfair competition law perspective and with a thorough analysis of the Turkish and Azerbaijani law for the purposes of this paper.

The first part of this paper analyses the concepts of standardised terms of contract and unfair competition with regard to Turkish and Azerbaijani law systems also mentioning the Swiss law and German law which constitute a resource for the Turkish law. The second part of this paper discusses the connection between tort and the use of standardised terms violating the principle of good faith. In the third part, the relevance of being a trader or a customer in the

determination of the extent of the protection from standardised terms of contract is evaluated. The last part of the paper aims to assess the relationship between standardised terms and the concept of unfair competition in light of the principles that govern contract law.

2.0 STANDARDISED TERMS OF CONTRACT AND UNFAIR COMPETITION RELATION

2.1 Turkish Law

Regarding standardised terms of contract in Turkish law, there is a three-tier protection mechanism. The main regulations that form the three pillars are found in the Turkish Code of Obligations (TCO), Turkish Commercial Code (TCC) and the Law on the Protection of the Consumer (LPC). The main focus of this paper, however, will be based on the TCC pillar. Banking law shall also be discussed as an area where it is possible to observe extensive usage of standardised terms.

2.1.1 The Turkish Code of Obligations

The standardised terms of contract are regulated under the Turkish Code of Obligations (TCO) between articles 20-25. TCO defines standardised terms of contract as terms which are prepared unilaterally for multiple usages in similar contracts. The protection envisaged against standardised terms does not foresee any distinction regarding whom to protect (Tig, 2019). In other words, the TCO does not differentiate between a trader and a consumer when it comes to protecting the other party to a contract from standardised terms, which are against the interests of this party or which aggravates the position of this party, contrary to the principle of good faith.

2.1.2 The Law on the Protection of the Consumer

The Law on the Protection of Consumer (LPC) in its Article 5, defines unfair terms as contractual terms that are individually prepared without any negotiation, causing a significant imbalance in parties' rights and obligations to the detriment of the consumer to violate the principle of good faith. The Turkish definition of unfair terms is a transposition of the definition given in the European Union Directive 93/13/EEC as amended by 2019/2161 EU Article 3. However, it must be noted that the concept of unfair terms envisaged in the LPC also includes the contract terms which do not constitute standardised terms. As a result, not every unfair term constitutes a standardised term of contract (Atamer, 2011; Uzunalli, 2013). Hence, it is observed that the concept of unfair terms in the LPC is wider in scope. The LPC regulation is

lex specialis in nature and hence solely protects the consumers. In other words, the protection of the LPC only covers people acting outside their business and trade.

2.1.3 Turkish Commercial Code

2.1.3.1 The term ‘unfair competition’

The New Turkish Commercial Code (TCC), diverging from the previous version, enlarges the definition of unfair competition in Article 54. Unlike the previous version of the Article which defined unfair competition as the abuse of economic competition and thus limiting the concept to business transactions, the new TCC embraces all market participants to include not only competitors but also suppliers and customers. In doing so, the new TCC aims to ensure fair competition not only in the relationship between competitors but also in the relationship between suppliers and customers. Article 54 of the TCC states that behaviours and commercial practices which are deceptive and against the principle of good faith and affect relations among competitors and also relations between suppliers and customers which are considered as unfair and unlawful. The term relations refer to the competitor’s or the buyer’s freedom to decide (economic behaviour), depending on the unfair competition act’s parties or targets. By any means, behaviours that affect one’s commercial reputation, operations (be it the enterprise itself, goods or services, selling and marketing techniques) and relations between his/her customers, shall be regarded as unfair if they are contrary to the principle of good faith (Topcuoglu, 2015).

Article 54 of the TCC draws the borders of the unfair competition. The preamble of the TCC on Article 54 mentions the *ratio legis* of the Article as providing a fair, competitive environment for all the market participants. The preamble states that all regulations on unfair competition rely on two pillars. The first pillar points out the necessity to ensure that a level playing field is provided for all the market participants, which also structures the quality of competition. In contrast, the second pillar represents the principle of good faith.

The TCC in its Article 55 titled acts and commercial practices contrary to the principle of good faith, exemplifies in six main categories the principle cases of unfair competition. The Article’s aim is to exemplify. Hence, the cases are not limited- *numerus clausus* with the ones that are stated in Article 55. These categories are 1) advertisement and selling techniques that are contrary to the principle of good faith and other unlawful acts, 2) directing to terminate or breach a contract, 3) unauthorised usage of others’ work products, 4) disclosing unlawfully production and business secrets, 5) disobedience to working terms, and 6) using standardised terms contrary to the principle of good faith.

2.1.3.2 Standardised terms and the concept of unfair competition

Under Article 55/1/f of the Turkish Commercial Code (TCC), using standardised terms of contract that are contrary to the principle of good faith is a primary act of unfair competition. The Article does not make any distinction between a business transaction and a transaction with an ordinary nature.

The standardised terms which are used against the interests of the other party misleadingly and which diverge significantly from the legal regulation constitute unfair competition. Usage of standardised terms in a way to envisage an inappropriate division among rights and obligations of the parties is also regarded as unfair competition. Upon scrutinising the Article, one notices that using standardised terms in the aforementioned ways shall constitute a violation of the principle of good faith and hence shall form an act of unfair competition. As a consequence of this determination, one can also state that unfair competition can be done via standardised terms of contract.

Article 55/1/f of the TCC takes its origins from the Swiss Unfair Competition Law (*Loi Fédérale Contre La Concurrence Déloyale- LCD*, 1986 as amended in 2012). The Swiss regulation LCD Article 8, titled abusing commercial conditions states that using standardised terms malevolently, especially contrary to the interests of consumers (*consommateur*) and in a manner to cause an imbalance between parties' rights and obligations, will constitute unfair competition. The Swiss lawmaker clearly states in Article 1 of the LCD its intention to protect fair competition which is to the interest of all market participants. As another source to the TCC regulation on using standardised terms contrary to the principle of good faith and hence constituting unfair competition, one can mention the German Unfair Competition Law (UWG, 2004 as amended in 2010). Article 8 of the UWG states that using unfair standardised terms of contract which are contrary to the principle of good faith and envisage a disproportionate distribution in the rights and obligations of the parties to the detriment of the consumer shall constitute unfair competition (Yagcıoğlu, 2013; Aydogdu, 2014).

2.1.4 Turkish Banking Law

Banks offer the resources that they possess not only to the investors but also to the consumers. With this characteristic, banks are important factors in economic growth. Their increasing use of the standardised terms has commenced creating fluctuations in the economic structure and caused problems (Kuntalp, 2012).

Upon examining the bank credit agreements, it can be detected that the general credit term agreements or the general undertakings which the bank brings before the customers for

signature include pre-prepared interest rate, brokerage, tax and expense ratio. Moreover, these agreements or undertakings often include clauses mentioning that bank records shall constitute direct evidence in case of a conflict. They also contain clauses on the applicable law in case of litigation and clauses in favour of the bank concerning guarantee (Kuntalp, 2012; Tekinalp, 2009).

In Turkish Banking Law there is no explicit regulation on the standardised terms of contract. However, it is possible to detect an implicit reference to the issue. According to Article 76/2, the content and requirements as to the form of the standard agreements that are to be signed between banks and retail customers are subject to the Turkish Banking Regulation and Supervision Agency surveillance. The problem of standardised terms of contract that are prepared without negotiation with the other party which create an imbalance between parties' rights and obligations and consequently harming the objective justice, reveal the necessity to take measures in order to protect the other party against these terms. This protection is of crucial importance both from consumer protection point and from the unfair competition point.

The standardised terms of contract can be prepared not only by banks but also by insurance companies, transportation and shipping companies, also by architectural and engineering firms. In Turkey, banks use the standardised terms of contract, in their general credit terms agreements or the general undertakings, in a way that adversely affects competition (Tekinalp, 2009). Banks holding a wide range of customer portfolio often (where they) use agreements with standardised terms of contract in the different services and products that they offer. This demonstrates the need to approach the issue from a broader perspective to include not only customer protection but also the preservation of the competition environment.

2.2 Azerbaijani Law

Regarding the standardised terms of contract in Azerbaijani Law, it is possible to identify provisions in the Civil Code of the Republic of Azerbaijan (*Mulki Mecelle*) and provisions in the Law of the Republic of Azerbaijan on Banks. The Azerbaijani Civil Code states in its Article 2.6 that, in contracts concerning civil law matters, there is the supremacy of the Civil Code over other laws in terms of the hierarchy of norms. The legal regulations concerning the unfair competition, on the other hand, is found at the Azerbaijani Unfair Competition Law.

2.2.1 Azerbaijani Civil Code (*Mulki Mecelle*)

The regulations concerning standardised terms of contract are found in the Civil Code between articles 417-420. Upon comparing these regulations with those found in the TCO, it is possible

to detect the similarity. TCO is a general law in nature (*lex generalis*) concerning the Turkish contract law and the Civil Code of Azerbaijan which bears similarities in regulating standardised terms of contract with the TCO. For instance, in line with TCO Article 20, the Civil Code of Azerbaijan in Article 417 defines standardised terms of contract as terms that are prepared for multiple uses and that are presented to the other party as contractual provisions.

According to the Civil Code, as long as the terms possess the specified conditions in Article 417, no matter to whom they are directed to, be it a consumer or a trader, they count as standardised terms. The Code is in line with TCO Article 20.

In order for the standardised terms to be incorporated into the contract, the Civil Code requires the party preparing the terms to inform the other party about the content thereof and the latter's acceptance (The Civil Code Article 418/1). The Code conforms with the TCO Article 21. In default thereof, the standardised terms face the sanction of invalidity according to Article 21 of the TCO, regardless of the person to whom the standardised terms are directed. The term invalidity can be assessed as null and void (Atamer, 2011). However, the Civil Code deviates from the TCO Article 21, with Article 418/2 stating a specific regulation concerning traders. Article 418/2 accepts the incorporation of the standardised term into the contract which is concluded with a trader to the extent that the terms can be regarded as acceptable by a prudent businessman. Hence, if the integration of the terms can be explained and justified under the concept of cautiousness in trade relations, only then the terms can be accepted as part of the contract. As a result of this different approach, the Civil Code imposes the sanction of invalidity via enumerating specific examples that are designated solely for people not conducting business activity in Article 420/2.

2.2.2 The Law of the Republic of Azerbaijan on Banks

Similar to the Turkish Banking law regulation, the Azerbaijani banking law points out the necessity to inform the customers on the agreement terms and general undertakings (The Law of the Republic of Azerbaijan on Banks Article 36.4).

2.2.3 Azerbaijani's Unfair Competition Law

Unlike the Turkish Constitution which does not include any explicit terms concerning the unfair competition, the Constitution of the Republic of Azerbaijan in its Article 15 titled economic development and state, forbids the unfair competition (Article 15/2). Article 15/2 reflects the State's role in setting the ground for a socially oriented economy via guaranteeing free enterprise and preventing monopolies and unfair competition. Apart from the constitution

outlining the framework of the prohibition of unfair competition, the issue is regulated under the Law on the Unfair Competition (*Haqsız rəqabət haqqında qanun-AHRK*) in fifteen articles. It must be pointed out that the Azerbaijani Law on Unfair Competition embraces a similar approach with the TCO Article 54. Accordingly, the Law on Unfair Competition applies to all market participants. The law intends to encompass not only the competitors but all market participants (Yolciyev, 2015).

The unfair competition practices are specified as imitating, discrediting or interfering in opponents' economic operations, deceiving consumers by getting involved in unfair entrepreneurship operations and unfair business practices. The TCC Article 55, though not limited, also exemplifies leading unfair competition practices. On the other hand, unlike the TCC Article 55, the Law on the Unfair Competition of Azerbaijan does not regulate the use of standardised terms in violation of the principle of good faith as unfair competition. Nevertheless, using the aforementioned type of standardised terms may unfairly bring the users of such terms in an advantageous position vis a vis other market participants.

Upon examining Turkish and Azerbaijani law, it is possible to conclude that two countries, having similar regulations with familiar approaches concerning the standardised terms and unfair competition, may well be in interaction with each other concerning their legislation. The import and export volumes between the two countries (Ministry of Foreign Affairs, 2018) also encourage harmonisation of legal regulations which will facilitate traders' commercial activities. Taking all these into account, this paper suggests introducing a new provision into the Law on the Unfair Competition of Azerbaijan. The proposed provision will define the usage of standardised terms in a manner violating the principle of good faith as unfair competition.

3.0 RELATION BETWEEN USING STANDARDISED TERMS OF CONTRACT AGAINST THE PRINCIPLE OF GOOD FAITH AND TORT

The principle of good faith which is regulated under Article 2/1 of the Turkish Civil Code indicates the necessity to abide by this rule in using rights and in fulfilling obligations for every person. It expresses the need to act without harming anybody. The principle finds its origins in terms of Islamic Law with the expression of *bilâ- zarar* (Eng. without giving harm). Accordingly, a contract must be concluded without harming the other party's interests (Demirtas, 2014). Using standardised terms of contract against the principle of good faith constitutes a breach of competition in the market and thus will harm the market's operation and market participants. The paper sets forth that such a case may well be considered as a tort in a

broad sense. Most of the time, an action is qualified as a tort not only because it breaches a general rule, but it also violates a subjective right of a third person. The subject matter of such a breach is primarily an absolute right. It is possible to recall the breach of intangible rights such as copyright, patent and the rights concerning trade name as examples to such a case. However, the tort is not only composed of the breach of an absolute subjective right. Hence, a person who breaches the law order with his/her negligence must compensate the damage that he/she caused, even in a case where there is no subjective right of the injured party at stake (VonTuhr, 1983). Upon examining the sanctions to unfair competition, it is possible to notice *inter alia* material compensation, immaterial compensation when conditions are satisfied and abrogation of the material situation which arose as a result of unfair competition. Taking all into account, it is set forth that using standardised terms of contract may also constitute a tort.

4.0 ASSESSING THE RELEVANCE OF THE CONCEPTS OF CONSUMER AND TRADER IN QUALIFYING THE USE OF STANDARDISED TERMS AS UNFAIR COMPETITION

In contracts, including standardised terms, the idea of protecting consumers prevails in many legal systems. On the other hand, whom to protect from the standardised terms differs from country to country. In some legal systems, it can be detected that the protection is limited to consumers. The German UWG Article 8 protection, for instance, is limited to consumers (Yagcioglu, 2013; Aydogdu, 2014). The Swiss law as a reference to the Turkish law system, on the other hand, protects malevolently standardised terms, especially for the consumers. The wording of the LCD Article 8 especially demonstrates that the protection is not limited to consumers.

In the Turkish Law, the protection envisaged in the TCO articles 20-25 against standardised terms, does not foresee any distinction regarding whom to protect. In other words, the TCO does not differentiate between a trader and a consumer when it comes to protecting the other party to a contract from standardised terms, which are against the interests of this party or which aggravates the position of this party, contrary to the principle of good faith. As it can be reiterated, the LPC regulation is *lex specialis* in nature and hence solely protects the consumers. In other words, the protection of the LPC only covers people acting outside their business and trade. Under Article 55/1/f of the Turkish Commercial Code (TCC), using standardised terms of contract that are contrary to the principle of good faith is considered as a primary act of unfair competition. As aforementioned, Article does not make any distinction between a business transaction and a transaction with an ordinary nature.

Taking all into consideration, it is asserted that extending the protection to other market participants and not limiting it to consumers is of the essence. As the malevolently used standardised terms may affect commercial life and ruin market's balance without making any differentiation between a consumer and a trader, it is set forth that limiting the extent of protection with solely the consumers would trigger market imbalance.

Concerning traders, one of the foremost principles that come into mind is the necessity for a trader to act prudently as required from a business person. However, it should be borne in mind that also traders, especially the ones operating small and medium-sized enterprises, most of the times face difficulty in understanding and negotiating the standardised terms. In a case where the trader does not find the chance to negotiate and assess the standardised terms, the burden of proof falls on the trader's shoulders (Atamer, 2001). Hence, the authors interpret that the Turkish regulations on the issue enable the traders to benefit from the protection from malevolent standardised terms. However, the principle of traders' necessity to act prudently draws the line and requires for him/her to prove that he/she did not have a chance to negotiate and get informed about the aforesaid terms.

When it comes to Azerbaijani regulations, Article 418/2 of the Civil Code of Azerbaijan states a specific regulation concerning traders. Article 418/2 accepts the incorporation of the standardised term into the contract which is concluded with a trader to the extent that the terms can be regarded as acceptable by a prudent businessman. Hence, if the integration of the terms can be explained and justified under the concept of cautiousness in trade relations, only then the terms can be accepted as part of the contract. As a result of this different approach, the Civil Code imposes a sanction of invalidity via enumerating specific examples that are designated solely for persons not conducting business activity in Article 420/2. However, it must be pointed out that the Azerbaijani Law on Unfair Competition embraces a similar approach with the TCO Article 54. Accordingly, the Law on Unfair Competition applies to all market participants. The law intends to encompass not only the competitors but all market participants (Yolciyev, 2015). Hence it can be set forth that also in Azerbaijani law the traders must benefit, at least to a certain extent, from the protection against malevolent standardised terms. In doing so, introducing a provision into the Law on the Unfair Competition of Azerbaijan, stating that the use of standardised terms violating the principle of good faith shall constitute unfair competition, would be beneficial for all the market participants to a fair, competitive environment.

5.0 USE OF STANDARDISED TERMS VS UNFAIR COMPETITION IN LIGHT OF THE PRINCIPLES GOVERNING CONTRACT LAW

The contract law regulates the conditions concerning the formation of contract, parties' rights and obligations stemming from thereof and sanctions when a breach occurs. On the other hand, the law on unfair competition regulates the rules that must be followed by all market participants.

If parties to a contract agree to the terms of a contract upon negotiation, then it is possible to mention the formation of an agreement. In this case, if the agreement stays within the boundaries that are drawn by laws and mandatory rules, then it is not possible to set forth further supervision. The situation is a result of the governing principle of contract law, which is freedom of contract. As there are negotiation and mutual agreement of the parties, it would not be possible to mention the use of standardised terms. However, when it comes to the use of standardised terms, it is observed that these terms are formulated based on the idea of taking it or leave it. As these terms, in most of the cases do not give the other party the chance to assess and understand the outcomes fully, it would not be possible to mention the freedom of contract. In other words, when the use of standardised terms is on the desk, the freedom of contract leaves. The traders and consumers are confronted with similar problems when they are the other party of the contract, as both lacks the chance to negotiate such terms.

In using the standardised terms of contract, it is of vital importance not to break the link between freedom to contract and contract justice. As a result of this approach and with the aim to provide equality of arms, the theory of standardised terms has come into play as an application area of the principle of contract justice (Hatemi & Gokyayla, 2012). The standardised terms gain cruciality when it comes to the contract concluded with banks mostly in using credits. Often the banks leave the customers with the standardised terms, and it is possible to see them accepting the terms in order to conclude the agreement and benefit from the service even though the terms constitute imposition and hence impair contract justice. In a decision of the Turkish Court of Cassation, the Court, upon emphasising the freedom of contract as the main rule, also points out the necessity that the contract should not include any unlawful standardised terms (Turkish Court of Cassation, 11th Circle).

It must be stated that during the formation of a contract, the party preparing the standardised terms, must explicitly warn the other party and must inform the latter about the content as an obligation arising from the principle of contract justice and the principle of good faith. However, it must be clarified that merely inserting clauses into the contract stating that the standardised terms have been negotiated does not suffice to demonstrate that they have

been actually negotiated. Hence, such clauses do not exempt standardised terms from being qualified as such (TCO Article 20/3).

A party using standardised terms in its commercial transactions may become more advantageous compared to its economic opponents who do not use such terms in their transactions. In this case, the use of standardised terms in a manner that harms the principle of good faith may also hamper the fair competition environment to the detriment of other market participants.

The Civil Code of Azerbaijan in its Article 390, adopts freedom to contract, is in line with Article 26 of the TCO, within the boundaries that are envisaged by laws. Accordingly, as long as the content of a contract conforms to the mandatory rules, and it is ethical, parties may agree freely.

The Law of the Republic of Azerbaijan on Banks Article 36 designates the relationship between banks and their clients. In moulding thereof, the Law prioritises freedom to contract (The Law of the Republic of Azerbaijan on Banks Article 36/6). Nevertheless, it is also stated in Article 36/6 that the banks shall abide by the normative documents that are determined by the Civil Code of Azerbaijan and the Financial Markets Supervisory Authority of Azerbaijan (FMSA).

Taking all into account, it is evaluated that the standardised terms of contract should be used in light of the principle of good faith. Hence, it can be set forth that the aforementioned principle draws the line to the freedom to contract. In default thereof, it would be possible to observe actions that can be qualified under the concept of unfair competition. It must be noted that not the mere use of standardised terms but the use thereof in violation of the principle of good faith shall constitute unfair competition.

6.0 CONCLUSION

Acting prudently is among the foremost principles regarding traders; however, the difficulties that small and medium-sized enterprises face in understanding and negotiating the standardised terms should not be underestimated. Furthermore, limiting the extent of protection solely to consumers would trigger market imbalance. Hence, the paper sets forth that extending the protection to other market participants and not limiting it to consumers is necessary.

Using standardised terms of contract against the principle of good faith constitutes a breach of competition in the market. Thus, the paper sets forth that the case may well be considered as a tort in a broad sense.

The principles of good faith and contract justice draw the line at the freedom to contract. The freedom to contract cannot be a justification for the use of standardised terms in violation of the principle of good faith.

Under Article 55/1/f of the Turkish Commercial Code (TCC) using standardised terms of contract that are contrary to the principle of good faith are regulated as a primary act of unfair competition. The Article does not make any distinction between a business transaction and a transaction with an ordinary nature. Unlike the TCC Article 55, the Law on the Unfair Competition of Azerbaijan does not regulate the use of standardised terms in violation of the principle of good faith as unfair competition.

Upon examining Turkish and Azerbaijani law, it is concluded that the two countries, having similar regulations with familiar approaches concerning the standardised terms and unfair competition, need to be in interaction with each other concerning their legislation. The high volume of commercial activities between the two countries also points out the need for harmonisation of legal regulations which will facilitate business. Taking all these into account, this paper suggests introducing a new provision into the Law on the Unfair Competition of Azerbaijan. The proposed provision will define the usage of standardised terms in a manner violating the principle of good faith as unfair competition in line with the TCC Article 55/1/f.

REFERENCES

- Atamer, Y. (2001). *Protection of merchants against standard form contracts* (Nr. 2001-08). Publication of Istanbul Chamber of Commerce.
- Atamer, Y. (2011). *Control of standard form contracts according to the new Turkish Code of Obligations – In comparison to Art. 6 Turkish Consumer Code and Art. 55 Turkish Code of Commerce*. Publication of the Institute for Banking and Trade Law.
- Aydogdu, M. (2014). *The supervision of standardised terms of contract in Turkish Code of Obligations and of unfair terms in the law on the protection of consumers*. Seekin Publications.
- Demirtas, N. (2014). *The annotated Ottoman fatwas I, Fatwas of Ali Efendi*. Kubbealti Publications.
- Doganci, D. E. (2018). *Transparency supervision of standardised terms of contract*. On Iki Levha Publications.
- Hatemi, H., & Gokyayla, K. E. (2012). *The code of obligations general part*. Vedat Publications.

- Kuntalp, E. (2012). *Banks and standardised terms of contract, standardised terms of contract symposium in Turkish Law* (Ed. B. Sit). Publication of the Institute for Banking and Trade Law.
- Ministry of Foreign Affairs. (2018). Relations between Turkey and Azerbaijan. Retrieved from <http://www.mfa.gov.tr/economic-relations-between-turkey-and-azerbaijan.en.mfa>
- Tekinalp, U. (2009). *The principles of banking law*. Vedat Publications.
- Tig, S. G. (2019). Standardised terms of contract. Retrieved from <https://tez.yok.gov.tr>
- Topcuoglu, M. (2015). Breach of the competition through standardised terms of contract and its results. *Gazi University Law Journal*, XIX(4), 3-69.
- Uzunalli, S. (2013). The supervision of standardised terms of contract through unfair competition provisions. *Istanbul University Law Journal*, LXXI(2), 383-420.
- VonTuhr, A. (1983). *The code of obligations*. Olgac Printery.
- Yagcioglu, A. H. (2013). Open control of the content of general terms and conditions on the new Swiss federal law against unfair competition (UWG Art.8). *Yasar University Law Journal*, 8(1), 3057-3098.
- Yolciyev, M. (2015). Concept of unfair competition in law of Azerbaijan and the examination of the unfair competition through deceiving consumers. *Meliksah University Law Journal*, 1(1), 1-13.