

# Codification of Legislation in Russia: Historical and Practical Aspects

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**Abstract.** The current stage of development of Russia is associated with the transformation of economic relations, the democratization of public life, and an increase in the value of legislation as a condition of social regulation. The Russian legislative base is very voluminous: the lower house of parliament has adopted 8,000 laws in a quarter of a century and considered over 600 bills since the beginning of 2020, sorting out, in the words of the speaker, the *legislative backlog*. In Russia, there are more than 20 codes in force in various areas, but the preparation of a subsequent package of laws and by-laws is inevitable. At the same time, the theoretical understanding of the codification process is not completed, and discussions continue about the content, functions, and types of systematization. The incompleteness of the current stage of codification actualizes the problem, determining the need for an integrated approach to its study. The experience of domestic lawmaking bodies should undoubtedly be used in streamlining modern Russian law. Comprehension of the historical past presupposes a connection between the stages of development while preserving certain elements. This study aims to determine the role of codification of legislation in Russian and modern history. In pursuance of this goal, the authors set the following tasks: (1) identifying the opinions of jurists of different decades on the role of codification in the state; (2) studying the experience of performing codification in Russian history; and (3) determining the direction of codification works. The novelty and practical significance of the research lie in the attempt to comprehensively consider the theoretical and practical aspects of the codification process in Russia and the restoration of continuity in domestic legal science. The methodological basis of the research is a universal dialectical method, which, in conjunction with the historical and comparative legal method, allows revealing the features of the codification stages in the country. The theoretical and practical experience of the Russian codification process contributes to solving the codification problems in current conditions, restoring the *connection of times*.

**Keywords:** Incorporation · Codification · Systematization · Legislative process · Lawmaking · Sphere of public relations · Branches of legislation · Code · Code of laws

## 1 Introduction

Currently, the formation of the legal system in Russia occurs in difficult political and economic conditions, and the number of all types of federal regulations has significantly increased recently. More than 1,400 laws have been approved in ten years since the adoption of the Constitution of the Russian Federation (compared to 63 in the RSFSR in 1991) (Pigolkin, 2003, p. 115).

According to some estimates, more than 6,400 laws that every resident of the country must know (and follow) are in force in Russia today, without considering the numerous government decrees, departmental orders, and instructions. The legislative initiative of the State Duma deputies is limitless: from the law on the protection of mushrooms, the tax on picnics, and the ban on cycling without a license to the replacement of the Russian flag with an imperial standard and the renaming of regions and districts into provinces and counties. S. J. Lec's witty phrase is that lawlessness can also be introduced into the code (Lec, 2007, p. 266). In Russian reality, the subject in this phrase should be replaced by the word *nonsense*.

An increase in the number of adopted normative acts is also characteristic of the constituent entities of the Russian Federation, governors, heads of administration, and mayors. The existence of actually inoperative acts that need to be canceled or amended is a serious problem in the Russian Federation. Whole complexes of normative legal acts do not fulfill their regulatory functions due to scattering, confusion, and conflict, and a large number of them are the reason for the spread of an undoubtedly negative phenomenon – legal nihilism (Presidential Executive Office, 2007). Russian legislation is difficult to apply since it is extremely voluminous, and its updating requires cleansing from debris and removing the existing inconsistency of competition acts and chaotic regulations. The main purpose of the law as a legal form of displaying stable ties and processes of social development is to eliminate or mitigate contradictions, find compromises, and promote stability in society (Baranov & Krasnov, 2009).

The state-organized legal order presupposes the ability to quickly find and use the appropriate legal norms, which is impossible without improving the legal technique (Rakhmanina, 2008, p. 65). At the same time, codification is a special type of lawmaking and an effective way of modernizing legislation (Gambarov, 1911, pp. 151-152).

The compilers of the Complete Collection of Laws of the Russian Empire wrote at one time:

Without knowledge of laws, the history of the state cannot have either clarity or reliability since, without history, laws are often incomprehensible. Therefore, the timelier the laws are made known, the more convenient the sources of history become for contemporaries and the more reliable for posterity (Galuzo, 2009, p. 6).

Revealing the problems of systematization in retrospect allows tracing the complex *chain* of codification of law, caused, as a rule, by large-scale changes in politics and economy. Consideration of each *link* of this chain provides a variety

of materials for analysis and conclusions and allows solving specific issues of the modern codification process.

The historical and legal aspect of the problem makes it necessary to identify the goals and features of codification at each historical stage and conduct a comparative theoretical analysis revealing the general features and specifics of codification works of the 19<sup>th</sup>–21<sup>st</sup> centuries.

Scientific understanding of the historical experience, traditions, and concepts on which codifications have been performed is necessary and useful. The authors of the paper make their modest contribution to the discussion of the topical problem, paying tribute to the jurists and historians of the rich past. Materials can be used in the educational process.

## 2 Materials and Methods

The research object refers to jurisprudence and history, which makes it necessary to use a system-integrated method as the most effective and reliable. In describing state institutions, norms, and relations, it is hardly possible to distinguish common historical and legal components. Valuable historical information greatly facilitates the understanding of key aspects of Russian codification.

Comparison of this or that institution in the past and the present should have a theoretical and methodological basis. The completeness of systematic genetic relationships is ensured by a combination of several components:

- Study of the regulatory framework;
- Identification of the features and problems of the evolution of this institution and analysis of its practical activities.

The defining nature of the general historical material, with the undoubted specifics of legal reality in historical and legal research, does not raise doubts and ensures the recreation of the contextual environment.

The methodological basis of the research is the modern achievements of the science of cognition. The research goal is to reveal the experience of domestic legislation in solving the problem of codification. Comprehension of historical and practical issues of systematization of law is determined by the following tasks:

- Considering the theory of codification in the development of national legal thought;
- Determining the stages of the domestic codification process and identifying the specifics of each stage;
- Exploring the main directions and forms of codification and determining its prospects in modern Russia on the basis of the past.

Historical and legal discourse allows comprehending the past, on the one hand, as a reality and, on the other hand, as a style, strategy, or technique for *grasping* this reality in the thought activity of a particular time.

Given the reflexive nature of history, it is necessary to use the experience of previous generations, creating a *fusion* of jurisprudence and history, as well as the

important and the secondary. However, returning and repeating a situation requires one's own objectivity and impartiality. Ideologization of the humanities affects the completeness and integrity of the results of any research.

### 3 Results

As a result of previous legal life, the codification of legislation in Russia has strong historical roots. The incompleteness of the theoretical understanding of the unique historical experience and the ongoing process of streamlining the legal system have become the research subject for many prominent Russian scholars, such as N. N. Lityagin (2003), A. S. Pigolkin (2003), S. V. Polenina (1997), and T. V. Kashanina (2011). Their works present the definitions of codification, reveal its place in the systematization process, and develop its types, methods, and main directions (Oleinykov, Mamychev, Shestopal, Plotnikov & Sarychev, 2019; Polenina, 1997). The works of T. Ya. Khabrieva (2009), A. I. Abramova (2016), and T. N. Rakhmanina (2008) are devoted to the vision of legal technical, historical, and theoretical problems of codification of law.

The systematic streamlining of the legislation in force in Russia was performed more than once. It was embodied in the Complete Collection and the Code of Laws of the Russian Empire and the successful codification of the Soviet era.

An appeal to the history of codification in Russia is not only a tribute to the past and a description of little-known plots of it but also an expansion of the horizon for comprehending the multifaceted problem of systematization of Russian legislation and a condition for understanding the nature and shortcomings of modern law.

The concept of systematization of legislation traditionally includes the following forms of legal activity:

- Collection of current regulations by state bodies, enterprises, firms, and other organizations and institutions, and their processing and arrangement according to a certain scheme;
- Preparation and publication of various collections of normative acts (incorporation of legislation) as a preparation for the subsequent publication of various collections;
- Preparation and adoption of consolidated acts on the basis of combining the norms of disparate acts issued on one issue (consolidation of legislation);
- Preparation and adoption of new acts of the type of codes, which contain the proven norms of the previous acts and new regulations (Pigolkin, 2003, p. 372). Norms regulating the most important issues of public life, such as marriage and family, labor, and property, are usually formulated in a codification act.

The assessment of the code, presented in an ideal and real aspect, is high. On the one hand, it is a certain concept of law proceeding from some higher philosophical principles. On the other hand, it is a real document fixing the current legislative norms and their application (Medushevsky, 1993, p. 22).

The need to codify Russian laws was realized back in the time of Peter I. When the large number and casuistry of acts in their mass represented disorderly legislative information, Peter I ordered to bring together all acts issued after the Cathedral Code of 1649. However, this task was very difficult with that level of legislative technology and legal literacy. In addition, explaining the failures of the work of numerous commissions, M. F. Vladimirsky-Budanov, a historian of law, wrote that legal life had not yet settled into a calm form and had not assimilated the new with the old (Vladimirsky-Budanov, 1995, p. 265).

In the 18<sup>th</sup> century, attempts to unify centralized legislation by the authorities led to the creation of numerous commissions, which, according to V. O. Klyuchevsky, discovered so little legal meaning and preparation in their work that no one dared to use their it (Klyuchevsky, 1989, p. 307).

In 1804, a new codification commission was created. In this commission, M. M. Speransky, a prominent statesman and lawyer, began to work. According to the existing legend, he accompanied Alexander I during a meeting with Napoleon in Erfurt (1808). During the meeting, the latter allegedly turned to the Russian emperor with the words, “Your Majesty, would you like to exchange this person for some kingdom?” The largest Russian historian V. O. Klyuchevsky said about M. M. Speransky that it was Voltaire in an Orthodox theological shell and that since the time of Ordin-Nashchokin, the Russian throne did not have another such strong mind, and after Speransky, it was not known whether there would be another. In the 17<sup>th</sup>–19<sup>th</sup> centuries, qualitative changes in Russian jurisprudence contributed to the transition from empirical classification to the development of new legal norms, which was the essence of codification. However, unlike Europe, where the philosophy of the Enlightenment turned the law into a symbol of the fight against absolutism, codification in Russia consolidated the legal regime of the absolutist state (Emirsultanov, 2017, p. 5).

The concept of codification was largely determined by historical conditions and state ideology, but M. M. Speransky did everything possible to create the basis for the development of legislation and the establishment of the rule of law.

The form and structure of the Complete Collection of Laws in 56 volumes and the Code of Laws in 15 volumes, created under his active leadership, corresponded to the best examples of codes in Europe. However, their depth and comprehensiveness were assessed by some authors as merit and some others as a flaw.

M. S. Lunin once wrote:

Either in a hurry or due to the lack of special information, the compilers of the Code of Laws limited themselves to textual reproduction of dusty documents cluttering the archives and lumped together laws, decrees, orders, manifestos, diplomatic acts, temporary orders, and even simple circulars. From this incoherent mass, they compiled the Code of Laws, where, according to their admission, they did not adhere to any other rule, except for choosing the later law between two contradictory ones (Lunin, 1987, p. 141).

M. S. Lunin and his contemporaries, as well as researchers of a later time, argued more than once that a reasonable classification of laws was not performed,

thereby ignoring M. M. Speransky's role and freely dealing with historical facts.

Many imperfections inherent in past legislation were not eliminated: the laws in the Code of Laws were often notable for their causality, ambiguity of wording, and the presence of gaps. There was no clear division between laws and regulations, and as a result, a number of orders were included in the Code. However, it would not be an exaggeration to say that the work on the systematization of Russian legislation throughout the entire 19<sup>th</sup> and early 20<sup>th</sup> centuries influenced further lawmaking and contributed to the organization of the legal sphere. The creators of the Complete Collection and the Code of Laws of the Russian Empire predicted the inevitable shortcomings of their huge work and proposed ways to overcome them. The practice of public administration, with the systematization of legislation performed, underwent colossal changes. The laws became available not only to government officials but also to plaintiffs and defendants, which seemed much more valuable. More than that, the Code was also of tremendous importance for Russian science of law.

Currently, the republishing of the works of famous scholars of the past centuries as a Russian legal heritage is not only a tribute to history but also a valuable practice. T. N. Rakhmanina wrote, "The richest storehouse of ideas, concepts, terms, and methods of legal thinking, developed by Russian jurists of the past centuries, should really find application in the system of legal education and the practice of modern lawyers" (Rakhmanina, 1982, p. 72).

The October events of 1917 became the starting point for a new Soviet stage in the development of domestic law.

The objective need to improve legislation and optimize its source support should be the main thing when considering the activities to streamline the new legislation. However, in defining the milestones in the history of systematization, a significant role was played not only by the need and effectiveness of streamlining the normative material but also by its ideological component (Tomsinov, 2007, p. 42). If the sectoral codification of 1918 proceeded in parallel with the consolidation of the foundations of the state system in the Constitution of the RSFSR, the systematization of the 1920s and full-scale codification works of the 50s–60s were the factors for fixing the state and legal construction and the development of new constitutions.

The systematization of legislation was performed according to the federal nature of creating the Soviet state, at the levels of the legislation of the USSR and its subjects. New legislation was created at a rapid pace: by the end of 1922, there were already more than 4,000 laws and other normative acts in the USSR. P. I. Stuchka, a prominent Bolshevik, wrote, "We seemed to have *burned* the old laws in 1917, but yet the number of some post-revolutionary laws exceeds the numbers of the German ones." A large volume of scattered acts issued by the Soviet government was distinguished by inconsistent norms and terminology, and the lack of unity in legal and technical design. This legislative mass needed unconditional revision and systematization.

The work should have resulted in chronological or systematic collections of current legislation. The task of streamlining legislative prescriptions was solved by codification, which was revolutionary in the opinion of the People's

Commissar of Justice. In the first years of the formation of Soviet power and the outbreak of the civil war, it was possible to develop only separate sectoral codes. Some of them were replaced later, but others operated for several decades. The Codes of Labor, Family, and Marriage utilitarianly close to the population acted as a legislative guarantee of the Soviet state. The transition to a new economic policy changed the attitude of the authorities to law. The new historical situation, the accumulated voluminous legal material, and the existing problems actualized the legislative activity, which was performed with consideration of the Russian and world positive experience. Z. V. Tettenborn wrote, "It was necessary to thoroughly study Russian and foreign literature and formulate the new revolutionary Soviet legislation in a concise and clear manner" (Tettenborn, 1967, p. 134).

The result of active codification work was the adoption of seven codes in 1922–1923: Civil, Civil Procedure, Land, Forestry, Criminal, Criminal Procedure, and Labor Codes. Unfortunately, there is little documentary evidence of the creation of codes, but there is no doubt that they filled the legal void, had a high level of legal technique, and created new legislation using proven *building* materials.

With the formation of the USSR, codification began to be performed with consideration of the Fundamentals of Legislation of the USSR and the Union Republics in various industries. Further lawmaking and systematization of the relevant legislation in the republican codes were undertaken on their basis. Large-scale codification work began only in the late 50s. The Great Patriotic War and complex transitions from Stalin's rule to a more liberal one delayed this process. For example, work on the Fundamentals of Civil Legislation of the USSR and the Union Republics began in 1938 and ended in 1957–1961, while work on the Fundamentals of Criminal Legislation started in 1939 and ended in 1958.

The emergence of an unusual *basis-code* tandem determined the originality of the second Soviet codification and required serious efforts to resolve the legal and technical issues of their combination.

However, as rightly noted, the high quality of the technical and legal preparation of the new codified acts compensated for the not too fast pace of their creation (Rakhmanina, 1982).

The emergence of codes determined the structure of the Soviet legal system and became a rule – a principle that contributed to the development of law. The codification works of the Soviet period were distinguished by ideological orientation, a high level of organization, and sound legal techniques. The development of the modern Civil Code of the Russian Federation occurred based on consideration of the best traditions of Russian pre-revolutionary and Soviet legislation. An example is the democracy of the new laws of the Foundations of 1961 *On the Protection of the Honor and Dignity of a Citizen* and *On the Inadmissibility of the Eviction of Citizens from Residential Premises*.

The codes of the Soviet period contain a variety of materials for analysis and conclusions. In particular, the Code of Laws on Marriage, Family, and Guardianship of the RSFSR of 1926 is one of the most liberal in the history of Russian family law.

Soviet legislation is very far from modern ideas about law, but the legal technique of the codification work performed was distinguished by perfection and skill (Ovchinnikov, Kravchenko & Mamychev, 2019).

The formation of the new Russian state and the intensification of lawmaking activities after the adoption of the Constitution of the Russian Federation in 1993 made it necessary to perform codification as a necessary condition for the unity of the legal space. Historical experience shows that “the instability and fragmentation of the legal system, as well as numerous contradictions and collisions in normative legal acts, <...> open up a wide scope for ambiguous interpretation and, consequently, arbitrary application of legal norms” (Makovsky, 2010, p. 5).

#### **4 Discussion**

It is well known that “codification is the highest form of systematization of laws and other regulations that govern public relations and the creation of a unified body of laws (code) separating existing laws from outdated and inactive ones” (Georgieva, Georgiev & Orlov, 2013, p. 226).

In current conditions, codification, being not only a legal practice, acquires the significance of a strategic problem aimed at modernizing the Russian legal system and Russia. The issues of systematization of legislation are reflected in the works of foreign and domestic scholars, which highlight the role, methods, main directions, and difficulties of the codification process. Elimination of existing shortcomings and improvement of work on codification make it necessary to conduct a historical and legal analysis of codification work in Russia.

The theoretical basis of the research was legal scholars’ works on the general theory of law. Works *tied* to a particular industry and analyzing individual codes and institutions were of undoubted interest.

However, in jurisprudence, there is a clear tendency to consider the law and its codification in legal and broader aspects. An example is the works of A. P. Chashchin (2012) and Ya. A. Emirsultanov (2017) since they successfully combine the analysis of the political and economic context and regulatory legal acts.

Unfortunately, research interest in the stated topic is clearly insufficient. The provided paper is a continuation of the tradition of historical and legal research and an attempt to scientific and informational acquaintance with an urgent and multifaceted problem, which is worthy of being the subject of consideration in a larger and more voluminous work.

#### **5 Conclusion**

Studying the history of codification work in Russia allows drawing the following conclusions.

First of all, Russian jurists were almost unanimous in recognizing the codification of law as an important but not the only form of its systematization.



Second, securing the legality and fairness of the existing system and the power of the state is the general goal of systematizing legislation in different periods of national history.

Third, the experience of performing work on the codification of Russian legislation is varied and extensive: the Codes of Laws of the Russian Empire, the USSR, and the RSFSR were created based on improving legal technology and foreign experience.

Fourth, without denying the ideological orientation of the codification work, it is necessary to note the high level of its organization. In particular, the experience of codifying civil legislation in Russia is unique – from the draft Civil Code of the Russian Empire to the creation of the Civil Code of 1922, the Civil Code of 1964, and the Civil Code of the Russian Federation with its parts adopted in 1994–2006.

Fifth, an obligatory quality of the legal system of modern Russia should be continuity, which has an analytical and creative character.

Modernization of all aspects of life allows comprehending the positive and negative experiences of the past and warning against mistakes in the future.

The history of the state and law of the Motherland should be appreciated by contemporaries, and research materials should be used not only in research activities but also in teaching theory, history of state and law, and sectoral legal disciplines, combining theoretical and educational components.

The method of continuous codification has become a trend in modern legal development. The words of Yu. S. Gambarov, a famous Russian civilist, pronounced more than a hundred years ago, are still relevant today:

The work of law never ends. It is better to say that it always resumes. The progress of ideas, the needs of the practice, the suggestion of various interests give rise to new ideas every day. <...> Therefore, by fixing those ideas of law, the justice and usefulness of which have already been recognized, in a clear, simple, and concise language and providing those ideas, the justice and usefulness of which are still disputed, to free discussion, codification ensures the stability and progress of law simultaneously and to the correct extent (Gambarov, 1911, p. 149).

Systematization and codification of legislation is a matter of legal technique, the effectiveness of a specific legal system, and the basis for the formation of legal policy. This task is difficult, but the prospect of society and the state largely depends on its solution.

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