APPEALING DIFFERENCES AND SIMILARITIES BETWEEN GERMAN AND UZBEK CIVIL CODES

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Abstract: *In this research work, some of the most critical distinctions and fundamental similarities, included in the civil codes of Germany and Uzbekistan, are highlighted as well as discussed.*

Keywords: *Civil Code, domiciled place, ownership and membership rights, inheritance, testamentary disposition, obligation law, deprivation of legal personality, interim interest, electronic contracts.*

Admittedly, civil law is considered to be one of the most massive law spheres throughout the world as civic relationships have widely spread as well as already been an inseparable part of our lives on a daily basis. Hence, ruling over the maintenance of it can naturally be complicated, in turn, owing to its range of variety. Majority of states attempt to demystify the process by codifying the laws incorporating civic relationships as much as they can since gathering them allows courts to settle any dispute effortlessly as well as promptly[30]. Most of civil codes are fundamentally similar to one another as the essence and practice of civic relationships involve actions between people regardless of domiciled place. In the other hand, there may be nuances and distinctive differences among them based on culture, history, traditions which vary according to where persons reside.

Legal systems of Germany and Uzbekistan are both involved in Roman-German legal family which contributes to share plenty of similarities between them. The German Civil Code came into effect in 1900, much older compared to this of Uzbekistan that entered into force in 1997. Civil Code of Germany is divided into 5 parts: General part, then specifically obligations, property, family and inheritance law where complex, substantive norms have been listed. This is the first appealing distinction between the two legislation in question that in Uzbekistan Civil Code is composed of one book which consists of 1199 articles ruling over all fields as inheritance, obligations, treaties, property and private international law.

In terms of obligation law, The German civil code concerning mandatory law establishes the only form of occurrence of liabilities – contract as opposed to this of Uzbekistan incorporating some relationships that can make obligations other than contracts.[31] ‘Performance in favor of a stranger’ is a legal term addressing that someone thinks another person’s property is in need of help or in a possible damage thereby commences saving the property without any allowance of the possessor. As an example, two neighbors live in a 5-stair apartment and the one residing on the third stair suddenly feels distinct odor of fire, then looked at the second stair realizing that his neighbor’s flat is on fire. One minute of procrastination is quite enough to have the flat get awful by neglecting since the man, having a

[30] O. Akyulov, N. Imomov, M. Baratov. Civil Law. Textbook for academic lyceums. Tashkent. 2021. p. 367
[31] Beck C. H. German Civil Code Volume 1. Books 1-3: 1-1296. 2020. p. 562

clue about it, is allowed to save the flat without informing the owner at that time, but he is obliged to make the possessor informed in a reasonable period. After his efforts to preclude fire from ruining the home, the possessor must refund all his expenses and harm resulting from the accident. This obligation is inevitably not made by a contract but taking the possessor under the obligation to shoulder the volunteer's considerations.

One of the massive differences is that the German civil code includes family law whereas Civil Code excludes family law in Uzbekistan, considering that it is a big branch of law itself which is why should be entirely separate. As a matter of fact, Family Code reveals marriageable age is equally 18 for both genders (art. 15 of Family Code) compared to those in Germany: 16 for women (according to the 1303th section of German Civil Code) and 21 for men. However, the fact that the marriage is a secular legal institution is predominantly congruent apart from some provisions requiring the Church to keep its obligations continue in Germany.

Incidentally, Uzbek Civil Code can be seen more specific in a term of the period of seven days (article 242) in which a debtor must perform his or her obligations after a creditor's request unless the dates of performance are not specified in a contract, while there is no such a rule in Germany at all. Section 271 of German Civil Code provides: 'Where no time for performance has been specified or is evident from the circumstances, the obligee may demand performance immediately, and the obligor may effect it immediately' but does not provide a concrete span.

Meanwhile, it is possible to encounter special rules in terms of electronic business dealings in German Civil Code as: If an entrepreneur uses a teleservice or media service in order to enter into a contract for the supply of goods or the rendering of services (e-commerce contract), he must provide the customer with reasonable, effective and accessible technical means with the aid of which the customer may identify and correct input errors prior to making his order, notify the customer clearly and comprehensibly of information specified in the statutory order in good time prior to sending his order, confirm receipt of the order without undue delay by electronic means for the customer, make it possible for the customer to retrieve the contract terms including the standard business terms when the contract is entered into and save them in a form that allows for their reproduction (section 312i of BGB) and so on. In contrast, although it is written that electronic dealings can be made via telegraph, teletype, telephone and other electronic devices (article 366), there is no specific norm about its formation, as well as duties, rights and obligations of parties within this sort of contracts in Civil Code of Uzbekistan. For this reason, proving acceptability and liability might cause endless arguments taking a great deal of time and fruitless consideration.

When it comes to associations, minimum standards are determined to form a legal entity. The **association** is regulated as a legal form in the German Civil Code (BGB). Section 21 of the BGB represent the applicable law for associations. Usually, an association is entered in the register of associations and then receives the suffix "e.V." which means "registered association". As such, it has legal capacity with its own rights and obligations. [32]**A federation** is

[32] The German Civil Code and the development of private law in Germany. Reinhard Zimmermann. 2005. p. 5-38

typically a registered association as well that must therefore observe the same rules and regulations as an ordinary association - both in legal terms and with regard to association taxation. However, as opposed to Uzbek legislation in which all legal entities are at the same level on functioning, the term "federation" indicates that it is an association that has reached a certain size and is active, for example, nationwide or state-wide. Likewise, non-profit and for-profit companies exist in both countries but BGB requires at least seven members to register whereas no minimum numerical standard of members in UCC.

Emphasis on membership right plays considerable role in the both states, which is why the 38th article of German Civil Code claims that this right is neither transferrable nor inheritable and even it cannot be entrusted to another person. Members of association enjoys a wide range of rights including right to partipicate in heading, right to appear during distribution of profits, right to use and see all documents related to the association and etc. Even though there is not any rule on transferability or inheritability explicitly as in German Civil Code, the right also does not possess an ability to be inherited or transferred since it may be entrusted to someone so as to perform the real members obligations and utilize his rights on time. A merely modernized and critically improved civil code is about to entry into force where this right will be presented and protected in a more comprehensive way.

“The property may not be paid out to the persons entitled to receive it until a year has passed after the announcement by public notice of the dissolution of the association or the deprivation of legal personality” is provided in section 51 of BGB because rights of the third parties may come into the process . As an expository note, the persons who are to gain the property have to wait one year after the liquidation or dissolution of the company. Nonetheless, the persons mentioned above are able to receive all of the property, they are entitled to possess, right after the dissolution in UCC. If there are infringements on rights of the third parties, they may lodge a claim afterwards against the unjust distribution.

Undoubtedly, negligence is, one of the most crucial part of law, referred to an act marked by disregard for the rights and/or safety of others, and with indifference to the consequences of the act. In terms of the matters with associations, its interpretation can be understood as members’ irresponsibly indifferent performance on their formal responsibilities. In UCC there is no limitation on liability for damage or gross negligence among members who pay respectively for the damage they have brought while BGB sets some specific rules with regard to this in section 31:”If members of the association act for the association free of charge, or if they receive remuneration for their activity which does not exceed 720 euros per year, they are liable to provide to the association compensation for damage caused in performing the duties of the association, in accordance with the articles of association, that have been assigned to them, only in case of intent or gross negligence”. In this context, the term ‘gross negligence’ is explained as an act marked by *total* disregard for the obligations and with *complete* indifference to the consequences of an act, which is simply a terrible form of negligence in brief.

In German legislature there are many types of contracts incorporating electronic business dealings, distance contracts, which differ according to the formation and rights as well as obligations. Regarding off-premises contracts, those are the dealings that are concluded with the simultaneous physical presence of the consumer and of the trader, in a

place which is not the business premises of the trader (section 312b of BGB). In contrast, section 312c provides that distance contracts are contracts for which the trader, or a person acting in the trader's name or on his behalf, and the consumer exclusively avail themselves of means of distance communication in negotiating and concluding the contract. The reason why the contracts are divided into several types is inevitably linked with complexity of proving, distribution of the rights and obligations. For instance, if there is a dispute over a trade contact and it is an off-premises contact, the breach of contract by either party is much more effortless to prove since the dealing has been made in person and at least one evidence may possibly be displayed. Unfortunately, it is pretty complicated to find a formidable fact to defeat the other party as technical problems tend to be used to claim that the contract is void, which is immensely hard to whether he is right. This sort of special statutory rules are not included in UCC at all.

The relationships between debtors and creditors constitutes a main part of civil codes in most countries. Especially, debts are, without a doubt, given by one on ten people throughout the world but refunding in time is not the scene that we always encounter. In BGB, there is a term "interim interest" referring to a short-term payment amount made when a loan is funded. It might be payed when there is need to cover a particular amount of time before the payment date. As an example, if a payment date is due until the 13th of November (it is October 13 presently) and you are incapable of paying it entirely in a month, it is allowed to pay the respective amount of interim interest for one month so as to cover the next month and delay it till December 13. However, paying this does not affect the total sum ought to be paid which cannot cause any deduction. The opportunity is not provided in UCC, which is critically considered as one of the biggest disadvantages.

Standard limitation period to claim is set within every legislation. In this term, BGB and UCC share the similarity of a three-year standard limitation span to lodge a claim since there are some nuances concerning other cases. As an instance, section 197 of BGB displays conditions in which the limitation period is extended to thirty years: damage claims based on intentional injury to life, health, liberty; claims for return based on ownership; claims on enforceable settlements or enforceable documents; claims that have become enforceable upon being recognised in insolvency proceedings and others. Contrarily, the limitation period cannot be implemented on a claim based on deliberate injury to life and health in Uzbekistan, means that the period is not finite, according to article 163. This list may be continued with a claim on damage caused by commitment of crime and a claim on ownership right. Incidentally, BGB provides some rules on set-off in some types of claims as a claim in intentional tort, against a seized claim or against an unpledgeable claim (sections 390-395) but claimant may set-off the claim he lodged in tort at any time till a final ruling of a court is made (article 44 of Civil Code of Procedure).

Selling land pots is legally allowed in some countries where land pots are deemed as a private property. Until 2022 purchasing and selling had been prohibited, which was altered with the 71st ruling of the Cabinet of Ministers of the Republic of Uzbekistan "On measures to implement the Law of the Republic of Uzbekistan "On privatization of land plots unintended for agriculture". It entitles people to sell their land plots, except for what are utilized in agriculture, as this ruling differs from the German legislation in a term of

registration. While the transfer of ownership right of a plot of land is recorded by a notary in Germany (section 311b), this action only ought to be registered by regional Public service centers, not by any notary.

Concerning about inheritance law, although both civil codes share plenty of similar provisions, there are still so many differences within this field. Initially, the heir degrees in Germany are dramatically different from those in Uzbekistan: first degree – descendants, people in a descending line as children, grandchildren or great-grandchildren (section 1924 of BGB), second degree – parents and their descendants (section 1925 of BGB), third degree – grandparents and their descendants, fourth degree – great-grandparents and more distant degrees incorporating other forebears in Germany as opposed to UCC providing various rules as: first degree – children (includes children after the death of the deceased), a wife (only one marriage is accepted), parents; second degree - direct descendants (whose mother is same with this of deceased but father is not) and their grandparents, third degree – relative uncles and aunts of the deceased and further degrees.

Secondly, to the extent that the shares of the inheritance are still undetermined because the birth of a co-heir is expected, the partitioning is postponed until the indeterminacy is removed, according to 2043 of BGB. However, there is no such a rule that delays partitioning owing to the expectation of the co-heir which is why distribution takes place regardless of it giving the unborn child his or her share equally with other heirs.

Surprisingly, the norm provided in section 2072 is the one that cannot be found in most countries throughout the world including Uzbekistan: “If the testator has made provision, without more precise identification, for the poor, then in case of doubt it is to be assumed that provision is made to the public poor relief fund of the community in whose district he had his last residence, subject to the testamentary burden that it must distribute the gift among poor persons”. It should highly be recommended by lawmakers to add this kind of rule to UCC because if there is not any descendants of the deceased, the testamentary gift is automatically transferred to the budget of local government bodies.

Apart from the points above, section 2034 of BGB highlights: “If a co-heir sells his share to a third party, the other co-heirs have a right of preemption. The period for exercising the right of preemption is two months”. The reason for the existence of this right can be that the heir may sell his share to someone who potentially can harm other co-heirs’ property or who is in conflict with them in other manners. On the contrary, there is no time limit provided to exercise it in Uzbek civil law but this right is advocated by the government.

Furthermore, a testamentary disposition may be avoided or modified entirely or partially by the testator at any time in Uzbekistan, which is completely congruent with that in Germany. Nonetheless, there is a slight nuance in the period of avoidance, one year in BGB and no time limit in UCC (just a fact that testator’s living is enough to exercise).

Most importantly, there are two types of heirs in Germany as a subsequent (section 2100) and a substitute (section 2096) heir. To explain them, a subsequent heir may be appointed in such a way that the person only becomes an heir after another heir has first been heir as opposed to a substitute one who can be assigned in the case where an heir ceases to be heir before or after the date of the devolution of the inheritance. They have specific rights in

the particular terms fixed by the testator specially. However, such a classification of heirs is not determined in UCC.

With the differences mentioned above, BGB and UCC have some appealing points in common. Firstly, contract of forgiveness and acknowledgement of non-indebtedness, that release a debtor from performance after a creditor's admit of the debtor's non-indebtedness, are provided in both civil codes (section 397 of BGB, article 348 of UCC).

Another drastic congruence lays on place of payment resulting from obligations in a contract. Not only BGB, but also UCC provide absolutely same rules with regard to this: "In case of doubt the obligor must transfer money at his own risk and his own expense to the obligee at the residence of the latter; if the obligation came about in the commercial undertaking of the obligee, then, if the obligee has his business establishment in another place, the place of the commercial undertaking takes the place of the residence; if, as the result of a change in the obligee's residence or business establishment occurring after the obligation arises, the costs or risk of transmission increase, the obligee must in the former case bear the extra costs and in the latter case the risk" (section 270 of BGB and article 248 of UCC).

In both civil codes, animals are not deemed as things and protected by special rules even though they are governed by the provisions that apply to things with necessary modifications.

In conclusion, German civil law is one of the most solid and comprehensive legal sphere from which Uzbek Civil Code has taken some of the basic points. There is much more to work for both codes as the pace of modern world is pushing and requiring to modify them as practically as possible. Hopefully, in the foreseeable future, we are all about to encounter more comprehensive civil codes thereby make the disputes be settled effortlessly.

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