A Comparative Legal Analysis Of The Legislation Of Uzbekistan And Switzerland In The Field Of Contract Formation, Amendment, And Termination

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Abstract
This article provides a comparative legal analysis of the provisions of the Civil Code of the Republic of Uzbekistan and Swiss contract law governing the formation, amendment, and termination of contracts. The study examines in detail the concept of a contract, the principle of freedom of contract, types of contracts, the fundamental rules of contract formation, the form of contracts, mandatory contract formation, as well as the procedures for amending and terminating contracts. Through comparative analysis, the distinctive features, advantages, and potential areas for further development of national legislation are identified.
Keywords: Contract; freedom of contract; offer and acceptance; form of contract; mandatory contract; amendment of contract; termination of contract; Swiss law of obligations; fundamental change of circumstances.

Introduction

The majority of civil law relations are implemented through contracts. In a market economy, a contract serves as an essential legal instrument that coordinates the proprietary interests of the parties and clearly defines their rights and obligations. For this reason, rules governing the formation, amendment, and termination of contracts occupy a significant place in the legal systems of all states. While the Civil Code of the Republic of Uzbekistan [1] provides detailed regulation of contractual relations, Code of Obligations (*Obligationenrecht*) [2] stands out as a classic example of continental European law, distinguished by its flexible and liberal approach. This article undertakes a comparative analysis of these two legal systems. Article 353 of the Civil Code of the Republic of Uzbekistan [1] defines a contract as an agreement between two or more persons aimed at the creation, modification, or termination of civil law relations. Under this provision, a contract is presented not only as an agreement producing legal consequences, but also as a legal instrument ensuring stability in civil circulation. The notion of “agreement” used in the article implies the free and conscious alignment of the parties’ intentions.

In Swiss law of obligations [2], the concept of a contract is enshrined in Article 1, which provides that a contract is formed through the expression of the parties’ mutually corresponding intentions. The emphasis is placed not on the external form of the contract, but on the concordance of wills. Under Swiss law, a contract is primarily interpreted as a mechanism for giving legal form to economic needs. From a comparative perspective, while Uzbek legislation defines the concept of a contract with a clear focus on specific legal consequences, Swiss law approaches the concept largely through a legal-philosophical and doctrinal framework. This distinction reflects the general legal policy orientations of the two legal systems. Article 354 of the Civil Code of the Republic of Uzbekistan [1] enshrines the principle of freedom of contract, providing that persons are free, at their own discretion, to conclude or refrain from concluding a contract, as well as to determine its terms freely. This provision represents the principle of private autonomy in civil law. At the same time, it is recognized that such freedom is not absolute and may be limited by law and considerations of public interest. The Code distinguishes between named and unnamed contracts, thereby ensuring flexibility in adapting to the development of economic relations. In particular, the recognition of mixed contracts

enables legal subjects to incorporate complex economic relationships into a single legal framework. In Swiss law of obligations, freedom of contract is expressed even more broadly in Articles 19–20 [2]. In this legal system, the content of a contract is restricted only by the requirement that it must not contravene the law, morality, or public order. Swiss law does not adhere to a strict classification of contract types, which facilitates adaptation to the dynamic development of market relations.

Articles 364–376 of the Civil Code of the Republic of Uzbekistan [1] provide detailed regulation of the process of contract formation. Under these provisions, a contract is primarily concluded through the mechanism of offer and acceptance. An offer is understood as a proposal that clearly expresses the intention to conclude a contract and contains its essential terms. Acceptance, in turn, signifies full and unconditional consent to the offer. The Code specifies the period of validity of an offer, the consequences of delayed acceptance, as well as the possibility of revoking an offer. These rules are designed to prevent disputes in the process of contract formation. In Swiss law of obligations [2], offer and acceptance also constitute the principal mechanism of contract formation; however, the law places particular emphasis on commercial usages, prior dealings between the parties, and the overall context of the situation. In certain cases, silence may be interpreted as consent, which demonstrates the flexible approach of Swiss law [3].

According to Article 366 of the Civil Code of the Republic of Uzbekistan [1], contracts may be concluded orally or in writing. For certain types of contracts, written or notarized form is mandatory, which aims to ensure legal clarity and ease of proof. Failure to comply with the required form of a contract often renders it invalid. In Swiss contract law, the principle of freedom of form prevails. Article 11 of the Swiss Code of Obligations (OR) [2] stipulates that, unless otherwise required by law, a contract may be concluded in any form. This approach is based on the principles of good faith and trust.

Article 377-378 of the Civil Code of Uzbekistan articulate the concept of mandatory contract formation, stipulating that in cases provided by law, a party's refusal to enter into a contract may be remedied through compulsory formation by court order. This provision serves to stabilize relations of social significance. In Swiss law, the notion of compulsory contracting is exceptional in nature and arises only in situations involving monopolies or public services. This reflects the priority of the principle of private autonomy.

According to Articles 382–384 of the Civil Code of Uzbekistan [1], amendment of a contract is carried out by agreement of the parties. Modification through the court is permissible only in cases of material breach of contract or significant change of circumstances. Article 383 provides explicit criteria for the concept of a significant change of circumstances. In Swiss contract law, modification of a contract has been primarily developed through case law and is grounded in principles of equity and good faith. This approach enables the preservation of legal balance in extraordinary situations.

According to Articles 382 and 385 of the Civil Code of Uzbekistan [1], a contract may be terminated either by mutual agreement of the parties or by court decision. Termination discharges the obligations, but the duty to compensate for damages survives. This provision serves to reinforce contractual discipline. In Swiss contract law, termination of a contract is regulated by Articles 107–109 of the Code of Obligations (OR) [2], granting the creditor the right to rescind the contract in the event of non-performance of an obligation. This institution ensures a balance of interests between the contracting parties.

The conducted comparative legal analysis reveals that the institution of contract serves as a fundamental and central element of civil transactions under both the Civil Code of the Republic of Uzbekistan and Swiss contract law. In both legal systems, a contract is recognized as a legal agreement based on the free will of the parties. However, certain distinctions exist in the normative expression, application, and boundaries of judicial intervention regarding this institution. In the Civil Code of the Republic of Uzbekistan, contractual relations are highly regulated, with the concept of a contract, its formation procedure, form, as well as grounds for

its amendment and termination, being detailed in specific articles. This approach serves to ensure legal certainty and enhances stability and predictability in contractual relations. In particular, the establishment of strict procedural conditions for amending and terminating contracts prevents the unjustified infringement of the parties' rights. Conversely, the approach to the contract institution in Swiss contract law is relatively flexible and liberal. Significant emphasis is placed on the principle of freedom of contract, party autonomy, and commercial customs. In the process of contract formation and modification, courts tend to base their decisions more on criteria of equity, good faith, and economic logic than on rigid normative rules. This increases the ability of Swiss law to adapt swiftly to actual economic relations.

The analysis further indicates that in Uzbek legislation, the doctrine of a significant change of circumstances (hardship) has a clear normative basis, providing crucial guidance for the courts. In Swiss law, while this doctrine is not codified in a specific provision, it is effectively applied in case law through the principles of good faith and equity. This situation highlights the strengths of both approaches: one ensures legal certainty, while the other provides flexibility. Additionally, a notable difference exists between the two systems concerning compulsory contracting. In Uzbek legislation, this institution is clearly regulated as a tool for protecting social and economic interests. In Swiss law, compulsory contracting is considered an exceptional measure, with priority given to private autonomy. This divergence can be explained by the differing degree of state intervention in the economy and the prevailing directions of legal policy in each jurisdiction.

In summary, the comparative analysis demonstrates that while the Civil Code of the Republic of Uzbekistan is oriented towards ensuring legal order and clarity in contractual relations, Swiss contract law is grounded in freedom of contract and flexibility. A harmonization of these two approaches could hold significant potential for improving national legislation. Specifically, studying the flexible mechanisms based on Swiss judicial practice could contribute to the further development of contract law in Uzbekistan. The results of this article indicate that comparative legal analysis holds important methodological value for refining contract law, as studying foreign legal experience provides an opportunity to adapt national legislation to modern economic relations.

Reference

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