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As a manuscript



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**CODIFICATION TECHNOLOGY IN THE RUSSIAN EMPIRE
IN THE SECOND QUARTER OF THE XIX – BEGINNING OF THE XX
CENTURIES**

Specialty: 5.1.1 Theoretical and historical legal sciences

ANNOTATION

dissertation for the degree
of candidate of legal sciences

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Relevance of the research topic. The growth rate of the normative array and the dynamics of its change in modern states actualize the implementation of codification as a reliable, time-tested technology for ensuring the systemic unity and integrity of legislation. Codification not only contributes to the systematic construction of positive law, but also strengthens the state, giving uniformity and certainty to the organization of public law and order. The effectiveness of codification is explained by the fact that, being an integral part of the national legal and cultural tradition, it also has the properties of universality. The techniques accumulated in the course of its historical implementation include a wide range of methods, rules, procedures, means and techniques that can be used in different historical periods and in different national legal systems. The study of the history of codification demonstrates the multiplicity of its types and forms among European, Asian, African, Arab peoples, reflecting the cultural and civilizational diversity of the world. Codifications are carried out by individuals (unofficial) and on the initiative of the state (official). Its purpose may be to form a national code or to streamline the regulatory array in certain areas.

With the help of codification, reforms are carried out and (or) the use of the regulatory array is simplified. Its effectiveness is proven by the fact that in the last century, countries that were previously skeptical about it, for example, representatives of the Anglo-Saxon legal family of England and the USA, have been involved in codification.

The global trend towards an increase in the array of regulatory acts is also characteristic of the Russian Federation (hereinafter referred to as the RF). The system of modern Russian legislation includes millions of various regulatory legal acts (hereinafter referred to as NPA) and their growth does not stop. This situation complicates the achievement of the goal of the state policy of the Russian Federation aimed at forming a single Russian legal space.

Of particular scientific and practical interest is the technique of codification of legislation to bring it into systemic unity. Despite the fact that codification work has been carried out in Russia for almost four centuries, special studies devoted to the

technique of codification are rare in domestic legal science. As a result, there is a confusion of codification and legislative activities, which prevents the identification of specific characteristics of codification, the distinction between codified acts and other normative legal acts. The historical experience of codification in Russia demonstrates the complexity and uniqueness of codification work, which presupposes the presence of appropriate competencies, experience and skills of codifiers. The formulation of the goal and objectives, plan and methodology, the choice of the codification body and the rules of its work, the method of interaction of codifiers with the legislative body, the development of the structure and content of the codified act require special knowledge. Their acquisition and increase, as it seems, is associated primarily with the study and scientific understanding of national historical forms of codification. Since the success of codification presupposes a critical analysis and generalization of previous experience and the improvement of the technique of its implementation on this basis.

The object of the dissertation research was social relations, socio-political phenomena, connections and ideas in the sphere of formation of political will and theoretical approaches to the implementation of general imperial codification and their practical implementation in the Russian Empire.

The subject of the dissertation research was the goals, objectives, rules, techniques, methods of general imperial codification, scientific views on codification activities and legal norms regulating its implementation, as well as the choice of codification bodies and the organizational and legal foundations of their work in the Russian Empire in the second quarter of the 19th - early 20th centuries.

The purpose of the dissertation research is to scientifically substantiate the uniqueness of the codification technique that developed during the codification work in the second quarter of the 19th – early 20th centuries in the Russian Empire, to determine the main elements and stable ideas about the codification technique that retain scientific and practical significance in the context of modern Russian codification.

The implementation of the set goal is achieved by solving the following **tasks**:

- to determine the significance of codification work on the Code of Laws of the Russian Empire for the formation of scientific ideas about codification and the technique of its implementation;

- to reveal the main provisions of scientific criticism of the Code of Laws of the Russian Empire and their influence on the improvement of the codification legal technique;

- to characterize the content of the codification technique of the Second Section of His Imperial Majesty's Own Chancellery in the preparation of continuations and reprints of the Code of Laws;

- to show the influence of the Great Reforms of the second half of the 19th century on the technique of codification of branches of Russian law;

- to highlight the features of the technique of implementing codification work by bodies under the State Council from 1883 to 1906;

- to determine the state of codification technique after the adoption of the Fundamental Laws of April 23, 1906.

The scientific novelty of the dissertation consists in the scientific substantiation of the independent legal significance of the codification technique based on the experience of codification works in the second quarter of the 19th – early 20th centuries, the definition of the main elements and stable ideas about the codification technique that have scientific and practical significance for the implementation of modern Russian codification, which, in particular, is confirmed by the achievement of the following scientific results:

- using the example of codification works of the second quarter of the 19th century, the shortcomings of the formal approach to codification as a way of systematizing legislation are revealed, the main one of which is the lack of substantive criteria for distinguishing between various ways of organizing regulatory material and establishing the relationship between them. Based on the experience of developing the Code of Laws of the Russian Empire, the expediency of a broad approach to defining codification as a technology for the formation of a legislative

system, with the help of which it develops on a uniform legal basis for a comfortable and safe life together of people, is substantiated;

- the contribution of critics of the Code of Laws to the development of the codification technique is determined. Based on the works of M.M. Speransky, M.A. Korf, E.A. Nefedieva, S.V. Pakhman, N.N. Rennenkampf, A.N. Filippov and other critics of the Code of Laws formulated legal and technical rules for conducting codification work;

- disclosed the content of the codification technique formed by the Second Section of His Imperial Majesty's Chancellery during the preparation of continuations and reprints of the Code of Laws, as well as drafts of sectoral codified acts. Using the example of the Second Section, the effectiveness of codification work by a body specially created for this purpose, which is in close contact with and under the control of the highest bodies of state power, is proven;

- factors that influenced the change in codification technique in the codification bodies under the State Council from 1883 to 1906 are identified. It is established that the incorporation of the Codification Department, and then the Section of the Code of Laws into the structure of the State Council limited the independence of the codification body, but did not reduce the discretionary powers of the codifiers. It is shown that the restraint of codification by conservative political goals leads to its bureaucratization and a decrease in the level of its technology. As a result, codification in the early twentieth century became a brake on the legal development of Russia;

- the state of the codification technique after the adoption of the Fundamental Laws of April 23, 1906, its positive and negative sides are determined. Such features of the codification technique as a protective and political nature, inconsistency, «supra-legal» state and practice-oriented nature are highlighted. The differences between the legislative and codification procedure for changing legislation are determined. It is established that the clerical and editorial technique of continuing the Code of Laws hindered the development of the legislative path of changing Russian legislation.

The scientific and theoretical significance of the dissertation research is determined by the fact that the obtained scientific results fill the gaps in the field of historical and legal knowledge concerning the evolution of scientific approaches to the technique of codification and the implementation of codification works. The collected and scientifically processed historical and legal material can be used in further scientific research devoted to the history of Russian codification. The generalized experience of codification works in the second quarter of the 19th – early 20th centuries allows us to distinguish between the legislative and codification methods of changing legislation and to understand the technical features of their implementation. The research materials can be used to form a separate direction of research into legal technique – the technique of codification («codistics»).

The practical significance of the dissertation is that the scientific results of the study can be used as a basis for developing a methodology for conducting codification work in modern conditions. The work substantiates the feasibility of creating a permanent codification body for conducting codification work, identifies structural elements of the codification technique and best practices for its implementation using a historical example of the second quarter of the 19th - early 20th century. The materials of the dissertation research have been introduced into the educational process at the South-Russian Institute of Management, a branch of the RANEPA under the President of the Russian Federation, and are used in studying such disciplines as «History of the State and Law of Russia», «Theory of State and Law», «Modern Problems of Legal Knowledge».

The methodology of the dissertation research is based on the general scientific dialectical doctrine of the interrelation and interdependence of social phenomena, the associated systems approach to law and the principles of historicism, scientific objectivity and justice. Systemic ideas about law are used to consider the codification of law as an integral object of knowledge. Its study is carried out using general scientific methods of analysis, induction, deduction, synthesis, generalization, comparison, classification. Their application ensured objectivity, consistency and coverage of all aspects and connections in the study of

the technique of codification activity. The features of the construction and the main elements of the Code of Laws and other codified acts adopted in the period under review are revealed using the structural and functional method. The constructiveness of scientific criticism of codification works in the second half of the 19th - early 20th centuries is determined using the methods of scientific criticism, historical reconstruction, retrospective analysis, as well as the comparative legal method. The comparison of scientific views on the concepts of «codification», «systematization», «incorporation», as well as the identification of the legal nature of the Code of Laws was carried out using specific scientific methods, namely dogmatic, systemic-structural, formal-legal. The method of chronological historical-legal analysis made it possible to determine the periodization of codification activities in the second quarter of the 19th - early 20th centuries, the main stages of codification work, and to establish the chronological sequence of substantive and organizational changes in the technique of codification.

The provisions of the dissertation research submitted for defense:

1. The Code of Laws of the Russian Empire became the most significant result of codification works in the second quarter of the 19th century. The experience of its creation is a historical example confirming the limitations of the formal approach to codification as a way of systematizing legislation, as well as the existence of significant differences between lawmaking and codification. During the development of the Code of Laws, the technique of Russian codification began to take shape. It developed both empirically and theoretically, relying on the latest achievements of Western European legal science.

By the middle of the 19th century, the structural elements of the technique of Russian codification had generally taken shape, namely the plan and methodology of work, the goals and theoretical foundations of codification, the methods and rules for organizing regulatory material, the choice of the codification body, its structure, the order of work and interaction with government bodies, the determination of the form of codification acts and their structure, the method of presenting legalizations in them. The Code of Laws, compiled on the basis of the plan and certain general

principles and provisions, brought Russian legislation into a system. The compilation of the continuations of the Code of Laws gave systematicity, integrity and unity to legislative activity in the Russian Empire up until 1857.

2. Criticism of the Code of Laws differs in the level of professionalism of the critics, in the nature of the assessments given to the results of the conducted codification of legislation, in the degree of constructiveness and scientific validity of the comments made about the Code of Laws and the activities of its compilers. The shortcomings of the Code of Laws identified by critics primarily reflected the imperfections of Russian reality. After the Code of Laws came into force, a balanced approach prevailed in science, consisting in the recognition of its advantages and shortcomings. Constructive comments from scientific critics made it possible to form a plan, procedure and methods for finalizing, correcting and supplementing the Complete Collection and the Code of Laws, as well as to formulate the rules of codification work, which were legislatively enshrined in 1885.

3. After the Code of Laws came into force, the Second Section continued codification activities in two directions: development of the Code of Laws for its actualization and convenience of practical application and implementation of sectoral codifications. Personal participation of Nicholas I and Alexander II in the codification work, the correct choice of the Chief Managers of the Second Section, their high professionalism and direct participation in the work on drafting codified acts contributed to the high efficiency of codification. The continuous work of the Second Section from 1826 to 1883 not only led to the emergence of the Russian legislative system, but also to the formation of highly qualified legal personnel, the development of legal education and science, the accumulation of experience in codification work and the formation of the technique of the codification procedure for changing legislation. The technique of codification was complex and included the formation of the goal (establishment of a systematic connection and unity of laws in the form of a code), tasks, theoretical foundations and methods of codification, selection of the composition of codifiers and the organizational form of their activities, development of the procedure and rules of work, interaction and

consultations with authorities and other organizations interested in carrying out codification, determination of the structure and form of codification acts.

4. It has been established that it was in the Second Section that the main preparation of the projects of codified laws of the period of the Great Reforms of Alexander II was carried out. It directly developed the projects of acts of the Peasant, Judicial, Zemstvo reforms, and discussed other projects of reforms of special state significance. The institutional transformations carried out within the framework of the Great Reforms, in turn, influenced codification. The creation of bourgeois-democratic judicial and legal institutions, such as attorneys-at-law, notaries, justices of the peace, judicial investigators, and jurors, provided an institutional opportunity for conducting sectoral codifications on new legal principles that met modern political and legal doctrines and the socio-economic needs of Russian society.

5. The specific features of the codification technique from 1883 to 1906 are connected with the change in the position of the codification bodies. From a body in the system of the Supreme Administration, the codification institutions became a structure of the State Council. The gradual loss of independence of the codification bodies did not lead to a reduction in the discretionary powers of the codifiers. Russian laws were still applied according to the articles of the Code of Laws, and their revision for inclusion in the Code was carried out by the codifiers. The implementation of the task of preserving the practical applicability of the Code made lawmaking dependent on the codification procedure for changing legislation. The immutability of the purpose of codification determined its bureaucratization and formalization. An analysis of the technique of codification works since 1893 allows us to speak about the emergence of its new variety, «office codification». This technique gave originality to Russian codification and had no analogues in Western Europe.

6. The Fundamental Laws of April 23, 1906, which legally formalized the creation of legislative bodies of power in the person of the State Duma and the State Council, did not streamline the legislative process in the Russian Empire, but on the contrary, more firmly consolidated its duality. On the one hand, the legislative, on

the other - the extraordinary-decree path. They had not only a different order, but also goals. The legal basis for the legal path was the Fundamental Laws of 1906. The second path of rule-making was provided by the Code of Laws. Both of these paths went back to the supreme power of the Emperor, without whose approval no law could come into force. The office-editorial technique of continuing the Code of Laws hindered the development of the legislative path. Updating the technique of codification work concerned changing their purpose, methods and rules, broad discretionary powers of codifiers to change legislation. The most important issues of codification were developed by legal science, its positive and negative sides were determined. However, the preservation of «supra-legal» rule-making in the order of the Supreme and subordinate administration, the clerical approach to the technique of codification in the State Council, and the generally binding significance of the Code of Laws slowed down the transition to sectoral codification based on the principles of bourgeois law.

The results of the dissertation research were tested at international, all-Russian scientific and practical conferences, round tables held in the cities of Moscow, Voronezh, Yelets, Rostov-on-Don, St. Petersburg, Taganrog.

The dissertation was discussed at a meeting of the Department of Theory and History of Law and State of the South-Russian Institute of Management.

The main scientific results were published in 9 articles, including four articles in journals recommended by the Higher Attestation Commission of the Ministry of Science and Higher Education of the Russian Federation. One article was published in a publication recommended by the Academic Council of RANEPA. The results of the dissertation research were introduced into the educational process of the South-Russian Institute of Management, a branch of the Russian Presidential Academy of National Economy and Public Administration.

The topic of the dissertation research corresponds to the passport of the scientific specialty 5.1.1. Theoretical and historical legal sciences.