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Vorlesung
Osteuropäisches Recht III:
Zivilrecht im Ostseeraum

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20.04.2017 Grundstrukturen der Zivilrechtssysteme im Ostseeraum

27.04.2017 Allgemeiner Teil des Bürgerlichen Rechts

04.05.2017 Schuldrecht Allgemeiner Teil

11.05.2017 Kaufrecht

18.05.2017 Eigentum und andere dingliche Rechte

25.05.2017 *Feiertag*

08.06.2017 Delikts- und Schadensrecht – *Verlegung auf Ausweichtermin*

15.06.2017 Handels- und Gesellschaftsrecht

22.06.2017 Familienrecht

29.06.2017 Erbrecht

06.07.2017 Zivilprozessrecht und Schiedsgerichtsbarkeit

13.07.2017 Insolvenzrecht

20.07.2017 Internationales Privatrecht

Grundstrukturen der geltenden Zivilrechte im Ostseeraum

- Deutschland: BGB und HGB getrennt, Prägung des ZivR durch römR, neu EU-Einfluss
- Skandinavien: keine Kodifikation des ZivR, aber Einzelgesetze (zT nord. Koop), große Bedeutung von Analogien, römR präsent, aber weniger prägend; teilw EU-Einfluss
- Baltikum und PL: Kodifikation durch ZGB ohne HGB, EU-Einfluss
- Russland: ZGB ohne HGB, kaum EU-Einfluss, postsowjet. Merkmale fortbestehend

Zivilgesetzbücher im Ostseeraum

- Deutschland: BGB v 1896, HGB v 1897
- Estland: G über AllgT des ZivR 2002, SchuldRG 2001, SachenRG 1993, ErbRG 2008. FamGB 2009. IPRG 2002. HandelsG 1995.
- Lettland: BGB 1937, HandelsG 2000
- Litauen: ZGB 2000
- Polen: ZGB 1964, HandelsgesG 2000
- Russland: ZGB T1-4 1994-2006 (ff)
- Skandinavien: nord. VertragsG 1915, nord. KaufG 1905 etc.

Struktur des AT von Zivilgesetzbüchern

• Estland

- Part 1: General provisions
- § 1 Purpose of Act
- § 2 Sources of civil law
- § 3 Interpretation of acts
- § 4 Analogy
- § 5 Basis for creation of civil rights and obligations
- § 6 Legal succession
- Part 2: Persons
- Ch.1: Natural persons §§ 7 – 23
- Ch.2: Legal persons §§ 24 – 47
- Part 3: Objects §§ 48 – 66.1
- Part 4: Transactions §§ 67 – 131
- Part 5: Liability for another person §§ 132 - 133
- Part 6: Term and due date
- Part 7: Exercise of civil rights §§ 138 – 141
- Ch.9: Principles
- Ch. 10: Expiry
- Part 8: Implementation of Act

• Litauen

- BOOK 1: GENERAL PROVISIONS
- PART I : CIVIL LAWS AND THEIR APPLICATION
- CHAPTER I : CIVIL LAWS AND THE RELATIONSHIPS THEY REGULATE
- Article 1.1. Relationships regulated by the Civil Code of the Republic of Lithuania
- Article 1.2. Principles of legal regulation of civil relationships
- Article 1.3. Sources of civil law
- Article 1.4. Customs
- Article 1.5. Application of the criteria of justice, reasonableness and good faith
- Article 1.6. Ignorance of laws or improper understanding thereof
- Article 1.7. The effect of civil laws
- Article 1.8. Analogy of a statute and law
- Article 1.9. Principles of interpretation of the Civil Code provisions
- CHAPTER II: PRIVATE INTERNATIONAL LAW
- PART II: TRANSACTIONS, Art.1.63 –
- PART III: OBJECTS OF CIVIL RIGHTS
- PART IV: TIME-LIMITS
- PART V: EXERCISE AND PROTECTION OF CIVIL RIGHTS, ART.1.136 –
- BOOK TWO: PERSONS, Art.2.1 –
- BOOK THREE: FAMILY LAW, Art.3.1 -

Allgemeiner Teil des Zivilrechts

- **Zum entstehungsgeschichtlichen Hintergrund eines „Allgemeinen Teils“ des Zivilrechts bzw. von Zivilgesetzbüchern im röm. Recht (Pandektensystem)**
- **Typische Inhalte des Allg. Teils des ZivR (am Beispiel des BGB): Personen, Rechtsgeschäfte allg., Sachen**
- **Gibt es in den Rechtsordnungen des Ostseeraums einen „Allgemeinen Teil des ZivilR“?**
- Deutschland: ja, im BGB
- Nordeuropäische Rechtsordnungen: formal nein (keine Kodifikation), aber Einzelgesetze (s. z.B. nord. VertragsG) bzw. ungeschrieben bzw. Rspr
- Baltikum: Estland ja (G über Allg. Teil „des Zivilrechts“), Litauen ja (ZGB, *oft ähnl. wie Russland, teilw. wie Estland*), Lettland formal nein (*AT weitgehend in SchuldR eingeordnet; Einführungstitel ZGB betr. meist Recht allg, auch IPR*)
- Polen: ja (ZGB)
- Russland: ja (ZGB): *darin sehr umfangreich Kernelemente des GesR (mit Doppelungen in Sondergesetzen) und WertpapierR*

Struktur des AT von Zivilgesetzbüchern

- **Lettland**
- **Introduction (Art.1 – 25)**
- **PART 1: Family Law (Art.26 – 381)**
- **PART 2: INHERITANCE LAW (Art-382 -)**
- **PART 3: Property Law (Art.841 -)**
- **PART 4: Obligations Law (Art.1401 -)**
- CHAPTER 1: Lawful Transactions in General (Art.1401-)
- SUB-CHAPTER 1: Parties to a Transaction (1405-)
- SUB-CHAPTER 2: Subject-matter of Lawful Transactions (1412 -)
- SUB-CHAPTER 3: Expression and Authenticity of Intent (1427 -)
- I. Expression of Intent
- II. Authenticity of Intent (Mistake etc.)
- SUB-CHAPTER 4: Elements of Lawful Transactions (1469 -)
- SUB-CHAPTER 5: Form of Lawful Transactions (1473 -)
- SUB-CHAPTER 6: Time and Place in Lawful Transactions (1495 -)
- SUB-CHAPTER 7: Interpretation of Lawful Transactions (1504 -)
- CHAPTER 2: Contracts (1511 -)
- SUB-CHAPTER 4: Ancillary Provisions of Contracts (1548 -) I. Conditions ...
- CHAPTER 3: Obligations and Claims arising from Wrongful Acts (1635 -)
- CHAPTER 11: Gifts
- CHAPTER 12: Claims regarding Contracts Requiring Return of Property
- CHAPTER 13: Claims Arising from Alienation Contracts
- SUB-CHAPTER 1: Purchase Contracts

Struktur des AT von Zivilgesetzbüchern

- **Lettland**
- **Introduction (Art.1 – 25)**
- **1. Rights shall be exercised and duties performed in good faith.**
- **2. This Law is applicable to all legal issues, to which its text or interpretation relates.**
- **Rights based on custom may neither set aside nor vary law. Rights based on custom are applicable in the cases specified by law.**
- **3. Every civil legal relation shall be adjudged in accordance with the laws, which are in force at the time when such legal relations are created, varied or terminated. Previously acquired rights shall not be affected.**
- **4. The provisions of this Law shall be interpreted firstly in accordance with their direct meaning; where necessary, they may also be interpreted in accordance with the structure, basis and purposes of this Law; and, finally, they may also be interpreted through analogy.**
- **5. Where a matter is required to be decided in the discretion of a court or on the basis of good cause, the judge shall decide the matter in accordance with a sense of justice and the general principles of law.**
- **6. The general provisions regarding obligations are applicable *mutatis mutandis* to family, inheritance and property legal relations.**
- **7. – 25 (Internationales Privatrecht]**

Themen aus dem AT des Zivilrechts zum Vergleich

- Thema 1: Allg. Struktur
- Thema 2: Grundprinzipien des ZivilR
- Thema 3: Beziehung ZivilR zu anderen Gesetzen
- Thema 4: Gesetzesauslegung
- Thema 5: Treu und Glauben
- Thema 6: Irrtum

Einige Vorschriften des AT von Zivilgesetzbüchern zum Vergleich

Topic 1: General structure

Topic 2: Basic Principles of civil law

Russisches ZGB Teil 1 (1994)

Article 1. Basic principles of civil legislation.

1. Civil legislation proceeds from recognizing the equality of participants in relations regulated thereby, inviolability of property, freedom of contract, inadmissibility of someone's intervention in private affairs, necessity for civil rights to be freely exercised, ensuring restoration of violated rights and their judicial protection.

2. Citizens (individuals) and legal persons acquire and exercise their civil rights wilfully and to their benefit. They are free to set their rights and responsibilities on a contractual basis and to stipulate new contract terms and conditions unless these are contrary to legislation.

Civil rights can be restricted on the basis of federal law and only to the extent deemed necessary to protect foundations of constitutional order, morality, health, rights and lawful interests of other people and to ensure national defence and security of the state.

3. Goods, services and financial resources can freely move within the entire territory of the Russian Federation. Restrictions as to the movement of goods and services can be imposed in accordance with federal law if so required for the purposes of ensuring security, protection of people's lives and health, conservation of nature and protection of cultural values.

- **Litauisches ZGB 2000**
- **Article 1.2. Principles of legal regulation of civil relationships**
- 1. Civil relationships shall be regulated in accordance with the principles of equality of their subjects' rights, inviolability of property, freedom of contract, non-interference in private relations, legal certainty, proportionality, and legitimate expectations, prohibition to abuse a right, as well as the principles of comprehensive judicial protection of civil rights.
- 2. No civil rights may be limited, except in the cases established by laws, or on the basis of a court judgment made in accordance with laws, where such limitation is necessary to protect public order, the principles of good morals, likewise the health and life of people, property of persons, their rights and lawful interests

Einige Vorschriften des AT von Zivilgesetzbüchern zum Vergleich

Topic 1: General structure

Russisches ZGB Teil 1 (1994)

Article 2. Relations regulated by civil legislation.

1. Civil legislation defines the legal status of participants in civil circulation, grounds for the rise and order for the exercise of property right and other real rights, exclusive rights to the results of intellectual work (intellectual property), regulates contractual and other obligations, as well as other proprietary and related personal non-propriety relations based on the equality, autonomy of will and propriety independence of their participants.

Participants in relations regulated by civil legislation include **citizens and legal persons**. Also, the **Russian Federation**, Russian Federation subjects and municipal formations can participate in relations regulated by civil legislation (article 124).

Civil legislation regulates relations between persons engaged in entrepreneurial activities or participating in them where it proceeds from the concept that an activity is entrepreneurial if it is carried on independently and at one's own risk and is aimed at regular profit-making through using property, selling goods, performing jobs and providing services by persons registered in this quality according to the procedure established by the law. **The rules laid down by civil legislation apply to relations in which foreign citizens and foreign legal persons are participants unless otherwise provided for by federal law. ...**

- **Litauisches ZGB 2000**
- **Article 1.1. Relationships regulated by the Civil Code of the Republic of Lithuania**
- 1. The Civil Code of the Republic of Lithuania shall govern property relationships and personal non-property relationships related with the aforesaid relations, as well as family relationships. In the cases provided for by laws, other personal non-property relationships shall likewise be regulated by this Code.
- 2. The provisions established by this Code shall apply to property relationships based on the legal subordination of persons to state institutions and directly resultant from their exercise of functions of state power (realization of subordination), or from the performance of persons' obligations established by laws towards the state, or from the infliction of administrative or criminal sanctions established by laws, including relationships in the field of taxation and other obligatory payments or dues to the state or to its institutions, also in the field of the state budget, as well as to any other relationships governed by the provisions of public law to the extent that these relationships are not regulated by the relevant laws, also in the cases when it is expressly prescribed by this Code.
- 3. Labour relationships shall be regulated by special laws. The provisions of this Code shall apply to labour relations to the extent that they are not regulated by special laws.

Einige Vorschriften des AT von Zivilgesetzbüchern zum Vergleich

- **Topic 3: Beziehung des ZGB zu anderen Gesetzen**
- **Russisches ZGB Teil 1 (1994)**
- **Article 3. Civil legislation and other acts containing civil law norms.**
- 1. According to the Russian Federation Constitution, civil legislation falls within competence of the Russian Federation.
- 2. Civil legislation consists of this Code and other federal laws adopted in line with it (hereafter referred to as "laws") which regulate relations specified in pts. 1 and 2, art. 2 of this Code.
- **Civil law norms contained in other laws must be in conformity with this Code.**

Einige Vorschriften des AT von Zivilgesetzbüchern zum Vergleich

- **Topic 4: Interpretation von Gesetzen**

- **Lettisches ZGB 1937**

4. The provisions of this Law shall be interpreted firstly in accordance with their direct meaning; where necessary, they may also be interpreted in accordance with the structure, basis and purposes of this Law; and, finally, they may also be interpreted through analogy.

- **Estnisches AT-ZivilR-G**

§ 3. Interpretation of Acts

A provision of an Act shall be interpreted together with the other provisions of the Act pursuant to the wording, spirit and purpose of the Act.

- **Litauisches ZGB**

Article 1.9. Principles of interpretation of the Civil Code provisions

1. In order to ensure the integrity of the present Code and the conformity of its separate structural parts, the provisions of this Code in the process of their application shall be interpreted by taking into account the structure and system of this Code.

2. The words and word combinations used in this Code shall be interpreted according to their general meaning, except in those cases where it is clear from the context that a word or word combination is used in a special – legal, technical or any other – meaning. In the cases of non-conformity between the general and the special meaning of a word, priority shall be given to the special meaning.

3. In determining the right meaning of an applicable norm, the purposes and tasks of the Civil Code and the norm concerned shall be taken into consideration

Einige Vorschriften des AT von Zivilgesetzbüchern u.ä. zum Vergleich

Topic 5: Good faith

Lett. BGB 1937

1. Rights shall be exercised and duties performed in good faith.

Estn. AT-ZivR-G

7. Part Exercise of Civil Rights

9. Chapter Principles in Exercise of Civil Rights

§ 138. Principle of good faith

(1) Rights shall be exercised and obligations shall be performed in good faith.

(2) A right shall not be exercised in an unlawful manner or with the objective to cause damage to another person.

§ 139. Presumption of good faith

If legal consequences are bound to good faith by law, good faith shall be presumed unless otherwise provided by law.

• Topic 6: Mistake

• Estn. AT-ZivR-G

• § 92. Mistake

- (1) Mistake is an erroneous assumption relating to existing facts.
- (2) A transaction is entered into under the influence of a relevant mistake if upon entry into the transaction the mistake was of such importance that a reasonable person similar to the person who entered into the transaction would not have entered into the transaction in the same situation or would have entered into the transaction under materially different conditions.
- (3) A person who entered into a transaction under the influence of a relevant mistake may cancel the transaction if:
 - 1) the mistake was caused by circumstances disclosed by the other party to the transaction, or non-disclosure of circumstances by the other party if disclosure of the circumstances was required pursuant to the principle of good faith;
 - 2) the other party knew or should have known of the mistake and leaving the mistaken party in error was contrary to the principle of good faith;
 - 3) the other party to the transaction entered into the transaction on the basis of the same erroneous circumstances, except if the other party could have presumed, having the correct perception of the circumstances, that the mistaken party would have entered into the transaction even if it had known about the mistake.
- ...
- (5) A person who has entered into a transaction shall not cancel the transaction if according to the circumstances under which the transaction was entered into and the content of the transaction, the risk of mistake was to be borne by the person.