

Prof. Dr. Alexander Trunk

Vorlesung / Course

Einführung in die Rechtsvergleichung
Introduction to Comparative Law

Winter term (WS) 2014-2015

<http://eastlaw.uni-kiel.de>

27.10.2014: Basic questions and structures of comparative law

30.10.2014 optional lecture on the legal position of women in China

03.11.2014: Methods of comparative law *[in addition: guest lecture on Russian constitutional law]*

10.11.2014: Methods of comparative law (cont.)

17.11.2014: German legal family (deutscher Rechtskreis)

24.11.2014: France legal family

*28./29.11.2014 optional possibility to participate in conference „**Settlement of international trade disputes in/with countries of the region of Caucasus/Central Asia**“ (Landeshaus Kiel)*

01.12.2014: Anglo-American legal family

08.12.2014: The legal systems in Northern and Eastern Europe

15.12.2014: Legal systems in Asia

22.12.2014: Religious laws

12.1.2015: Law of contract (contracts law)

19.1.2015: Law of torts

26.1.2015: Property law - Sachenrecht (date under reservation)

02.02.2015: Commercial law (date under reservation)

09.02.2015: Civil procedure and arbitration

Introductory example

You work in a German enterprise, which intends to set-up an establishment in Ukraine. The enterprise would like to use its German-based general contract terms also in its relations to Ukrainian customers and asks whether this is possible. You have to check the German terms on the basis of Ukrainian law, in particular art.634 of the Ukrainian Civil Code.

Art.634 Ukrainian Civil Code (2003): Contract of adhesion

(1) A contract of adhesion is a contract the terms of which are set by one of the parties in forms or other standard formats and which may be concluded only by way of the other party joining the proposed contract as a whole. The other party may not propose its own contract terms.

(2) The joining party can request **modification or termination** of the contract if the contract deprives it of its **usual rights** under such contracts, **excludes or restricts the liability** of the other party or contains other **provisions obviously burdensome** for the joining party. ...

(3) If a claim to modify or terminate a contract is brought forward by a party joining it in connection with its **business** activity, the other party may refuse to satisfy these claims if it proves that the joining party was aware or could be aware of the provisions of the contract.

What aspects of „comparative law“ are involved in this case?

- 1) The case requires to check compatibility of the German-based general contract terms with Ukrainian law. As the general contract terms were formulated to be in line with German (or EU) law, it is necessary – indirectly – to compare German general contract terms law with Ukrainian law = comparison
- 2) The case is an example of practical use of comparative law
- 3) When one looks art.634 Ukr.Civ.Code in detail, numerous differences from German (and EU) law appear, and at the same time remarkable parallels with Russian law (art.428 Russian Civ.Code) can be seen.

Notion and object of comparative law

- 1) Differences between legal orders
- 2) Comparative law (Rechtsvergleichung (droit comparé) = science of comparing national and assimilated legal orders (e.g. EU law or non-binding rules) „horizontal“ comparison v. „vertical comparison“ (legal history)
- 3) Object: law of all legal disciplines.
Here: Comparison in the field of civil law.

Tasks of comparative law

- **Scientific function**
- **Forensic-practical function**
- **Legislative function**

Problem of guiding interests and and expected outcomes, in particular in case of „legal transplants“/processes of „reception“ of foreign law