YURISPRUDENSIYA

HUQUQIY ILMIY-AMALIY JURNALI

2026-yil 5-son

VOLUME 6 / ISSUE 5 / 2026

DOI: https://dx.doi.org/10.51788/tsul.jurisprudence.65

ISSN: 2181-1938

DOI: https://dx.doi.org/10.51788/tsul.jurisprudence

MUASSIS: TOSHKENT DAVLAT YURIDIK UNIVERSITETI

"Yurisprudensiya" – "Юриспруденция" – "Jurisprudence" huquqiy ilmiy-amaliy jurnali O'zbekiston matbuot va axborot agentligi tomonidan 2020-yil 22-dekabrda 1140-sonli guvohnoma bilan davlat ro'yxatidan o'tkazilgan.

Jurnal O'zbekiston Respublikasi Fanlar akademiyasi huzuridagi Oliy attestatsiya komissiyasi jurnallari ro'yxatiga kiritilgan.

Mualliflik huquqlari Toshkent davlat yuridik universitetiga tegishli. Barcha huquqlar himoyalangan. Jurnal materiallaridan foydalanish, tarqatish va ko'paytirish muassis ruxsati bilan amalga oshiriladi.

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Vebsayt: jurisprudence.tsul.uz
E-mail: lawjournal@tsul.uz

Obuna indeksi: 1387

Tasdiqnoma
№ 174625, 29.11.2023.

Jurnal 2026-yil 21-oktabrda bosmaxonaga topshirildi.
Qog'oz bichimi: A4.
Shartli bosma tabog'i: 11,6.
Adadi: 100. Buyurtma: № 110.

TDYU bosmaxonasida chop etildi.
Bosmaxona manzili:
100047. Toshkent shahri, Sayilgoh ko'chasi, 37.

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Журнал включён в перечень журналов Высшей аттестационной комиссии при Академии наук Республики Узбекистан.

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Ответственный за выпуск:
О. Чориев

Редакторы:
Э. Мустафаев, Е. Ярмолик,
М. Шарифова, Х. Юлдашева,
Ф. Усмонова, К. Абдувалиева

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улица Сайилгох, 35.
Тел.: (0371) 233-66-36 (1169)

Веб-сайт: jurisprudence.tsul.uz
E-mail: lawjournal@tsul.uz

Подписной индекс: 1387.

Свидетельство
от 29.11.2023 № 174625.

Журнал передан в типографию
21.10.2026.
Формат бумаги: А4.
Усл. п. л. 11,6. Тираж: 100 экз.
Номер заказа: 110.

Отпечатано в типографии
Ташкентского государственного
юридического университета.
100047, г. Ташкент,
ул. Сайилгох, 37.

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"Yurisprudensiya" – "Юриспруденция" – "Jurisprudence" legal scientific and practical journal was registered by the Press and Information Agency of Uzbekistan on December 22, 2020 with certificate No. 1140.

The journal is included in the list of journals of the Higher Attestation Commission at the Academy of Sciences of the Republic of Uzbekistan.

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Agreed-upon price.

Publication Officer:
O. Choriev

Editors:
E. Mustafaev, E. Yarmolik, M. Sharifova, Kh. Yuldasheva, F. Usmonova, K. Abduvalieva

Proofreader:
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Editorial office address:
100047. Tashkent city,
Sayilgoh street, 35.
Phone: (0371) 233-66-36 (1169)

Website: jurisprudence.tsul.uz
E-mail: lawjournal@tsul.uz

Subscription index: 1387.

Certificate
№ 174625, 29.11.2023.

The journal is submitted to the Printing house on 21.10.2026.
Paper size: A4. Cond.p.f: 11,6.
Units: 100. Order: № 110.

Published in the Printing house of Tashkent State University of Law.
100047. Tashkent city,
Sayilgoh street, 37.

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Kelib tushgan / Получено / Received: 14.09.2026
Qabul qilingan / Принято / Accepted: 12.10.2026
Nashr etilgan / Опубликовано / Published: 21.10.2026

DOI: https://dx.doi.org/10.51788/tsul.jurisprudence.65004
UDC: 346.91(045)(575.1)

THE PRESUMPTION OF GOOD FAITH OF BUSINESS ENTITIES AS A PROCEDURAL GUARANTEE FOR THE JUDICIAL PROTECTION OF ECONOMIC RIGHTS

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Abstract. *This article examines the legal character of the presumption of good faith in the activities of business entities and substantiates the need for its explicit incorporation into the economic procedural legislation of the Republic of Uzbekistan. The study proceeds from the premise that, although Uzbek legislation establishes a range of substantive guarantees aimed at safeguarding entrepreneurial freedom, the existence of such guarantees does not in itself ensure a balanced procedural position of the parties when entrepreneurs challenge actions or decisions of public authorities. Particular attention is therefore devoted to the relationship between the general principle of good faith and its procedural manifestation in the form of a legal presumption. The article analyzes the existing rules governing the distribution of the burden of proof under the Economic Procedural Code of the Republic of Uzbekistan and identifies the procedural implications of the absence of a clearly formulated presumption of good faith for business entities. The study also includes a comparative legal analysis of the approaches adopted in Kazakhstan, Germany, and France, focusing on the extent to which their procedural frameworks provide mechanisms for protecting private parties in disputes involving public authorities. Based on the findings of the analysis, the article proposes the introduction of a new Article 68[1] into the Economic Procedural Code. The proposed provision would establish a rebuttable presumption that the actions and conduct of a business entity are lawful and undertaken in good faith unless the contrary is demonstrated in accordance with the procedure established by law. In disputes concerning legal measures affecting entrepreneurial activity, the relevant public authority would bear the burden of substantiating the alleged unlawfulness or bad faith. Such an approach, in the author's view, could strengthen procedural guarantees for entrepreneurs, improve the predictability and legal certainty of economic proceedings, and contribute to a more balanced allocation of procedural burdens between business entities and public authorities.*

Keywords: *business entity, economic rights, judicial protection, presumption of good faith, economic proceedings, public authority, procedural guarantees, Economic Procedural Code*

TADBIRKORLIK SUBYEKTLARINING HALOLLIGI PREZUMPSIYASI IQTISODIY HUQUQLARNI SUDDA HIMOYA QILISHNING PROTSESSUAL KAFOLATI SIFATIDA

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Annotatsiya. *Mazkur maqolada tadbirkorlik subyektlarining halolligi prezumpsiyasining huquqiy tabiati o‘rganilib, ushbu normani O‘zbekiston Respublikasining iqtisodiy protsessual qonunchiligida bevosita mustahkamlash zarurati asoslab berilgan. Tadqiqot shunga asoslanganki, O‘zbekiston qonunchiligida tadbirkorlik erkinligini himoya qilishga qaratilgan bir qator moddiy-huquqiy kafolatlar belgilangan bo‘lsa-da, bunday kafolatlarning mavjudligi tadbirkorlar davlat organlarining xatti-harakatlari yoki qarorlari ustidan nizolashganda taraflarning protsessual mavqeyi muvozanatini o‘z-o‘zidan ta’minlay olmaydi. Shu bois halollikning umumiy prinsipi va uning huquqiy prezumpsiya shaklidagi protsessual ifodasi o‘rtasidagi o‘zaro munosabatga alohida e’tibor qaratilgan. Maqolada O‘zbekiston Respublikasi Iqtisodiy protsessual kodeksiga muvofiq isbotlash majburiyatini taqsimlashni tartibga soluvchi amaldagi qoidalar tahlil qilingan hamda tadbirkorlik subyektlari uchun halollik prezumpsiyasi aniq belgilab qo‘yilmagani keltirib chiqaradigan protsessual oqibatlar ochib berilgan. Shuningdek, tadqiqot doirasida Qozog‘iston, Germaniya va Fransiyada qo‘llanadigan yondashuvlar qiyosiy-huquqiy tahlil qilinib, ushbu mamlakatlarning protsessual qonunchiligida davlat organlari ishtirokidagi nizolarda xususiy subyektlarni himoya qilish mexanizmlari qay darajada ta’minlanganiga e’tibor qaratilgan. Tahlil natijalariga tayangan holda maqolada Iqtisodiy protsessual kodeksga yangi 68^1-moddani kiritish taklif etilgan. Taklif etilayotgan norma, agar qonunda belgilangan tartibda aksi isbotlanmagan bo‘lsa, tadbirkorlik subyektining xatti-harakatlari hamda faoliyati qonuniy va vijdonan amalga oshirilganligi to‘g‘risidagi rad etilishi mumkin bo‘lgan prezumpsiyani belgilab beradi. Tadbirkorlik faoliyatiga ta’sir ko‘rsatuvchi huquqiy choralar bilan bog‘liq nizolarda taxmin qilinayotgan qonunga xiloflik yoki vijdonsizlikni asoslab berish majburiyati tegishli davlat organi zimmasiga yuklatiladi. Muallifning fikricha, bunday yondashuv tadbirkorlar uchun protsessual kafolatlarni mustahkamlaydi, iqtisodiy sud ishlarini yuritishda oqibatlarni oldindan baholay olish imkoniyatini hamda huquqiy aniqlik darajasini oshiradi, tadbirkorlik subyektlari va davlat organlari o‘rtasida protsessual majburiyatlarning yanada mutanosib taqsimlanishiga xizmat qiladi.*

Kalit so‘zlar: *tadbirkorlik subyekti, iqtisodiy huquqlar, sud himoyasi, halollik, halollik prezumpsiyasi, iqtisodiy sud ishlarini yuritish, davlat organi, protsessual kafolatlar, Iqtisodiy protsessual kodeks*

ПРЕЗУМПЦИЯ ДОБРОСОВЕСТНОСТИ СУБЪЕКТОВ ПРЕДПРИНИМАТЕЛЬСТВА КАК ПРОЦЕССУАЛЬНАЯ ГАРАНТИЯ СУДЕБНОЙ ЗАЩИТЫ ЭКОНОМИЧЕСКИХ ПРАВ

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Аннотация. *В статье исследуется правовая природа презумпции добросовестности в деятельности субъектов предпринимательства и обосновывается необходимость её прямого закрепления в экономическом процессуальном законодательстве Республики Узбекистан. Исследование исходит из положения о том, что, хотя законодательство Узбекистана устанавливает ряд материально-правовых гарантий, направленных на защиту свободы предпринимательства, само по себе наличие таких гарантий не обеспечивает сбалансированного процессуального положения сторон при оспаривании предпринимателями действий или решений органов публичной власти. В связи с этим особое внимание уделяется соотношению общего принципа добросовестности и его процессуального проявления в форме правовой презумпции. Кроме того, в статье анализируются действующие правила распределения бремени доказывания, предусмотренные Экономическим процессуальным кодексом Республики Узбекистан, и выявляются процессуальные последствия отсутствия чётко сформулированной презумпции добросовестности субъектов предпринимательства. Исследование также включает сравнительно-правовой анализ подходов, применяемых*

в Казахстане, Германии и Франции, с акцентом на том, в какой мере процессуальное регулирование в этих странах предусматривает механизмы защиты частных субъектов в спорах с органами публичной власти. По результатам анализа предлагается дополнить Экономический процессуальный кодекс новой статьёй 68[1]. Предлагаемая норма предусматривает закрепление опровержимой презумпции правомерности и добросовестности действий и поведения субъекта предпринимательства, если иное не доказано в установленном законом порядке. В спорах, касающихся правовых мер, затрагивающих предпринимательскую деятельность, бремя обоснования утверждений о неправомерности или недобросовестности возлагалось бы на соответствующий орган публичной власти. По мнению автора, такой подход мог бы укрепить процессуальные гарантии предпринимателей, повысить предсказуемость и правовую определённость экономического судопроизводства, а также способствовать более сбалансированному распределению процессуального бремени между субъектами предпринимательства и органами публичной власти.

Ключевые слова: *субъект предпринимательства, экономические права, судебная защита, презумпция добросовестности, экономическое судопроизводство, орган публичной власти, процессуальные гарантии, Экономический процессуальный кодекс*

Introduction

The effectiveness of constitutional guarantees of entrepreneurial freedom cannot be assessed solely by reference to the catalogue of substantive rights granted to business entities. Their actual significance becomes apparent in the course of legal disputes, particularly when the legality of an entrepreneur's actions is questioned by another party or by a public authority. The procedural framework governing such disputes is therefore of fundamental importance. Rights relating to property ownership, contractual activity, and the conduct of lawful economic activities may lose much of their practical effect where an entrepreneur is placed under an initial obligation to disprove allegations of unlawful, dishonest, or coordinated conduct. Accordingly, the allocation of the burden of proof, as well as the standard that must be satisfied before that burden shifts, should be regarded as an essential element of the effective protection of entrepreneurial rights rather than merely as a technical matter of procedure.

These issues are particularly significant in disputes in which the legality of an entrepreneur's conduct is challenged by a public authority or a contractual counterparty. For example, a dispute may arise where a tax or other competent authority questions the economic justification of a transaction, alleges that contractual arrangements lack genuine commercial substance, or contests the bona fide nature of the entrepreneur's actions. Similar evidentiary difficulties may occur in disputes concerning the performance of contractual obligations, the recovery of debts, the validity of transactions, and the consequences of unilateral decisions taken by public authorities. In these circumstances, the court must distinguish between a substantiated allegation of unlawful conduct and a conclusion based primarily on suspicion, formal discrepancies, or an unfavourable interpretation of the entrepreneur's commercial decisions. Where the evidentiary basis for such allegations is insufficient, requiring the entrepreneur to disprove them may undermine the balance between the parties and weaken the effectiveness of judicial protection.

The practical problem is not that entrepreneurs should be exempt from demonstrating the facts on which their claims or objections are based. Rather, it concerns the circumstances in which the burden of establishing particular facts is imposed on a business entity and

whether the opposing party has first provided sufficient grounds to question the lawfulness or good faith of its conduct. An entrepreneur may possess the relevant contractual documents, accounting records, correspondence, and other evidence relating to a transaction. Nevertheless, the existence of such documentation does not automatically resolve every dispute concerning the commercial purpose of the transaction or the conduct of the parties. Conversely, the absence of a document or the existence of a formal irregularity should not, without an assessment of all relevant circumstances, necessarily lead to the conclusion that the entrepreneur acted dishonestly. These situations demonstrate the need for a procedural approach that ensures a fair assessment of the evidence while preventing unsupported allegations from placing a disproportionate evidentiary burden on the business entity.

The development of Uzbekistan's legal framework in recent years demonstrates a consistent expansion of constitutional and legislative safeguards for entrepreneurial activity. The Constitution of the Republic of Uzbekistan guarantees freedom of economic activity and entrepreneurship, protects property irrespective of its form, and recognises the inviolability of private property. Article 67 establishes specific constitutional guarantees concerning the business environment by requiring the State to create favourable conditions for investment and entrepreneurial activity (Republic of Uzbekistan, 2023). It also recognises the freedom of entrepreneurs to engage in any activity not prohibited by law and to independently determine the direction of their economic activity.

These guarantees have direct implications for the resolution of economic disputes. When a public authority challenges a business transaction or when one party alleges that the other has acted in bad faith, the resulting judicial assessment may affect not only the outcome of an individual case but also the predictability of contractual relations, the protection of property, and the ability of businesses to make independent commercial decisions. If the legal consequences of a transaction depend on allegations that are not supported by sufficient evidence, entrepreneurs may face uncertainty regarding the legal status of their ordinary business activities. Accordingly, the constitutional protection of entrepreneurial freedom must be reflected in procedural safeguards that enable courts to distinguish between proven violations and assumptions concerning the motives or commercial conduct of a business entity.

An additional constitutional foundation for this approach is Article 55 of the Constitution, which guarantees the right to judicial protection, including the right to challenge unlawful decisions, actions, and omissions of public authorities. It also guarantees the right to have a case considered by a competent, independent, and impartial court within the period prescribed by law, as well as the right to compensation for damage caused by unlawful decisions, actions, or omissions of State bodies or their officials (Dundua & Kakushadze, 2024). For entrepreneurs, these guarantees are especially relevant in disputes involving administrative interference, the exercise of regulatory powers, and the legal consequences of decisions adopted by public authorities. However, access to a court alone does not necessarily ensure effective protection. Judicial protection also depends on whether the applicable procedural framework enables the parties to participate on a fair basis in establishing the facts and whether the court requires allegations of unlawful or dishonest conduct to be supported by appropriate evidence.

The practical importance of this issue is closely connected with the role of economic

courts in resolving disputes between commercial entities and with the role of administrative courts in reviewing decisions and conduct of public authorities within their respective jurisdictions. In both contexts, the assessment of the parties' conduct may be decisive. In contractual disputes, a court may need to determine whether a party fulfilled its obligations honestly and consistently with the requirements of the relevant legal relationship. In disputes involving public authorities, the court may be required to examine the factual and legal grounds for interference with an entrepreneur's rights. Although these categories of proceedings differ in their subject matter and procedural rules, both demonstrate the importance of clearly distinguishing between the obligation to prove facts relied upon by a party and the impermissible imposition of an obligation to disprove allegations that have not been adequately substantiated.

Against this background, the question of establishing a rebuttable presumption of good faith in Uzbekistan's economic procedural legislation has practical as well as doctrinal significance. Such a presumption could provide an initial procedural safeguard where the conduct of an entrepreneur is challenged solely on the basis of an allegation of dishonesty or illegality. Its application would not prevent a court from examining evidence of abuse, fictitious transactions, circumvention of mandatory legal requirements, or other unlawful conduct. Rather, it would require the party disputing the entrepreneur's good faith to present relevant grounds and evidence before the evidentiary burden shifts in accordance with the applicable procedural rules. The court would retain responsibility for evaluating the evidence comprehensively and determining whether the presumption has been rebutted in the circumstances of the particular case.

The concept of good faith itself does not lend itself to a universally applicable and exhaustive legal definition. Its content depends on the nature of the legal relationship, the circumstances of the transaction, the conduct of the parties, and the requirements established by law. In legal doctrine, good faith is commonly examined as a fundamental principle governing the exercise of civil rights, a standard for evaluating the conduct of participants in legal relationships, and a presumption that may influence the distribution of evidentiary responsibilities. For the purposes of economic proceedings, these functions should be distinguished. Recognition of good faith as a general legal principle provides a standard against which conduct may be assessed; however, it does not necessarily establish a sufficiently precise procedural rule governing the initial allocation of the burden of proof.

This distinction becomes apparent in practice when a court must decide whether the available evidence is sufficient to establish bad faith or whether the conclusion is based on assumptions concerning a party's motives. Without a clearly articulated procedural approach, the assessment of good faith may depend excessively on the circumstances of individual cases and on the manner in which the parties present their evidence. The introduction of an express rebuttable presumption could contribute to greater consistency in judicial reasoning by clarifying the initial evidentiary position of an entrepreneur while preserving the court's ability to reach a different conclusion where sufficient contrary evidence is established.

The present study therefore examines the legal and practical grounds for recognising a rebuttable presumption of good faith in Uzbekistan's economic procedural legislation. It considers how the distribution of the burden of proof affects the resolution of economic disputes, the assessment of allegations concerning dishonest entrepreneurial conduct, and the

effectiveness of judicial protection against unjustified interference with business activity. Particular attention is given to the relationship between constitutional guarantees, existing procedural rules, and the evidentiary difficulties that may arise in disputes between entrepreneurs and in proceedings involving public authorities. The study seeks to determine whether express statutory recognition of the presumption could improve procedural fairness, promote consistency in judicial decision-making, and strengthen the practical implementation of constitutional guarantees of entrepreneurial freedom without creating immunity from legal responsibility or restricting the legitimate powers of courts and competent public authorities.

Main part

The legal nature of good faith in entrepreneurial activity cannot be adequately explained by reference to a single branch of law. Although the concept has traditionally been examined within civil-law doctrine, its practical significance extends to constitutional guarantees of economic freedom and to the procedural rules governing the resolution of economic disputes. These dimensions are closely interconnected, but they perform different legal functions. A failure to distinguish between them may lead to the mistaken assumption that recognition of good faith as a general legal principle automatically establishes a procedural presumption in favour of an entrepreneur. In fact, the substantive requirement to act in good faith, the constitutional obligation to protect entrepreneurial freedom, and the procedural allocation of the burden of proof address different aspects of the same legal problem.

From a constitutional-law perspective, the protection of entrepreneurial freedom concerns the conditions under which individuals and business entities may exercise their economic rights without unjustified interference by the State. The Constitution of the Republic of Uzbekistan establishes the freedom of economic activity and entrepreneurship, protects property irrespective of its form, and guarantees the inviolability of private property. Article 67 is particularly important because it requires the State to create favourable conditions for investment and entrepreneurial activity and recognises the freedom of entrepreneurs to engage in any activity not prohibited by law and independently determine the direction of their economic activity.

These guarantees establish the constitutional framework within which the legality of State intervention in entrepreneurial activity must be assessed. A public authority may exercise its statutory powers to prevent violations, enforce mandatory requirements, and protect public interests. However, the existence of such powers does not eliminate the requirement that their exercise be lawful and supported by sufficient factual grounds. Where an authority questions the legitimacy of an entrepreneur's transactions or alleges that a business entity has acted dishonestly, the resulting dispute raises not only a question of compliance with ordinary legislation but also a question concerning the practical protection of constitutionally guaranteed economic freedom.

Article 55 of the Constitution complements these guarantees by establishing the right to judicial protection, including the right to challenge unlawful decisions, actions, and omissions of public authorities. It also guarantees consideration of a case by a competent, independent, and impartial court within the period prescribed by law, as well as compensation for damage caused by unlawful decisions, actions, or omissions of State bodies or their officials. The significance of these provisions becomes apparent where an entrepreneur challenges a decision that adversely affects its property,

contractual position, or ability to conduct business.

Constitutional judicial protection would be incomplete if a court were unable to examine the factual basis of the contested decision or if an entrepreneur were effectively required to disprove an allegation that had not been adequately substantiated by the authority advancing it. In this context, the constitutional dimension of the presumption of good faith is associated with the requirements of legal certainty, effective judicial review, and protection against arbitrary interference (Inshakova, 2024). The presumption may serve as a procedural instrument through which these constitutional requirements are given practical effect.

Nevertheless, the constitutional protection of entrepreneurial freedom should not be confused with a substantive rule governing every private-law relationship. Constitutional guarantees establish fundamental limits on public power and obligations concerning the organisation of judicial protection (Solomin & Solomina, 2018). They do not, by themselves, determine whether a contractual party has fulfilled its obligations, whether a particular transaction is valid, or whether one party has abused a civil right. Such questions are primarily addressed through the relevant rules of civil law, commercial legislation, and economic procedural law.

The civil-law dimension of good faith concerns the proper exercise of subjective rights and the performance of obligations within private-law relationships. In this context, good faith functions as a normative standard against which the conduct of participants may be evaluated. It allows the legal assessment of conduct to extend beyond the formal existence of a right or obligation and to take account of the circumstances in which that right is exercised or that obligation is performed.

Solomin and Solomina, in their analysis of good faith in civil-law relations, emphasise that the concept should not be reduced to a person's subjective awareness of particular circumstances. Rather, good faith is associated with an objective model of appropriate behaviour, the content of which must be determined in light of the nature and circumstances of the relevant legal relationship. Applied to entrepreneurial relations, this approach recognises that businesses may reasonably be expected to exercise appropriate care and diligence in organising their activities. At the same time, the professional character of entrepreneurship cannot, on its own, justify the conclusion that a business entity has acted dishonestly or intended to circumvent mandatory legal requirements.

Ulyanov's (2014) scholarly approach similarly treats good faith as a multifaceted concept within civil-law regulation. Good faith may guide the exercise of subjective rights, assist in interpreting legal provisions, and provide a standard for evaluating the behaviour of participants in a legal relationship. Its substantive function is therefore to establish a criterion for determining whether the conduct of a party is consistent with the requirements of reasonableness, fairness, and appropriate behaviour arising from the relevant circumstances.

The procedural dimension, however, is different. A legal standard may establish how parties should behave without specifying which party must bear the consequences when the relevant facts cannot be established with sufficient certainty. This distinction is particularly important in economic proceedings, where the court may be required to assess allegations of fictitious transactions, abuse of rights, deliberate non-performance, or other forms of allegedly dishonest conduct.

As Goncharov's (2017) approach to the distinction between legal principles and

presumptions suggests, a normative principle and a legal presumption cannot be treated as interchangeable. The principle of good faith provides a standard for evaluating conduct, whereas a presumption establishes an initial legal position for adjudication unless sufficient evidence demonstrates otherwise. Its principal procedural significance lies in the allocation of evidentiary responsibility and the determination of which party bears the consequences of unresolved factual uncertainty.

Accordingly, recognition of good faith as a general civil-law principle does not necessarily mean that procedural law already establishes a general presumption of entrepreneurial good faith. Nor does the constitutional protection of entrepreneurial freedom automatically determine the distribution of the burden of proof in every economic dispute. A separate procedural rule may be necessary to connect these substantive guarantees with the practical requirements of judicial proceedings.

The practical significance of the distinction between a principle and a presumption becomes clearer when examined through typical economic disputes. Such disputes demonstrate that the question of good faith frequently arises not as an abstract theoretical issue but as a question concerning the sufficiency of evidence, the interpretation of commercial conduct, and the legal consequences of disputed transactions (Republic of Uzbekistan, 2018).

A different situation arises where a public authority questions an entrepreneur's conduct on the grounds that a transaction was structured to circumvent a mandatory legal requirement. For example, an authority may argue that the contractual arrangements between commercial entities do not reflect their actual economic relationship or that the entrepreneur's actions were intended to obtain an advantage contrary to law.

The authority is entitled to investigate suspected violations within the limits of its statutory powers. However, the conclusion that an entrepreneur has acted in bad faith should be distinguished from the existence of circumstances that merely justify further examination. The fact that a transaction produces an economic advantage, involves several contractual arrangements, or differs from a common commercial model does not, in itself, establish that it is unlawful. Its legal significance must be assessed in light of the applicable legislation and the evidence of the particular case.

Suppose that the authority relies on the structure of a transaction but does not adequately establish the circumstances indicating an unlawful purpose. If the entrepreneur is then required to demonstrate conclusively that no improper purpose existed, the practical effect may be to transfer the evidentiary risk to the party against which the allegation is directed.

A rebuttable presumption could provide a more balanced starting point. The authority would be required to identify the relevant facts supporting its allegation, while the entrepreneur would retain the opportunity to submit documents and explanations concerning the commercial purpose and actual performance of the transaction. The court would then examine whether the available evidence establishes the alleged violation in accordance with the applicable standard of proof.

The proposed approach would not restrict the authority's lawful investigative powers or prevent the imposition of liability where a violation is established. Its purpose would be to distinguish evidence-based intervention from conclusions resting on unsupported assumptions about the motives of a business entity.

This case also demonstrates why the constitutional and procedural dimensions must be considered together. The constitutional guarantee protects the

entrepreneur against unjustified interference, while the procedural presumption could help ensure that judicial review examines the factual basis for the interference rather than requiring the entrepreneur merely to negate the authority's assertions (Mosin, 2023).

These examples reveal a common problem. In each situation, the court must distinguish between a disputed allegation and a circumstance established by evidence. However, the legal context may differ: one case may concern the performance and character of a commercial transaction, another may involve the exercise of public authority and the constitutional protection of entrepreneurial freedom, while a third may concern the exercise of contractual rights and the performance of private-law obligations.

These differences demonstrate why the presumption of good faith cannot simply be equated with the general civil-law requirement of good faith. The principle provides a substantive standard for evaluating conduct, while the presumption would establish a procedural starting point for the assessment of allegations (Dirgėlienė, 2016). Its application must therefore be coordinated with the specific rules governing each category of proceedings.

The cases also indicate that the presumption should not be formulated as an unconditional obligation requiring every opposing party to disprove an entrepreneur's conduct. The party advancing a claim must still establish the facts on which that claim is based, and the party raising an objection must comply with the applicable rules governing its proof. The proposed presumption would address the particular situation in which the good faith of entrepreneurial conduct is challenged and would prevent an unsupported allegation from being treated as sufficient evidence of wrongdoing.

A comparative survey of Kazakhstan, Germany, and France illustrates the range of legislative techniques available for codifying good faith and reveals the distinctive contribution that an explicit procedural presumption can make.

The most instructive precedent for Uzbekistan is that of the Republic of Kazakhstan, where the presumption of good faith of business entities has received direct legislative recognition. Article 3 of the Entrepreneurial Code of the Republic of Kazakhstan lists the presumption of good faith of business entities, together with the mutual responsibility of the State and business, among the principles governing the interaction between the State and entrepreneurship (Republic of Kazakhstan, 2015). Article 14 of the same Code develops this principle further, providing that, in the course of State regulation of entrepreneurial activity, the good faith of a business entity's conduct is presumed when it discharges its obligations or exercises the rights conferred on it by law. The Kazakh Code also protects an entrepreneur who has relied upon an official clarification issued by a competent State authority, even where that clarification is subsequently withdrawn or found to have been erroneous, provided the underlying statutory norm has remained unchanged.

What is significant for Uzbekistan is not merely the presence of the term "good faith" in Kazakh legislation, but the underlying legal architecture: the legislator proceeds from the premise that, in relations of State regulation, the initial assumption should favour the good faith of the entrepreneur's conduct. This achieves a shift from a model in which "the entrepreneur must establish its own rectitude" to one in which "the State must prove the violation it alleges." The Kazakh experience, however, largely situates the presumption at the level of substantive entrepreneurial legislation. For Uzbekistan, the logical next step would be to accord the presumption an explicitly procedural character within the Economic Procedural

Code itself, linking it directly to the rule governing the burden of proof.

German law contains no universal procedural presumption of good faith for business entities directly analogous to the construction proposed here. The central provision in this respect is § 242 of the Bürgerliches Gesetzbuch (BGB), which requires that an obligation be performed in accordance with good faith, having regard to prevailing commercial custom (Treu und Glauben) (Federal Republic of Germany, 2002). On the basis of this provision, German doctrine and case law have developed an extensive body of requirements governing the conduct of participants in civil and commercial dealings. The German model thus illustrates an alternative legislative technique: good faith functions as a general standard of evaluation, from which specific procedural consequences are derived according to the nature of the dispute rather than fixed in advance by a dedicated presumption. This experience is instructive for Uzbekistan chiefly as a caution against reducing the proposed presumption to an unconditional vindication of every entrepreneurial decision: its operation must remain coupled with a continuing substantive requirement that entrepreneurs themselves act in good faith.

French law, for its part, provides in Article 1104 of the Code civil that contracts must be negotiated, formed, and performed in good faith, and that this requirement is mandatory in character (French Republic, 2016). This illustrates a broader continental approach in which good faith operates not merely as a moral notion but as a legally relevant standard of conduct.

The comparative picture, taken as a whole, suggests that Germany and France have principally developed good faith as a substantive principle and standard of conduct, whereas Kazakhstan has directly codified a presumption of good faith governing relations between the State and business entities. For Uzbekistan, the more promising course is to combine these approaches: to preserve the substantive requirement of good-faith conduct while simultaneously establishing a procedural presumption that determines the allocation of the burden of proof.

A threshold question concerns how the proposed presumption should operate within the litigation process itself. The general rule under Article 68 of the Economic Procedural Code (EPC) – that each party must prove the circumstances on which it relies – should not be displaced by the presumption; rather, the presumption should give that general rule concrete content in relation to allegations of bad faith specifically.

Where a claimant alleges that a respondent business entity acted in bad faith, it is the claimant who must prove the relevant circumstances. Where a public authority has issued a decision premised on a finding of fictitiousness, abuse of right, an artificial transaction, or some other form of bad-faith conduct, it is the authority that must prove the factual basis for that finding (Goncharov, 2017). Once sufficient evidence has been adduced, the presumption may be regarded as rebutted, and the entrepreneur is afforded the opportunity to present rebuttal evidence of its own; the adversarial character of the proceeding is thereby preserved rather than displaced.

The proposed rule should not be understood as establishing an irrebuttable presumption. Good faith in entrepreneurial relations should be presumed, but not rendered conclusively unassailable; to do otherwise would simply invert the existing imbalance, depriving public authorities and counterparties of any meaningful capacity to invoke abuse of right.

The applicable standard of proof also warrants attention. Rebuttal of the presumption cannot rest on a bare assertion,

a generalised reference to the unusual character of a commercial transaction, or a public authority's disagreement with the economic rationale of an entrepreneurial decision. What is required is concrete evidence enabling the court to establish bad faith by reference to the specific circumstances of the case.

Entrepreneurial risk merits separate treatment in this connection. The unprofitability of a transaction, an unconventional business model, a decline in profitability, or the completion of an operation that later proves economically inefficient does not, without more, constitute evidence of bad faith (Halberda, 2020). Commercial activity is inherently risk-bearing, and judicial evaluation must not permit the retrospective substitution of a public authority's economic judgment for the entrepreneur's own commercial discretion at the time the decision was made.

Earlier discussions of this proposal considered locating the new presumption within Article 91 EPC; however, the current structure of the Code shows that Article 91 is already devoted to judicial commissions (letters rogatory). From the standpoint of legislative technique, it is accordingly more coherent to place the proposed provision immediately following Article 68, "Burden of Proof," as a new Article 68^1.

It is proposed that the Economic Procedural Code of the Republic of Uzbekistan be supplemented with the following provision:

Article 68^1. Presumption of Good Faith of a Business Entity

In the examination of an economic case, the actions (or omissions) of a business entity in the exercise of its rights and the performance of its obligations shall be presumed to have been undertaken in good faith unless the contrary is proved in the manner prescribed by law.

In disputes arising from decisions, actions, or omissions of public authorities and their officials, the burden of proving circumstances demonstrating the bad faith of a business entity's conduct shall rest with the competent public authority, unless otherwise expressly provided by law.

The economic inexpediency of a transaction, the occurrence of an unfavourable economic outcome, or the realisation of ordinary entrepreneurial risk shall not, in themselves, be regarded as evidence of a business entity's bad faith in the absence of evidence of a violation of statutory requirements or of an abuse of right.

The proposed formulation offers several distinct advantages. First, it defines the substantive content of the presumption itself, rather than confining itself to a declaratory statement that entrepreneurs act in good faith. Second, it fixes a concrete procedural consequence – the allocation of the burden of proof – rather than leaving that consequence to inference. Third, it separately addresses disputes between entrepreneurs and public authorities, the category in which procedural asymmetry is most acute. Fourth, it expressly distinguishes bad faith from ordinary entrepreneurial risk, preventing the subsequent commercial inefficiency of a decision from being treated, without more, as independent evidence of unlawful conduct.

This formulation confers no unwarranted immunity. Where evidence exists of a sham transaction, collusion, concealment of legally material facts, abuse of right, or a direct violation of the law, the presumption may be rebutted through the ordinary procedural channels.

Codification of the presumption of good faith is likely to influence several distinct levels of legal practice. At the administrative level, public authorities would be required to substantiate more rigorously any decision restricting an entrepreneur's rights; an unsubstantiated assumption of bad faith could no longer serve as a proxy for evidence.

At the judicial level, courts would gain a clearer benchmark for allocating the burden of proof, a benefit of particular significance in cases where one party possesses materially greater informational and coercive capacity than the other (Alekseev, 1981).

At the level of the business community, the predictability of legal regulation would be enhanced. Entrepreneurs would be entitled to expect that the lawful exercise of rights conferred upon them does not require the continuous demonstration of their own good faith in economic proceedings.

Finally, the proposed norm bears on the broader investment climate. Investors assess entrepreneurial freedom not merely by reference to the number of incentives and permitting procedures on offer, but by reference to the predictability with which the State resolves disputes and to which party the risk of evidentiary uncertainty is assigned when entrepreneurial conduct is judicially challenged.

The presumption of good faith should therefore not be regarded as a narrow procedural concession. It forms part of a broader model of State–business relations grounded in an initial disposition of trust toward lawful entrepreneurial initiative, coupled with an obligation on the State to substantiate any allegations it advances against the entrepreneur.

Conclusion

The foregoing analysis demonstrates that the presumption of good faith of business entities may serve as an important procedural guarantee for the effective protection of entrepreneurial rights in Uzbekistan. Its significance lies not in establishing a privileged legal status for entrepreneurs, but in ensuring that allegations of unlawful or dishonest conduct are assessed on the basis of sufficient evidence and that the evidentiary burden is allocated in accordance with the nature of the dispute and the applicable procedural rules.

The analysis has identified three interconnected dimensions of this issue. At the constitutional level, the presumption may contribute to the practical implementation of entrepreneurial freedom, the protection of property, legal certainty, and the right to effective judicial protection. At the civil-law level, it must be distinguished from the substantive principle of good faith, which governs the exercise of rights and the performance of obligations within private-law relationships. At the procedural level, its principal function is to establish an initial evidentiary position and clarify the conditions under which an allegation of bad faith must be substantiated. The practical examples examined in this study demonstrate that these dimensions become particularly relevant in disputes concerning the alleged fictitious nature of commercial transactions, challenges to entrepreneurial conduct by public authorities, and disagreements over the exercise of contractual rights.

The existing legislation of the Republic of Uzbekistan provides important foundations for the further development of this approach. The Constitution guarantees entrepreneurial freedom and judicial protection, while Article 42 of the Economic Procedural Code requires participants in proceedings to exercise their procedural rights in good faith. Article 68 establishes general rules on the burden of proof and provides for specific evidentiary arrangements in proceedings concerning the imposition of legal liability. However, these provisions perform distinct legal functions and should not be interpreted as automatically establishing a general presumption of good faith in entrepreneurial conduct in all economic disputes. The principal legislative question is therefore whether a separate procedural rule is needed to clarify the initial evidentiary position where the good faith of a business entity is challenged.

The comparative analysis further indicates that good faith is an established

legal concept in European legal systems and that the experience of Kazakhstan provides a relevant example for examining the possibility of expressly regulating good faith in relations between business entities and public authorities. Nevertheless, the comparative relevance of these approaches lies not in their mechanical transplantation into Uzbek legislation, but in identifying legal mechanisms that may be adapted to the constitutional principles, procedural structure, and practical needs of Uzbekistan's legal system.

In light of these findings, it is proposed that the Economic Procedural Code of the Republic of Uzbekistan be supplemented with a new Article 68^1 entitled "Presumption of Good Faith of a Business Entity." The provision should establish a rebuttable presumption of good faith in entrepreneurial conduct and clarify that a party alleging bad faith must substantiate the factual circumstances supporting that allegation in accordance with the applicable procedural rules. Where a public authority challenges the good faith of an entrepreneur's conduct, the provision should expressly address the authority's responsibility to establish the factual and legal grounds for its position, subject to the specific rules governing the relevant category of proceedings.

The proposed provision should also clarify that the presumption does not exempt business entities from compliance with statutory requirements, displace existing rules governing the burden of proof in relation to particular claims, or prevent courts from examining evidence of fictitious transactions, abuse of rights, or other unlawful conduct. Its purpose would be to distinguish an allegation of bad faith from its evidentiary establishment, preserve the court's authority to assess all relevant circumstances, and promote consistency in the application of procedural rules.

The practical value of this reform would depend on its precise legislative formulation and consistent application by the courts. By requiring allegations concerning the dishonest character of entrepreneurial conduct to be supported by an adequate factual basis, the proposed presumption could improve the predictability of judicial proceedings, encourage more thoroughly reasoned decisions by public authorities, and strengthen the balance between the procedural positions of business entities and other participants in economic disputes.

Ultimately, the presumption of good faith should be understood as a connecting mechanism between constitutional guarantees, substantive civil-law principles, and economic procedural law. Its introduction would not eliminate the responsibility of entrepreneurs or restrict the lawful exercise of public authority. Rather, it would contribute to a legal framework in which entrepreneurial freedom is protected through evidence-based adjudication, public intervention remains subject to judicial scrutiny, and the allocation of evidentiary responsibility supports the effective protection of economic rights. In this respect, the proposed reform could form part of Uzbekistan's broader transition towards a system of State–business relations based on legal certainty, accountability, and effective judicial protection.

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YURISPRUDENSIYA

HUQUQIY ILMIY-AMALIY JURNALI

2026-YIL 5-SON

VOLUME 6 / ISSUE 5 / 2026

DOI: https://dx.doi.org/10.51788/tsul.jurisprudence.65

DOI: https://dx.doi.org/10.51788/tsul.jurisprudence