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Codification of Private International Law Norms

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Abstract: The article analyzes in detail the specific aspects of the stages of systematization of private international law norms, the types of codification of international private law. As a result of the analysis, the complex autonomous codification type is widely used today by reworking and integrating the parts that were scattered at first, and the advantage of this type of codification is substantiated

Key words: private international law, intersectoral codification, autonomous codification, complex autonomous codification.

Before dividing the codification of private international law into types, it is considered appropriate to study the codification process in stages, and in the history of the process of national codifications of private international law four stages can be distinguished:

1. 90s of the 19th century - 60s of the 20th century. In the first stage: separate laws on private international law (Switzerland (1891), Japan (1898), Poland (1926)); special sections on conflict of laws included in civil codes or laws of codification of civil law (Germany (1896), Italy (1942), Egypt (1948)); scattered norms of private international law included in various special laws (one of the dominant trends) (Finland (1922)) were adopted. A private codification of judicial precedents was carried out by the American Law Institute in the United States in the form of the first "Collection of Conflict of Laws" (1934). In Iran in 1928 and in Brazil in 1942, private international law and international civil procedure norms were combined for the first time in the process of codification (Iranian Rules of Accession to Civil Code of 1928–1936, Law of Accession to Civil Code of 1942)[1].

2. Early 1960s - 1978s. The second stage was the adoption of the first special comprehensive law on private international law and international civil procedure in Czechoslovakia (1963) and the adoption of autonomous (Poland (1965), German Democratic Republic (1975)) and cross-sectoral (Polish Code of Civil Procedure (1964), Portugal (1966)) and sections of the Spanish Civil Code (1974)) characterized by the development of codifications. Some countries have

[1] Лунц Л.А. Международное частное право. – М.: Юрид. лит., 1970. 2.58. Лунц Л.А. Курс международного частного права: В 3-х т. Т.1. – М., 2002. 2.64. Макаров А.Н. Основные начала международного частного права. – М.: Юридическое изд-во Наркомюста РСФСР, 1924. Международное частное право: иностранное законодательство /Предисл. А. Л. Маковского; сост. и научн. ред. А. Н. Жильцов, А. И. Муранов. – М.: Статут, 2000.

adopted special laws on some aspects of the international civil process (Lebanon (1967)). The United States adopted the Uniform Commercial Code (1962) and the second Conflict of Laws Act (1971). The USSR also joined the process of codification by introducing norms of private international law into the Fundamentals of Civil Law of the Union of the SSR and the Allied Republics (1961), the Fundamentals of Civil Procedure of the Union of the SSR and the Allied Republics (1961), the Fundamentals of the Law of the Union of the SSR and the Allied Republics on Marriage and Family (1968). The second phase culminates with the adoption of the Austrian Private International Law Act (1978), which established the principle of the most integral relationship as the main basis of private international law[2].

3. 1979–1998 years. In the third stage, the legislature was implemented in 8 countries (Hungary (1979), Yugoslavia (1982), Turkey (1982), Switzerland (1987), Romania (1992), Italy (1995), Venezuela (1998), Georgia (1998) increased interest in complex autonomous codification. The Swiss Private International Law Act of 1987 is still the most detailed codification of private international law to date (201 articles). In the codes of a number of Islamic countries, separate sections regulating issues of private international law were adopted (UAE (1985), Burkina Faso (1989), Yemen (1992)). In 1986, significant changes were made to the German Civil Code. In 1992, a bill was developed in Australia to address the entire range of private international law issues. In the process of codification, Quebec and Louisiana (1991) adopted relevant sections in their civil codes, and the United Kingdom also participated, adopting the Private International Law (Miscellaneous Provisions) Act. In the early 1970s, in the 1980s, some documents on private international law were revised in the USSR, a section on conflict regulation was included in the foundations of the civil legislation of the USSR and allied republics (1991), the Family Code, which includes Section VII on the regulation of international family relations, was adopted in the Russian Federation done (1995), the Civil Code (1996), Family Code (1998), Civil Procedure Code of the Republic of Uzbekistan (1997) was adopted[3].

4. 1998/1999 - present period. The fourth stage is characterized by an increase in the status of national documents of private international law codification. This situation is reflected in the tendency to name these documents as "codes" (Tunisia (1998), Belgium (2004), Turkey (2007)). Tunisia's Code of Private International Law, which was adopted in 1998 and entered into force in 1999, is one of the most complete codification documents implemented in Muslim countries, which does not lag behind European laws. From the beginning of the 21st century, 15 countries (in addition to those mentioned) were involved in the process of private international law codification: Azerbaijan, Lithuania, Estonia, South Korea, Russia, Mongolia, Ukraine, Japan, Macedonia, China, Taiwan, Poland, the Netherlands, the Czech Republic, Puerto Rico. New codification documents adopted in 11 out of 15 countries reflect autonomous laws on private international law (Azerbaijan, South Korea, Estonia, Belgium, Bulgaria, Ukraine, Macedonia, Turkey, China, Poland, Taiwan). At the same time, 6 of them are the result of a complex autonomous codification, that is, they include issues of private international law and international civil procedure (South Korea, Belgium, Bulgaria, Ukraine, Macedonia, Turkey). Intersectoral codifications were implemented in Lithuania (2001–2003), Mongolia (2002), Russia (1999–2003), and the Netherlands (2002–2012)[4].

[2] Лунц Л.А. Международное частное право. – М.: Юрид. лит., 1970. Лунц Л.А. Курс международного частного права: В 3-х т. Т.1. – М., 2002. Международное частное право: иностранное законодательство /Предисл. А. Л. Маковского; сост. и научн. ред. А. Н. Жильцов, А. И. Муранов. – М.: Статут, 2000.

[3] Лунц Л.А. Международное частное право. – М.: Юрид. лит., 1970. Лунц Л.А. Курс международного частного права: В 3-х т. Т.1. – М., 2002. Международное частное право: иностранное законодательство /Предисл. А. Л. Маковского; сост. и научн. ред. А. Н. Жильцов, А. И. Муранов. – М.: Статут, 2000.

[4] Лунц Л.А. Курс международного частного права: В 3-х т. Т.1. – М., 2002. Международное частное право: иностранное законодательство /Предисл. А. Л. Маковского; сост. и научн. ред. А. Н. Жильцов, А. И. Муранов. – М.: Статут, 2000.

The pace of the modern codification process of national private international law is higher in the fourth stage, and in this stage the legislature has abandoned intersectoral codification. This confirms that private international law is separated as a legal system and an independent field of legislation.

In the process of private international law codification of the 21st century, the following types of codification can be indicated:

- "step-by-step" codification is a type of codification that envisages the creation of a unified law, that is, the formation of individual norms of private international law and the partial codification of individual institutions, ending with the adoption of a systematic term document. Full step-by-step codification has been implemented so far only in the Netherlands legal system (in 1981-2011, more than 20 separate laws were adopted on the law applicable to the name of an individual, marriage, property rights, etc., the implementation of international documents, and Article 10 of the Civil Code book implemented)[5].

- Compacting codification is a type of codification that envisages bringing a number of normative legal documents dedicated to separate institutions and issues of private international law into a single harmonized document by introducing certain innovations to the original legal material. As a rule, "compacting" codification is carried out in the second stage of "step-by-step" codification. For example, Book 10 of the Netherlands Civil Code replaced 16 laws: 14 on specific institutions of private international law and 2 laws on the implementation of European directives[6].

- blanket codification - based on the advantage of an international unified document that regulates certain cross-border private legal relations by direct reference to it. A blanket codification is a special method of codification, which is the preservation of an article (section) of the law reserved for a future norm, this norm consists of a reference to this treaty after the ratification of a particular international treaty (Netherlands)[7].

In the fourth stage of national codifications, since the significant experience of law-making practice within the framework of private international law has been collected and consolidated, it is appropriate to recognize compact and blanket codification as the most effective method. Therefore, the last method is gaining popularity nowadays.

The following criteria are the basis for dividing modern codifications of private international law into types:

a) legal force of the result;

b) subjective content and scope of the codification document;

c) element of re-transformation;

d) the form of recording norms.

From the point of view of **the legal force of the legal document**, codifications are divided into official and unofficial (private) types. The main differences of the codifications are covered in the work of S.V. Kodan[8]. By official codification, it is necessary to understand the result of the

[5] K.Boele-Woelki and D.van Iterson. The Dutch Private International Law Codification: Principles, Objectives and Opportunities. – Vol. 14.3. http://www.ejcl.org
[6] In the literature cited above
[7] In the literature cited above
[8] Кодан С.В. Акты систематизации законодательства: юридическая природа и место в системе источников российского права //Научный ежегодник Института философии и права Уральского отд-ния РАН. 2008. – Екатеринбург, 2008. – Вып. 8.

activity of state bodies (organizations) formed for this purpose, adopting a codification document of official nature and legal significance.

Informal codification is the activity of persons (lawyers - scientists and practitioners, various organizations - state, scientific research, education, publishing, information) who do not have special authority to create various regulated sets of legislation that provide personal and corporate (departmental) interests, do not have normative significance, help to improve the practice of law creation and law enforcement.

As a result of the official codification of private international law, since 2000, codification documents on the continental and mixed system of law have been adopted in more than 15 countries.

Informal codification usually precedes formal codification and lays the groundwork for its implementation. The main form of informal codification is doctrinal (scientific) codification, which is carried out by scientists and scientific organizations[9]. The next form is informal codifications of private publications, which are widespread in foreign countries, and as a result, they categorize excerpts of international, legislative and statutory documents, important court decisions and doctrinal works related to the relevant field of law[10].

The modern doctrine connects the future development of the codification process with a new form of informal codification - cybercodification (electronic codification), that is, “electronic collections of the texts of legal documents in up-to-date editions”.

In most countries of the common law system, there are no official codification documents on private international law, therefore private codifications play an important role in the regulation of private legal relations complicated by a foreign element. Dicey and Morris on the Conflict of Laws is famous for codifying precedents in the United Kingdom conflict of law framework[11].The first set of laws on the conflict of laws prepared by the American Law Institute in 1934 (Restatement of the Law of Conflict of Laws) and the second set of laws on the conflict of laws of 1971 are also known to everyone[12]. The second set consists of 30 volumes, in which court precedents are systematized and expressed in the form of laws (paragraphs).

In the doctrine, there is also a formal type of codification, such as the codification of international business practices, and international codification documents applicable to the regulation of international commercial behavior reflect sets of unified norms prepared by international trade (or other industry) associations outside the boundaries of any particular national legislation. They have a "non-national" feature. In doctrine, they are called transnational codifications[13].

In addition to customs, the aforementioned collections contain the most successful rules of international conventions, national legislation, court and arbitration practices. Legal documents drawn up through informal codification (having the status of “new legal substance of international relations”) will not be an independent source of law. But the rules established in

[9] Лукашук И.И. Международное право. Общая часть: Учебник для студентов юридических факультетов и вузов. 2-е изд., перераб. и доп. – М., 2001. – С. 102.

[10]Кабрияк Р. Кодификации /Пер. с франц. Л. В. Головко. – М.: Статут, 2007. – С. 398.

[11] Богуславский М. М. Международное частное право. 6-е изд., перераб. и доп. – М., 2011. – С.67.

[12] Галенская Л.Н. Международное частное право. – Л., 1983. – С.14. 2.58. Лунц Л.А. Курс международного частного права: В 3-х т. Т.1. – М., 2002. – С.142. Перетерский И.С., Крылов С.Б. Международное частное право: Учебник для юрид. ин-тов и фак., изд. 2-е, испр. и доп. – М.: Госюриздат, 1959. – С.35. 2.49. Кох Х., Мангус У., Винклер фор Моренфельс. Международное частное право и сравнительное правоведение /Пер. с нем. Ю. М. Юмашева. – М., 2001. – С.361.

[13] Мосс Д.К. Автономия воли в практике международного коммерческого арбитража /Под ред. А. А. Рубанова. – М.,1996. – С.47.

them (customs of international business dealings) may have binding legal force if they are the will of the parties to the international agreement or if they are recognized by the state itself.

At the current stage, the development of the codification process within the framework of private international law could not be affected by private codifications of private international law. The new edition of the 2004 York-Antwerp general accident rules, INCOTERMS 2010, the third edition of the UNIDRUA principles adopted by the International Institute for the Unification of Private Law in 2010, indicate the reform of the non-state framework of the regulation of transnational private legal relations.

According to the subjective content of codification and the territorial scope of application of the consolidated regulatory legal document, codifications are divided into international codifications covering several legal systems and national codifications implemented on the territory of a specific state. Currently, there is only one full-scale international codification document of private international law, and on February 20, 1928, at the VI International Conference of American States held in Havana, together with a number of other international agreements, the Convention on Private International Law was adopted and the code known as Bustamante was attached to it. This Code is named after the Cuban jurist, politician and diplomat Antonio Sánchez de Bustamante-i-Sirvena (1865–1951) who drew it up, and is distinguished by the breadth of the number of participants. The Bustamante Code is valid in 15 countries of Latin America, such as Bolivia, Brazil, Venezuela, Guatemala, Honduras, Haiti, Dominican Republic, Costa Rica, Cuba, Nicaragua, Peru, Panama, El Salvador, Chile, Ecuador. The Convention was signed by countries such as Mexico, Paraguay, and Uruguay, but not ratified. The codex consists of an introduction and 4 books[14].

The problem of application of international documents is related to the procedure of including them among domestic sources of private international law, i.e. setting the conditions under which private legal relations with a foreign element can be regulated in a particular country.

In order to apply official unified documents in the territory of individual countries, it is usually required to recognize their obligation by issuing the corresponding internal state document. This condition is mainly stipulated in special provisions of constitutions and internal laws. For example, in the Preamble of the Constitution of the Republic of Uzbekistan, international treaties of the Republic of Uzbekistan are to be ratified by the Oliy Majlis. The provision of ratification by the parliament is also present in the Constitutions of Bulgaria, Azerbaijan, Estonia, Lithuania, Mongolia, Macedonia, and Turkey, and the Belgian constitution stipulates the need for the consent of the parliament to their obligations, and the legislation of Russia and Ukraine stipulates the need for the official consent of the state to its obligations in relation to international agreements[15].

Important documents of the European unification on substantive and procedural legal issues of private international law include EU Council Regulation 44/2001 of 2000 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters (“Brussels I”), EU Council Regulation 2201/2003 of 2003 on jurisdiction, recognition and enforcement of judgments in family matters and parental responsibility and repealing EU Regulation 1347/2000 ("Brussels II bis"),”Rome II” Regulation, “Rome I” Regulation, EU Council Regulation 1259/2010 of 2010 on the implementation of active cooperation within the framework of the law applicable to the annulment of marriage and the legal separation of the spouses without annulment of the marriage (“Rome III”) can be included, and these regulations are not required

[14] Международное частное право: иностранное законодательство /Предисл. А. Л. Маковского; сост. и научн. ред. А. Н. Жильцов, А. И. Муранов. – М.: Статут, 2000. – С. 746-748, 753.
[15] http://www.worldconstitutions.ru/

to be ratified or otherwise transformed into national legislation[16]. The regulation is a directly applicable document for member states.

According to **the restructuring element** reflected in different levels of change in the process of systematizing the content of legal norms, it divided into reform codification (real codification) and compilation codification (formal codification).

Reform codification is a codification in which significant changes are made to the legal norms collected during the codification process. The legal norm being codified, having integrated into the article of the code, regardless of its original source, i.e. if it had a non-normative nature until then, has the force of law (for example, a rule that has persisted in judicial practice). The codification reform, which fundamentally changes the content of the previous law, was named "codification-modification"[17].

Compilative codification is a simple gathering of existing legal norms, combining them into the form of a code without making significant changes to the legal nature of norms. Modern doctrine emphasizes that this type of codification has an element of restructuring, although it is lighter than reform codification: "Compiler-codifiers without any hesitation either resort to amending the legal norms being codified or to cancel some of them, or even to introduce new norms"[18].

The advantage of compilative codification over reform codification is that it takes less time. The advantage of reform codification is reflected in the highest adaptation of regulatory legal documents to the new conditions of existence, the possibility of legal strengthening of norms developed in judicial practice.

The term "recodification" is used in the classification of foreign doctrine codifications. Its content means replacing one codification with another, that is, re-codification. Here we are not talking about gathering separate legal norms into one code, that is, about codification. According to R. Kabriak, the 20th century was the age of recodification, the age of "fundamental revision of outdated codes"[19].

Recodification is seen as one of the tools of the modern legislative process in private law, along with revision of legal documents through compilation codification and reformation. The purpose of the recodification is the "restoration" of private law that is correct from the point of view of modern principles.

Currently, the state of regular revision of the legislation on private international law has become widespread (recodification), previously the recodification of private international law was more passive: In 1986, the reform of German private international law was carried out, in the 80s and 90s of the 20th century, some changes were made to the laws of Spain, Portugal, Greece, Mexico, Japan, and Iran, and in 1998, to the laws of Austria. At the modern stage, recodification is becoming almost continuous. In 1999–2000, significant changes were made to Spanish laws, in 2000 to the German Access to Civil Code, and in 2006 to the Japanese Private international law Act. Bulgaria's Law on Private International Law 2005 has been amended three times, namely in 2007, 2009 and 2010; Ukraine's Law on Private international law 2005 and Macedonia's Law on Private International Law 2007 were amended in 2010; Part II of the First Book of the Civil Code of Lithuania (2001) in 2009, Part VII of the Civil Procedure Code of

[16]Official Journal of the European Union [Электронный ресурс]: Режим доступа: http://eur-lex.europa.eu/. свободный. – Загл. с экрана.
[17] Кабрияк Р. Кодификации /Пер. с франц. Л. В. Головко. – М.: Статут, 2007. – С.147, 289, 398
[18] In the literature cited above
[19] In the literature cited above. P.289

Lithuania (2002) in 2008 and 2011, Hungarian Decree on Private International Law of 1979 - 2000, 2001, 2002, 2004, 2009 and Changes were made in 2010[20].

We can talk about codification in two cases: the first case is related to the primary codification of private international law documents, which are divided into different normative documents. This is characteristic of Bulgarian, Belgian, Dutch law; the second case is reflected in the primary autonomous codification of collective inter-sectoral and other non-codified legal norms within the framework of private international law, for example, in the codification documents of Ukraine, Estonia, Azerbaijan and China.

Modern national codifications are all considered reform codifications, as they make significant changes to existing national private international law.

According to the form of recording codification legal norms, there are the following main methods of codification of private international law:

- adoption of special complex laws regulating general issues of application of foreign law, including conflict norms and norms of international civil procedure (complex codification of private international law);
- adoption of special autonomous laws regulating general issues of application of foreign law, including conflict norms (autonomous codification of private international law):

a) the adoption of a comprehensive and perfect law (Polish law) that regulates in the highest detail the legal issues applicable to all relations falling within the framework of private international law;

б) adoption of a concise law (Chinese law) consisting of the basic general concepts of private international law and the basic principles of applicable law. Other issues within the scope of private international law are regulated by special laws;

- inclusion of separate sections on conflict law in regulatory documents related to the field (in most cases, in civil codes or laws regulating civil-legal relations, marriage-family codes, labor codes and codes on the traffic of commercial ships) (intersectoral codification of private international law);
- inclusion of conflict norms and other rules of private international law in separate laws (status of foreigners, foreign economic activity, foreign investment regime, etc.)[21]. [22]

Countries that followed the path of autonomous and complex autonomous codification: **Azerbaijan** (Law on Private international law, 2000), **South Korea** (Law on Private international law, 2001), **Estonia** (On Private International Law Act, 2002), **Belgium** ("Code of Private International Law", 2004), Bulgaria (Private International Law Code, 2005), **Ukraine** (Law on Private international law, 2005), **Macedonia** (Law on Private International Law, 2007), **Turkey** (Private international law and International Code of Civil Procedure Law, 2007), **China**

[20] K.Boele-Woelki and D.van Iterson. The Dutch Private International Law Codification: Principles, Objectives and Opportunities. – Vol. 14.3. http://www.ejcl.org. Symeon C.Symeonides. Codification and Flexibility in Private International Law /General Reports of the XVIIIth Congress of the International Academy of Comparative Law. Washington, 2012. Yearbook of Private International Law. Vol. XIII. 2011.

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[22] http://base.spinform.ru/, http://pravo hse.ru/

(Law on the Application of Law in Cross-Border Civil-Legal Relations, 2011), **Poland** (Law on Private International Law, 2011).

Countries that followed the path of intersectoral codification: **Uzbekistan** (Section VI of Civil Code (1996), Section VIII of Family Code (1998), Section III of Civil Procedure Code (1997), Section III of Economical Procedure Code (1997)), **Kazakhstan** (Section VII of Civil Code (1999), Section V of the Civil Procedure Code (1999)), **Kyrgyzstan** (Section VII of the Civil Code (1998), Section V of the Civil Procedure Code (1999)), **Tajikistan** (Section VII of the Civil Code (2005), **Lithuania** (Part II, known as "Private International Law" of the First Book of the Civil Code (2001, ed. 2009), Part VII of the Civil Procedure Code, known as "International Civil Procedure" (2003)), **Russian Federation** (Chapter VI of the third part of the Civil Code, known as "Private international law" (2002), Chapter 31 of Part IV of the Civil Procedure Code, known as "Proceedings on recognition and enforcement of foreign court decisions and foreign arbitral awards" (2002) and Section V of the Arbitral Procedure Code, known as "Proceedings in cases involving foreign persons" (2003), **Mongolia** (Chapter VI of the Civil Code known as "Private international law" (2002), Civil Procedure Code Chapter XVIII known as "Private international law" (2002)), **Netherlands** (Civil Procedure Code, Book 1 as "Jurisdiction of Netherlands Courts" (2002)[23].

Another distinctive feature of the process of codification of private international law in the 21st century is the internationalization of the development of regulation of private international law issues. On the one hand, the reception method of such regulation is implemented (the adoption of the structure of Swiss law in the Belgian Code), on the other hand, foreign research centers and experts are actively involved in the preparation of the regulation (for example, the Estonian law of 2002 was prepared by German jurists)[24]. But reception does not mean mindless copying, but the adoption of the most acceptable and tested decisions (for example, the determination of the law applicable to cross-border insolvency). Taking into account the specific nature of the fourth stage of the codification process of private international law, a sufficiently legal result has been achieved – a higher level of uniformity of national legal regulations in private international law than before.

As a result of the research, it is known that most of the developed countries are following the path of autonomous codification and complex autonomous codification, and the compacting reform codification type of codification is used. That is, bringing a number of regulatory legal documents dedicated to specific institutions and issues of private international law into a single coordinated document form by introducing certain innovations to the original legal material, in order to ensure the highest adaptation of normative legal documents to the new conditions of existence, codification by means of reform is in effect.

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