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Abstract:

Protection of the weaker party to the contract is usually seen as one of the limitations of the principle of freedom of contract. The above mentioned considerations are intended to demonstrate that the principle of contractual freedom should not be contrasted with the protection of the weaker party. The confrontation of these two principles most often results from inappropriate approach to them: on the one hand, identifying the protection of the weaker party with paternalistic protection, aimed at privileging one of the parties to the contract, and on the other hand, formal treatment of the autonomy of the will of the parties. The legal instruments relating to the weaker party should, however, be viewed from a different perspective - not as providing additional protection, but as those aimed at equalizing the position of the parties to the contract. With this approach, the perception of the mutual relationship between the principle of freedom of contract and the idea of protecting the weaker party should be changed. These concepts are not opposed but complement each other. By ensuring adequate protection for the weaker party, the deficits in contractual freedom are in fact compensated, and, consequently, the principle is actually implemented. The starting point for further arguments is the traditional, formal understanding of the principle of freedom of contract, characteristic of liberalism and neoliberalism and working well in pre-industrial relations. However, the process of economic and social changes of the last two hundred years, with particular emphasis on the challenges posed by digitization of trade, has changed the shape of contractual relations so much that the formal approach to the principle of freedom of contract is no longer sufficient. The progressive materialization of private law, taking into account social elements in contract law, striving to equalize the position of the parties through appropriate legal measures (usually recognized as instruments of protection of the weaker party to the contract) entail the need to look at the essence of the principle of freedom of contracts in a

different way and also to take material aspects into consideration. With this approach, the protection of the weaker complements the principle of freedom of contract and allows for its actual implementation.