
N. Onishchenko, Doctor of Legal Sciences, Professor, Honorary Lawyer of Ukraine, Fellow of Ukraine Law Sciences Academy, Chief of the Theory of State and Law Department of V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine

CODIFICATION: CLASSIC IDEAS AND NEW APPROACHES

Summary. *The article is devoted to the modern understanding of the category of codification (recodification) and consideration of their substantive content, a separate vector is a description of the types and varieties of codification, as well as the tasks facing scientists in the specified plane.*

Key words: *codification, recodification, systematization of legislation, the task of codification, features of codification.*

Formulation of the problem. With regard to legal scientific developments, it is hardly possible to complain about the small number of publications concerning the codification category. However, even a cursory analysis of such publications indicates more about determining the instrumental (technical) component of this process than its substantive content. It should be noted that a new impetus for the debate on this category is stimulating, including, processes related to the recoding of civil law. We would like to emphasize that much attention was paid to this issue at the III International Legal Forum in

Kharkiv. However, it was primarily about civilistic principles and foundations. The theoretical aspect of codification remains, unfortunately, beyond the present scientific focus. We want to state that, as a rule, in the historical retrospect (not an exception and the modern context), the need for codification was linked to the need to regulate new social relations, with the new dominants of legal life, new priorities in it, and also – the human factor of perception and carrying out codification works was taken into account.

To put it briefly, the purpose of codification is always focused on the legal

certainty of both the form and content of the presented, updated legislation.

The main presentation of the material. Today, you can meet the thesis that codification is an indicator of the maturity of the national legal system. Agreeing on the whole, we would clarify this position somewhat and point out that the level of codification reflects the level of maturity of the national legal system.

Given this context, we would like to highlight the following codification tasks:

- a) appropriate “clearing” related to the elimination of obsolete standards;
- b) substantial updating of the regulation of a certain sphere;
- c) deep comprehensive revision of the current legislation and making the necessary changes to it;
- d) modernization of the current legislation, etc.

In addition, a number of factors can be cited that also “provoke” codification, including: departmental; the conflict and complexity of the texts of legal acts, which makes them unclear to the subjects of legal implementation; the politicization of content as a result of the rule of political expediency rather than objective necessity; the absence of promising programs for legislative development, monitoring of the legislative array and legal analytics; low level of legislative technique; complicated categorical conceptual apparatus, a small number or absence of encyclopedic and other legal publications with clearly defined definitions (doctrinal gaps) in scientific studies, etc.

According to modern researchers in the law-making process, the authorized

subjects of law-making make systematic mistakes, not fully taking into account structural links in the system of legislation, which leads to conflicts and duplication of the normative array, disparities in the development of certain branches of legislation, etc.

Understanding the reasons that stimulate the codification work of today, it should be said that more than 40 codes have been published in the history of Ukraine since 1960. First of all, the rules of law in the field of criminal and criminal procedural law (1960) were systematized, later the rules of civil and civil procedural law (1963). Subsequently, the Marriage and Family Code of Ukraine, the Land Code of Ukraine were adopted. It should be noted that there was a simultaneous codification of the rules of substantive and procedural law in a particular field, which certainly contributed to the improvement of the level of effective regulation of the relevant social relations, and consequently – to overcoming conflicts, inconsistencies and gaps in legal regulation.

Following the dynamics of codification of national legislation, using the relevant data of legal analysis and legal monitoring, it should be noted that since 1991, on average, one codified act has been adopted every year. In 1994 there were two: the Code of Ukraine on subsoil and the Forest Code of Ukraine, in 1995 – two: the Water Code of Ukraine and the Code of Merchant Shipping of Ukraine. From 1995 to 2001 no code was adopted. In 2001, there were two: the Land Code of Ukraine and the Criminal Code of Ukraine, and in 2002, two, in-

cluding the Customs Code of Ukraine and the Family Code of Ukraine. In 2003, the following three acts were adopted: the Criminal – Executive Code of Ukraine, the Civil Code of Ukraine, the Economic Code of Ukraine. It should be noted that no code is adopted from 2005 to 2010. In 2010, two were adopted again: the Tax Code of Ukraine and the Budget Code of Ukraine, in 2011 – the Air Code of Ukraine.

To date, 23 codes are in force in Ukraine, of which three (the Labor Code of Ukraine of December 10, 1971, the Housing Code of the Ukrainian SSR of June 30, 1983, the Code of Administrative Offenses of December 7, 1984) are “obsolete” from a legal and moral point of view, which requires immediate codification and action to address this problem.

It should be noted that the opinion that the relations in the sphere of information, culture and cultural heritage are insufficiently regulated today is repeatedly and not alone on the pages of our legal editions. In view of the latter, we would like to point out that proposals for the creation of separate codes are not always supported by scientists and practitioners. Yes, quite polar opinions are expressed about the need to adopt the Code of Information Law. We suggest dwelling on this in more detail.

Yes, today it is safe to say, and this is noted by some scientists, about the formed global information society, in which the processing of information and its higher form of knowledge – employ more people than for the processing of raw materials. At the same time, scien-

tists predict that in the future the entire world space will become a unified computerized and information society.

At the same time, everyone is well aware that “a medal always has two sides”. The information society, which conceals a number of dangerous trends, is not an exception, in particular: 1) the real likelihood of destruction of privacy of individuals and secret activities of organizations due to the impact of penetrating information technologies; 2) the problem of selecting reliable information; 3) the “difficulty” of preventing the circulation of “harmful” information, including that which contains elements of violence, public calls for terrorist activity, other extremist material, as well as material contrary to public morality; 4) the growing threat of being able to manipulate people’s consciousness due to the increased simultaneous influence of various forms of media, especially its electronic form; 5) the need to ensure the proper adaptation of people to the specific environment of the information society, which is becoming more technically more difficult every year, etc.

“Internet”, “cyberspace”, “virtual reality” – these are concepts that over the last decade have firmly entered not only the daily circulation of our compatriots, but also actively began to “capture” the scientific sphere of human activity. However, unfortunately, we must acknowledge that almost all relationships related to the collection, processing, transmission and other use of information in electronic form not only are not regulated by law, but at the normative level, not even definitions of many basic concepts are

defined, on the formally determined basis of which legal regulation should be built (eg cyberspace, cybercrime, data protocol, gateway, proxy, etc.).

It should be noted that when it comes to cyberspace, it is the space itself is meant, not the territory that is always linked to national geographical boundaries, which in turn affect the competence of states, clearly defining its limited jurisdiction. Against this background, it is worth agreeing that erroneously consider cyberspace a territory of mixed international legal status. However, it should be considered an international planetary space, which has its own specific features.

Given the above aspects of the stated problem, we can draw some conclusions:

1) the active development of the virtual information space and the Internet as a central part of it has significantly complicated the mechanism of bringing perpetrators to justice for offenses in the information sphere. At the same time, this complication is objective in nature and is related, first of all, to the technical and communication nature of cyberspace and the specific properties of storing and disseminating information in it in various forms;

2) the solution of the issue of combating information offenses only by improving the norms of the current legislation is quite difficult. In this context, it is necessary, first of all, to emphasize the need for combining legal and organizational and technical means of combating information offenses (for example, creating and implementing secure protocols for storing and transmitting information

in electronic networks). It should be noted that the positive law in this case has in some way started to depend on technical innovations related to the virtual information space;

3) the gradual development of the global information society requires that it be properly regulated at both international and national levels. In view of the above, in our opinion, ensuring the effective legal regulation of all information space at the national level in Ukraine can be achieved, in particular, by adopting a codified legislative act (for example, the Code of Laws on Information in Ukraine or the Code of Information Law of Ukraine), which would take maximum account of rights and legitimate interests of the whole subject structure of the respective legal relations and would provide uniform approaches and principles to the regulation of relations in cyberspace and legal liability for unlawful acts by clearly identified entities. Observance of these conditions could greatly contribute to the security of development of the information sphere of Ukraine, the protection of the national information space, the market from information terrorism and the information war etc [1]. However, let us reiterate that there are also many opposing opinions in the scientific community that have not only the right to exist but also their justification.

Consequently, codification (ordering) processes are not always uniquely understood so far.

So, going back to the need for codification work, we can say that codification can be considered in two interrelated planes:

1) as an independent field of scientific research.

2) as a type of legal activity.

Taking into account the theoretical component of the article, it should be reminded that codification refers to the activity of law-making bodies of the state in the creation of a new, systematic regulatory and legal act, which is carried out by deep and comprehensive revision of the existing legislation and introducing significant changes to it, in the process of codification, the draft act creates the existing rules that have not lost their meaning, as well as new rules that make qualitative changes in the regulation of a certain sphere of social relations.

Among the features of codification are usually the following:

- only competent law-making bodies are engaged in codification activities on the basis of constitutional or other legal powers;

- as a result of codification, a new regulatory act is created, which includes norms that are significantly different from those previously in force;

- a codification act is essentially a consolidated act, since it integrates the norms previously contained in various acts but regulated the same sphere of social relations;

- the codification act is the main one among the acts that operate in a certain field of public life;

- legal acts created as a result of codification, calculated for a long time regulation of social relations.

They take into account possible changes in life and are able to regulate social relations that will arise in the fu-

ture.

Codification is the most complex and perfect form of systematization of legislation that is law-making character. With its help, a single legally and logically integral, internally harmonized regulatory act is created. In its structure, as a rule, it has a general part, which reflects the sectoral principles that determine the nature and content of this area of law as a whole. There are three main types of codification acts:

- the basics of legislation – regulations that set out the most important provisions (basic principles) of a particular branch of law or public administration. This form of codification is believed to be in use in the federal states.

- Code is the most common type of codification acts in the main spheres of public life that require legal ordering.

- statutes, regulations – codification acts of special action issued not only by the legislature but also by other law-making bodies (for example, by the government).

Some codification acts in modern countries do not have a special name. These are different laws, such as: property, local government, retirement benefits, etc.

Codification is the process of law-making, reworking of all legislative material and creating new rules.

Often codification in scientific research is characterized as a creative process. The creative role is to consolidate the systematic nature of the legislation, strengthen legal unity and coherence. Thus, codification includes “old with new shades” of legislation, new rules,

and – promotes the formation of enlarged blocks, which indicates the achievement of the necessary stability.

From this it follows that the codification act should contain stable norms, calculated for a sufficiently long period of time, for a certain perspective. The effectiveness of a codification act will largely depend on how accurately and clearly the legislator takes into account trends in the development data of social relations.

In addition, it should be noted that more “moving” areas of social relations are governed by regulations created in the process of current lawmaking, and the “drivers” of choice for static or dynamic factors in the law are precisely the groups of public relations that need to regulate.

Among the varieties of codification, modern scientists distinguish: a broad and narrow understanding, where a narrow – a “technical processing”, and a broad – the processing, supplementation, alignment of existing and new rules.

Some scholars distinguish among the types of codification:

- a) minimum (identical incorporation without changing the content);
- b) medial (combination of new and old legislation);
- c) maximum (creation of a Code) [2].

There is also an unofficial codification conducted by individuals, an illustrative historical example being the “Book of the Old Master from Rosenber” (Czech Republic, 13th century).

They also distinguish: general codification – provides for a series of regulatory acts; sectoral codification – refers to

one branch of law; special codification – it is a separate legal institute.

At the very end, I would like to emphasize the role of legal doctrine in codification processes, in particular, legal monitoring and legal analytics for this segment.

Scientific and methodological and legal support is of great importance in the preparation of these codified acts. First of all, it is necessary to ensure such provision at the level of the law (this may be the law “On Regulatory Acts” or “On Laws and Legislative Activities”, possible and other names of acts) regarding the consolidation of the notion, legal force of the code, exclusive list of homogeneous spheres of public relations that require legal regulation through the code. It should be emphasize on systematization by industry principle, no possibility of mixing norms of public and private, substantive and procedural law with the simultaneous coherence and application of the same techniques of legal technology to the presentation of rules of law (for example, need consistency and providing system connections the Criminal and Criminal Procedure Codes, Civil and Civil Procedure Codes). The codification of the narrow spheres of homogeneous social relations should be avoided, where the use of common law is objective and justified. It is these and other factors that predetermine strengthening the impact of legal science on the process of systematization of law in general and codification in particular.

Interesting in this doctrinal context is the opinion of E. Kharitonov and O. Kharitonova on “saturation” and un-

derstanding of the term “recodification”. They note that processes related to codification, and, moreover, recodification, have always been accompanied by discussions, due to the fact that some of the society remained committed to the former values, while the other was ready to accept the updated values [3].

Conclusions

To sum up, we would like to point out that, in our view, modern scientific “to master” of codification, as a process, needs solving the following tasks:

a) study of the correlation of objective and subjective factors during the

codification work;

b) grouping of static and dynamic factors necessary for normative ordering of social relations;

c) isolation of functions of codification, in particular, integrative, defectological (elimination of defects of the previous legislation), system-forming, stabilizing, optimizing, etc.

In addition, carrying out codification work always requires a clear understanding of the goal of achieving a higher (compared to existing) legal certainty, both in terms of content and form of legislation.

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