

## About the Code: General Theoretical Aspect

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### **Abstract:**

*The article discusses a number of problems related to such a normative legal act as a code: its concept, increasing the proportion, correlation with other laws. Particular attention is paid to the situation according to which the code is a "product" not only of the codification of regulations, as is customary in the legal literature, but also of consolidation.*

### **Keywords:**

*code, legal act, statutes, regulations, codification, consolidation, Romano-Germanic legal family*

## I. Introduction

The relevance of this scientific article is determined by the circumstance according to which the code is the most common regulatory legal act that exists along with the Fundamentals of Legislation - regulatory legal acts that establish the most important provisions of a particular branch of law or the sphere of public administration (for example, Fundamentals of Forestry Legislation, Fundamentals of Legislation on Culture), charters regulating relations in a sphere under state control (for example, the work of the railway, internal water space, military service), provisions-regulatory legal acts of special action, which fix the status, organization of work of state bodies and institutions (for example, the Regulation on service in the internal affairs bodies of the Russian Federation), the rules determining the procedure for conducting any kind of act flaccidity (for example, hunting rules). It seems that the proposed work is being updated in connection with changes in the legal map of the world. Since Rene David spoke in favor of considering socialist law as an independent legal family, significant events have taken place, and the socialist legal system in the form in which it was in the 70s ceased to exist. After the collapse of the USSR and the "commonwealth of socialist countries" in the 1990s, the national legal systems of only some countries - China, North Korea, Cuba - remained in the structure of the former socialist legal family. On the territory of the former USSR and all other socialist states, new, post-Soviet and post-socialist legal systems were formed. It can be stated that a single group of national legal systems, which recognized as an independent legal family, along with the Romano-Germanic, Anglo-Saxon and other legal families, in the 90s underwent very significant, cardinal and far from intended in their nature and consequences changes. The legal systems of the countries belonging to the "socialist camp" previously belonged to the Romano - Germanic legal family. They still retain a number of her features. The rule of law has always been and is considered here as a general rule of conduct. To a large extent, the system of law and the terminology of legal science created by the efforts of European and Soviet scholars and dating back to Roman law have been preserved.

Bearing in mind these and other signs of the Romano-Germanic legal family - the division of law into branches and institutions of law, a common conceptual fund, a single

system of legal principles, a common conceptual fund, the division of law into private and public, material and procedural, a single hierarchical system of legal sources law, the first is characterized by the codified nature of law (highlighted by us - Vladimir Valentinovich Kozhevnikov). For the sake of fairness, we note that in legal science there are other positions regarding the characteristics of the modern legal system of Russia. Thus, drawing attention to the fact that Russia has proclaimed a movement towards the formation of a legal, democratic, social state, nationwide in its essence, the authors believe that this makes it possible to predict the convergence of its legal system at a new qualitative level, while maintaining the specificity, with the Romano-Germanic the legal system as the most related, as well as the perception of some of the merits of case law inherent in the common law system [1]. Finally, noteworthy is the position of those scientists who, assessing the situation that developed in the early 90s after leaving the historical arena of the USSR and other socialist countries, proposed to revise the previous classification of national legal systems that existed until now and to single out the family of Slavic peoples instead of the socialist legal family. ... So, Vladimir Nikolaevich Sinyukov believes that "with the existing criteria for the division of national legal systems into certain groups - legal families, the normative region and, accordingly, the legal community, formed by countries of mainly Slavic ethnic origin, which at one time belonged to socialist legal families "[2]

### III. Research Methods

When preparing a scientific article, the following methods were used:

1. general philosophical (dialectical-materialistic), which is used in all social sciences;
2. general scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
3. special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
4. private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

### III. Discussion

#### 3.1 The Concept of the Code

Codes (lat. Codex - book) is a large consolidated normative legal act that regulates in detail a certain area of public relations. In the Soviet legal literature of those years, the concept of "codification act" is used to designate the Fundamentals, and codes, and statutes, and regulations [3], codification was considered as the main form of systematization of legislation [4]. At present, the noted trend has basically remained, and in the scientific literature codification is viewed in a broad sense as an activity to systematize and radically revise the current legislation by developing and adopting a new regulatory legal act (Fundamentals of legislation, codes, statutes, regulations, rules, regulations) ... So, the team of authors, defining codification as "streamlining legal norms in the process of lawmaking, the publication on this basis of a single, legally and logically integral codified act (foundations, code, charter, regulations, etc.)", emphasize that the main function and the most important feature of codification in its modern sound is the change in the content of legal regulation, giving it a complex systemic character [5]. Another paper argues that the codification of legislation is a form of radical revision of existing normative acts (or rather, normative legal acts - Vladimir Valentinovich Kozhevnikov) in a certain sphere of relations, a way of qualitatively streamlining legislation, ensuring its consistency and compactness, as well as clearing the normative array, liberation from outdated, unjustified norms [6]. Yuri Albertovich

Dmitriev, in principle agreeing with this interpretation of the codification of legislation, clarified that the latter "is aimed at critically rethinking the existing norms, eliminating contradictions and inconsistencies between them, eliminating repetitions, outdated provisions, gaps, duplication of norms" [7].

### 3.2 Increasing the Share of Codes

In the legislation of our country over the past decade, the proportion of codes has grown sharply. There are two dozen of them, for example, Civil, Budget, Customs, Labor, Family, etc. The subjects of the federation have their own codes - Library, Museum, Labor, etc. The question arises: is the subject of regulation successfully chosen with the help of codes, do they correspond in form and structure to their purpose? A code is a kind of law. It is distinguished, firstly, by the completeness of the regulation of relations in any area, secondly, by the uniformity of regulation, thirdly, by the consolidation of basic legal principles, concepts and constructions, and fourthly by the reflection of major legal theories and concepts, in fifth, - a leading place among other laws and a special impact on all legal acts and the law enforcement process. The criteria for choosing a code as one of the forms of laws are not yet clear. Often a code "appears" from scratch, in the absence of accumulated normative material, and, in fact, there is nothing for it to codify. There is also a federal aspect. The adoption in a number of subjects of the Russian Federation of codes (Library, Electoral, Museum, Labor, etc.) is unjustified. Duplication or violation of federal legislative competence is allowed. The form of the codes is inadequate to the nature and volume of the relations regulated by them.

### 3.3 The Problem of the Correlation of the Code with other Laws, the Subordination of Codes

The problem of the correlation of the code with other laws is difficult. One line is the code and laws within the framework of the branch of legislation, the other is the ratio of different codes in the regulation of related or homogeneous relations. The third is the combination of the norms of the codes with the norms of laws that establish the status of state bodies, local self-government, public and economic structures. These relationships arise and exist to a greater extent on the basis of the "head" role of the code. From a formal legal point of view, this is not entirely correct, since there are no corresponding provisions in the Constitution. For a long time, the federal law "On Normative Legal Acts" has not been adopted, where a place in this hierarchy can be assigned to the code. And each code itself has to proclaim its supremacy. Topical and debatable is the problem of "subordination" of codes, as well as, as noted, the relationship of codes with other laws.

Tatyana Nikolaevna Rachmanina, noting that the code, like any normative legal act, does not exist autonomously, in isolation from other acts; he "lives", acts in a certain hierarchically structured system, being in one or another systemic relationship with other acts, noted that in the practice of Russian lawmaking, the principle of the priority of the code over sectoral laws actually operates (though not always consistently). With different options for solving the problem in different codes, practice follows the path of endowing the codes with a higher, compared to ordinary federal laws, legal force, which is by no means impeccable, because from a formal legal standpoint, the norms of the code do not have priority in the hierarchy of legal norms, because in terms of legal force, according to the procedure for adoption, the codes are the same federal laws and, therefore, are subject to the rule of priority among acts of the same legal force of an act, which has been established in theory and practice of lawmaking, which was adopted later [8]. In doing so, the author refers to the definition. Of the Constitutional Court of the Russian Federation of February 3, 2000, in which it was emphasized that "no federal law, by virtue of Article 76 of the Constitution of the Russian Federation, has greater legal force in relation to

another federal law. [nine]. The scientist supports the original idea, according to which codes should be "placed" in the hierarchy of sources of law between federal constitutional and federal laws. And in order to emphasize the special role of codes in the legal system of Russia, to establish a special procedure for the adoption of codes: to adopt codes "in a procedure more complicated than the procedure for adopting federal laws, but simpler than when adopting federal constitutional laws" [8].

### 3.4 Code as a Result of the Consolidation of Regulatory Legal Acts

In our opinion, attention should be paid to one more problem, the essence of which is as follows. Scientists always mention the Code of Laws when analyzing the codification of regulatory legal acts in the Russian Federation. Agreeing with Vladimir Nikolaevich Kartashov that consolidation is very close to codification and therefore has primarily a law-making character, although as a result of its implementation a great effect is achieved in systematizing legal documents [10], we note that recently in Russia the border between codification and consolidation has become even more eroded. Sometimes the legislator calls the law a code, but in reality it is a purely consolidated act. An example is the Water Code of the Russian Federation, where many acts on water use are mechanically arranged according to the following scheme: ownership of water bodies, management in the field of their use and protection, use of water bodies and resolution of disputes. The fact that it contains a chapter containing general provisions does not change the matter. Of course, you cannot make a tragedy out of this. It's just that once again forces us to reconsider the possibilities of codification. Comparison of two adjacent types of systematization, which are codification and consolidation, taking into account the growing pace of social life, makes us recognize that the future belongs to consolidation, because codification does not always allow timely reflection of social changes.

## IV. Conclusion

In conclusion, we note that the solution of the considered problems related to codes, as a result of both codification and consolidation of regulatory legal acts in the Russian Federation, can significantly affect the quality and efficiency of both lawmaking and law enforcement activities.

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