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Legal-Technical Objectives of The Codification of Legislation

Ashuraxunova Shahnoza Toxir qizi

Tashkent State University of Law, Doctoral Student, Tashkent, Uzbekistan

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ABSTRACT

This article provides a theoretical-legal analysis of the legal-technical objectives of codifying legislation. The author treats codification not merely as the highest form of systematizing legal norms, but as a method of qualitatively renewing the body of legislation through the special instruments of legal technique. The article examines the historical-theoretical foundations of codification, its types and forms, the experience of foreign states, and the principal legal-technical tasks of codification — eliminating contradictions between normative legal acts, filling legal gaps, ensuring terminological unity, condensing legislation, shaping its systemic structure, ensuring the stability of legislation, and simplifying law-enforcement practice. The implementation of these objectives is also analysed on the example of the codification practice of the legislation of the Republic of Uzbekistan, together with existing problems and possible solutions.

Keywords: - Codification, legislation, legal technique, systematization, code, legal norm, legal gap, legal conflict (collision), law enforcement, lawmaking, normative legal act.

INTRODUCTION

The growing complexity of legal relations accompanying social development is constantly generating the need to regulate new spheres of social life. Factors such as scientific and technological progress, the development of the digital economy, and the intensification of international legal integration are placing ever new demands on the national legal system. As a result, the number of normative legal acts is steadily increasing, which in turn gives rise to a degree of disorder, duplication, contradictions and gaps within the body of legislation. This state of affairs makes the need for codification — the highest and most complex form of systematizing legislation — increasingly urgent [7].

Codification is the process of substantively reworking the legal norms of a given field, bringing them into a single, logically coherent and internally consistent system, and adopting them in the form of a new codified normative legal act (a code, statute, foundations, etc.). Codification activity has, by its nature, two dimensions: first, it appears as a direction of legal policy and lawmaking; second, it is a technical-organizational process carried out through specific legal-technical instruments and methods. It is precisely this second dimension — the legal-technical objectives and instruments of codification — that requires separate, in-depth scholarly investigation [4].

The relevance of the topic lies in the fact that the quality of the codification process depends, above all, on how scientifically grounded the legal-technical instruments applied within it are. If the requirements of legal technique are not observed during codification, the resulting code, instead of resolving the very problems it was meant to solve — contradictions, gaps, and terminological uncertainty — may, on the contrary, generate new ones. This is why a comprehensive scholarly study of the legal-technical objectives of codification carries both theoretical and practical significance.

The purpose of this article is to theoretically systematize the legal-technical objectives of the process of codifying legislation, to reveal the essence and significance of each of them, to comparatively analyse the experience of foreign states, and to examine, on the example of the codification practice of Uzbek legislation, the manner in which these objectives are realized and the problems that arise.

The methodology of the study relies on formal-legal, historical-legal, comparative-legal and systemic analysis methods. These methods make it possible to present the legal-technical aspects of codification in a comprehensive manner from both theoretical and practical perspectives.

The idea of codification has traversed a long and complex evolutionary path in the history of law. Among the earliest examples of codification in ancient law are the Code of Hammurabi and the Justinian codification of Roman law (Corpus Juris Civilis). It was precisely the methods of legal technique developed by Roman jurists — the systematic arrangement of norms, the precise definition of concepts, the distinction between general and special rules — that later formed the foundation of codification theory [8].

Codification in its modern sense took shape in Europe during the eighteenth and nineteenth centuries, under the influence of the ideas of the natural-law school. The French Civil Code adopted in 1804 (the Napoleonic Code) is recognized in world legal thought as the classical example of codification. This code stands out for its concise language, logical structure and precision of concepts, and later served as a model for the codification efforts of many other states. The German Civil Code (BGB), which entered into force in 1900, in turn produced another outstanding example of codification technique, distinguished by its high degree of abstraction and systemic structure (the Pandect system) [9].

The codification of the Digest of Laws (Svod zakonov) carried out under the leadership of M.M. Speransky in the Russian Empire, as well as the codification practice of the Soviet period, also had a considerable influence on the subsequent theory and practice of codification in the post-Soviet space, including Uzbekistan. This historical experience shows that the success of codification depends, first and foremost, on the extent to which the instruments of legal technique were applied in a scientifically grounded manner [12].

Legal theory distinguishes several types of codification, which in turn leads to legal-technical objectives manifesting themselves differently in each case.

General codification is activity aimed at creating a unified, comprehensive body of codified acts covering several branches or all the principal institutions of the legal system. An example would be the process of adopting, in a consistent and mutually coordinated manner, codes for all the main branches of the legal system.

Branch codification is the process of consolidating the norms of a particular branch of law (civil, criminal, labour, family law, etc.) into a single codified act, and is the most common type of codification encountered in practice. It is precisely in this type of codification that legal-technical objectives — the consistent formation of the branch's system of concepts, principles and institutions — are most clearly manifested.

Complex codification is the process of combining the norms of several closely related branches or institutions of law, on the basis of their functional interconnection, into a single act. In such codification, the principal task facing legal technique is to harmonize concepts and methods belonging to different branches without internal contradiction.

Codification may also be classified, according to its outcome, into new codification (creating a comprehensive act that did not previously exist) and re-codification (a fundamental reworking of an existing codified act). In both cases the legal-technical objectives are essentially the same, though the means of achieving them and the degree of complexity differ [5].

Legal technique is the set of methods, instruments and rules used in lawmaking and law-enforcement activity, serving to express the content and form of normative legal acts in the most optimal manner. Legal technique includes the rules for drafting normative legal acts, legal constructions, legal presumptions and fictions, terminological devices, and methods of formalizing documents. Legal technique acquires special significance in the process of codification, since what is involved here is not mere editing, but the substantive reworking of an entire branch or institution of law and raising it to a new qualitative level [4].

The legal-technical objectives of codification are understood as the results, pertaining to the internal quality indicators of the system of legislation, that are intended to be achieved through the special methods and instruments applied in the codification process. Unlike the substantive (socio-political) objectives of legal policy, these objectives are directed immediately at the structure, logic, language and internal consistency of the text of legislation. In other words, if the objectives of legal policy answer the question of "what should be regulated," the legal-technical objectives answer the question of "how this should be achieved in the most optimal form."

In the scholarly literature, the legal-technical objectives of codification are usually grouped under the following main headings: the systematic arrangement of norms; the elimination of contradictions (collisions); the filling of gaps in legislation; the condensation of legislation through the removal of duplication; the formation of a unified conceptual-terminological apparatus; ensuring the stability of legislation; and the simplification of law-enforcement practice [14]. Each of these objectives is examined separately and in detail below.

The primary legal-technical objective of codification is to bring norms scattered across normative legal acts of various periods and levels, relating to a given field, into a single logical structure. Here, norms are arranged not arbitrarily, but according to the principle of moving from the general part to the special part, and from general institutions to specific ones. As a result, the structural composition of the code (sections, chapters, paragraphs, articles) forms a system with a coherent internal logic that is comprehensible to the reader and to the law-enforcer [8].

In pursuing the objective of systematization, codifiers usually rely on either the "Pandect" or the "institutional" model of systematization. In the Pandect system, a general part (rules common to all institutions) is placed first, followed by special parts. In the institutional system, norms are divided into large blocks such as subjects, objects and claims. The choice between these models depends on the particular features of the branch of law concerned and on national legal traditions. The quality of systematization is, in turn, the principal factor determining the convenience of using the code and its internal logical consistency.

In the course of the development of legislation, it is a natural phenomenon for substantive inconsistencies and mutually exclusive provisions to arise between normative legal acts adopted at different times. Identifying and eliminating such collisions is regarded as a distinct legal-technical task within the codification process. This requires codifiers, first of all, to carry out a thorough comparative analysis of all existing norms, to identify conflicting norms, and to determine which of them conforms to the general principles of the legal system, so as to develop a single, unified rule [4].

Several types of legal collision may be distinguished: temporal collisions (between an old and a new norm), hierarchical collisions (between acts of different legal force), and substantive collisions (between acts of the same level). In eliminating all these types of collision, the codification process relies on generally accepted legal rules such as "the priority of the later norm," "the priority of the special norm" and "the priority of the norm with higher legal force." However, the principal advantage of codification is that it eliminates the collision at its root — by developing a single, precise norm — rather than merely requiring these rules to be applied.

Analysis of existing normative material during codification frequently reveals the existence of relations that require regulation but are not reflected in any norm. One of the legal-technical objectives of codification is precisely to identify such gaps on a scientifically grounded basis and to fill them with new norms. Although this process is closely linked to lawmaking as such, the technical task of codification consists specifically in filling the gap within the existing system, in a manner consistent with its structure and logic [11].

There exist specific methods for identifying gaps: comparative-legal analysis (studying how analogous relations are regulated in the legislation of other states), analysis of law-enforcement practice (identifying the difficulties encountered by courts and other bodies owing to the absence of a precise norm on a given issue), and socio-legal monitoring. It is through these methods that gaps identified during codification are systematically eliminated, which — unlike filling a gap through the adoption of a separate law — ensures that the new norm is organically integrated into the entire system of the code.

Over time, the adoption of several normative legal acts addressing the same matters leads to the repetition of identical or nearly identical norms. This burdens the body of legislation and makes it more difficult to use. An important legal-technical objective of codification is to eliminate redundant, repetitive and obsolete norms, bringing legislation into a condensed yet substantively complete form.

In the process of condensation, special instruments of legal technique are used — blanket norms, reference norms, and generalized definitions. Rather than repeating the same rule in full each time, these instruments make it possible to significantly reduce the volume of the text by referring to it. At the same time, condensation must not be taken to excess, that is, it must not compromise the clarity and comprehensibility of the norm — this represents an important balance that codifiers must maintain [14].

The qualitative development of any branch of law depends on how precisely and consistently its conceptual-terminological apparatus has been elaborated. One of the important legal-technical tasks of codification is that it provides unified, precise and unambiguous definitions of legal concepts and terms, and ensures that they are applied consistently throughout the entire text of the code. This, in turn, reduces the risk of divergent interpretation of norms and ensures uniformity in law-enforcement practice.

One of the principal means of achieving terminological unity is to provide statutory definitions of key concepts in a dedicated article (usually in the first chapter) of the code. Such definitions ensure that the same meaning is applied not only within the code itself, but also in other normative legal acts relating to the same field. In addition, ensuring correspondence between foreign and national terms, and replacing archaic or ambiguous terms with modern, precise ones, is also an important legal-technical task in the codification process.

One of the important, though often overlooked, legal-technical objectives of codification is ensuring the stability of legislation. Whereas it is relatively easy to make frequent amendments to numerous scattered normative legal acts, a unified codified system, owing to its internal interconnectedness, resists ill-considered or unsystematic amendments. The fact that any amendment must take into account its effect on the entire system of the code encourages lawmakers to adopt a more responsible and systemic approach [13].

At the same time, stability of legislation does not mean rendering it entirely immutable. On the contrary, a codified act must be periodically improved, in line with the development of social relations, but in a systematic and scientifically grounded manner. From this point of view, the legal-technical objective of codification consists in ensuring an optimal balance between change and stability.

One of the ultimate legal-technical objectives of codification is to ensure the convenience of using the finished codified act. This is achieved through the consistent structural arrangement of norms, the use of clear and comprehensible language, the simplification of the system of cross-references, and, where necessary, the inclusion of explanatory norms. As a result, it becomes considerably easier for law-enforcement bodies, as well as for citizens, to find, understand and apply the norms of legislation.

Moreover, in modern conditions, the presentation of codified acts in electronic form, equipped with search functions and cross-referencing systems, is also regarded as an important technical means of simplifying law enforcement. This is of particular practical importance when working with extensive codes such as the Tax Code or the Civil Code [11].

A comparative analysis of the experience of foreign states makes it possible to identify various models for achieving the legal-technical objectives of codification. In states belonging to the continental legal system (France, Germany, Austria, Switzerland), codification has traditionally been characterized by a high degree of abstraction and systematic organization. In such states, codes are typically divided clearly into general and special parts, based on a carefully developed conceptual system [9].

In states belonging to the Anglo-Saxon legal system (the United Kingdom, the United States), codification is not employed as widely as in the continental system, although in certain fields — for example, the civil codes of some U.S. states, or the Uniform Commercial Code — codification practice does exist. The legal technique of such acts has developed in close connection with judicial practice, and they tend to have a more practical and advisory character.

Among the member states of the Commonwealth of Independent States, including Uzbekistan, Kazakhstan and Russia, codification practice has, on the whole, retained a strong influence of the continental legal tradition and, in particular, of the Soviet-era codification experience. At the same time, in recent years these states have shown a tendency to harmonize their codified acts with international standards, including the legal instruments of the European Union, which is further enriching national codification theory and practice.

During the years of independence, the Republic of Uzbekistan has carried out extensive work in codifying its legislation. The adoption of codes in the fields of civil, criminal, labour, family, tax, budgetary, economic procedural, administrative procedural and many other areas may be regarded as the practical realization of the legal-technical objectives outlined above. In particular, these codes have eliminated contradictions that existed in the previously scattered normative legal acts, filled gaps, and formed a unified conceptual apparatus for the relevant field.

In particular, the adoption of the Civil Code of the Republic of Uzbekistan made it possible to bring together, into a single system, norms regulating civil-law relations that had previously been scattered, and to give legal form to new institutions that emerged under market-economy conditions (for example, new types of contract and forms of ownership). The adoption of the Criminal Code and the Code of Criminal Procedure brought the rules governing criminal liability and criminal proceedings into a unified, internally coherent system [6].

At the same time, given the rapid renewal of legislation and the development of socio-economic relations, the numerous amendments and additions introduced into certain codified acts may affect their internal systemic coherence and terminological unity — a matter that also deserves particular theoretical attention. In practice, the accumulation of numerous amendments has led to increasingly complex article numbering (for example, the appearance of additional articles such as "Article 1-1" or "Article 1-2"), and, on occasion, to terminological inconsistencies between different articles. This, in turn, points to the need for periodically improving the codification process, that is, for developing new, scientifically grounded editions of codified acts.

Furthermore, the normative legal acts adopted in the Republic of Uzbekistan on systematizing and codifying legislation, including legislation on lawmaking technique, serve to further strengthen the legal foundations of this process. Such acts establish requirements for the preparation, structure, language and terminology of normative legal acts, which constitutes an important guarantee for improving the quality of the codification process [2].

An analysis of the codification process in the Republic of Uzbekistan reveals a number of theoretical and practical problems. First, amendments introduced into codified acts are not always subjected to sufficiently systematic scientific expert review, which may result in some amendments conflicting with the general logic of the code. Second, certain difficulties remain in ensuring terminological and substantive consistency between different codes (for example, between the Civil Code and the Code of Economic Procedure).

Third, the shortage of qualified specialists in the field of legal technique, and the insufficient level of scientific and methodological support for codification activity, may also be identified as problematic aspects. Fourth, there is a need to organize broader public and scholarly discussion of codified acts prior to their adoption, which would make it possible to identify and eliminate possible shortcomings in a draft code in advance [5].

In order to address the problems outlined above, the following proposals may be put forward: first, to introduce a mandatory legal expert-review mechanism assessing the impact of any amendment on the entire system of a code before it is introduced; second, to strengthen the activity of specialized scientific-methodological centres in the field of codification; third, to create a unified electronic database of concepts ensuring terminological consistency across codes; and fourth, to expand the practice of subjecting draft codified acts to international scientific expert review.

Successfully achieving the legal-technical objectives of codification depends, to a large extent, on the stages through which the process is carried out. In legal theory, the codification process is usually studied as consisting of several consecutive stages, which makes it possible to manage and monitor the process scientifically.

At this stage, the entire body of existing normative legal acts relating to the field being codified is identified, and a comprehensive analysis is carried out. The principal task of the analytical stage is to determine the quantitative and qualitative composition of the existing normative material and to record the contradictions, duplications and gaps it contains. At this stage, law-enforcement practice, judicial statistics and the results of social surveys are also studied, since it is practice that most clearly reveals problem areas [11].

Following the analytical stage, the overall concept of the act to be codified is developed. This determines the structural model of the future code (the Pandect or institutional system), its basic principles, its conceptual apparatus, and other fundamental aspects. The concept is usually subject to broad discussion involving the scholarly community, practising lawyers and interested state bodies, which enhances the scientific soundness of the future code.

On the basis of the concept, the actual text of the code is drafted. At this stage, all the instruments of legal technique — the systematic arrangement of norms, the provision of definitions, the use of legal constructions, and ensuring precision and consistency of language — are applied. The drafting stage is usually the longest and most demanding in terms of expertise, since it is precisely at this stage that theoretical ideas are given the form of concrete legal norms.

The drafted code undergoes legal, linguistic, anti-corruption and other forms of expert review. In addition, the draft is discussed by scientific institutions, practising lawyers and the broader public. The legal-technical significance of this stage lies in the fact that it makes it possible to identify and eliminate any remaining contradictions, gaps or terminological inconsistencies in the draft before its adoption.

At the final stage, the code is adopted by the legislative body and officially promulgated. This stage also resolves questions concerning the entry into force of the code, transitional provisions (where necessary), and the harmonization of other related normative legal acts. Frequently, at the same time as a new code is adopted, a separate law is passed declaring previous normative legal acts, or particular parts of them, that conflict with the new code to be no longer in force, thereby preventing duplication within the system of legislation [2].

A fuller understanding of the legal-technical objectives of codification requires comparing it with other forms of systematizing legislation — incorporation and consolidation — since each of these forms performs a different legal-technical function.

Incorporation is the process of arranging normative legal acts externally (formally), without altering their content, that is, compiling them into collections in chronological or thematic order. Unlike codification, incorporation introduces no changes to the substance of the norms and does not eliminate contradictions or gaps — it is simply a technical exercise aimed at making it easier to find and use existing material. The legal-technical objectives of incorporation are therefore considerably more limited than those of codification, encompassing only systematization and, to some extent, condensation [10].

Consolidation is the process of combining several normative legal acts on the same subject into a single act, without substantively altering their content. Consolidation occupies an intermediate position between codification and incorporation: unlike incorporation, several acts are merged into one and certain technical duplications are eliminated, but, unlike codification, the substance of the norms is not fundamentally reworked and no new conceptual system is created.

Comparing these three forms shows that codification is the deepest and most complex form of systematization, representing a unified process directed not merely at external arrangement, but at substantive reworking, the elimination of contradictions, the filling of gaps, and the creation of a new conceptual system. It is precisely this feature that makes codification the most effective, yet also the most resource-intensive, method of improving legislation.

It is worthwhile to separately analyse the specific instruments used to achieve the legal-technical objectives of codification, since it is precisely through these instruments that the objectives described above are put into practical effect.

A legal construction is a model, developed in legal scholarship and practice, that reflects the typical structure of a legal phenomenon, making it possible to express complex legal relations in a concise and comprehensible form. Concepts such as "contract," "liability" and "ownership right," for instance, are in fact complex legal constructions through which numerous specific situations are reduced to a single generalized model. The use of legal constructions in codification significantly reduces the volume of the text and strengthens the logical connection between norms [14].

A legal presumption is the statutory establishment of an assumption regarding a fact whose correspondence to reality is highly probable, dispensing with the need for special proof (for example, the presumption of innocence). A legal fiction, by contrast, is a device whereby a circumstance that does not actually exist, or is uncertain, is treated as existing for legal purposes. The use of these instruments in codification simplifies legal regulation, distributes the burden of proof reasonably, and ensures the stability of legal relations.

As noted above, codified acts provide statutory definitions of key concepts in a dedicated article or chapter. In formulating definitions, legal technique imposes a number of requirements: a definition must be precise, concise, must not be explained through other vague concepts, and must not be self-referential. A high-quality system of definitions is the principal instrument ensuring that a code is interpreted uniformly throughout its entire text.

Blanket norms are norms that, instead of establishing a specific rule, refer to another normative legal act or to an act to be adopted in the future. Reference norms, by contrast, refer to another article within the code itself. Both instruments are used to avoid repeating text and to condense the code; however, since excessive use of them may complicate the understanding and use of the code, they should be applied with caution [14].

In recent years, the rapid development of information and communication technologies has also had an effect on the codification process. Under modern conditions, in addition to traditional instruments, new approaches based on digital technologies are increasingly being used to achieve the legal-technical objectives of codification.

In particular, the use of artificial intelligence and big-data analysis tools now makes it possible to conduct an automated analysis of the entire body of existing normative legal acts and identify contradictions and duplications among them. This, in turn, reduces human error and improves the quality of analysis at the preparatory stage of codification. In addition, presenting codified acts in electronic form, equipped with cross-references, search functions and analytical systems, is an important modern instrument serving the objective of simplifying law-enforcement practice [15].

At the same time, it must be emphasized that the use of digital tools cannot fully replace the creative-intellectual essence of codification. Determining the substance of norms, deciding how to resolve contradictions, and determining how to fill a given gap are, ultimately, matters that remain dependent on the scientifically grounded judgment of legal specialists. Digital technologies can serve in this process only as an auxiliary, data-preparing instrument.

In order to objectively assess the extent to which the legal-technical objectives of codification have been achieved, it is necessary to develop a scientifically grounded system of criteria. These criteria should, first and foremost, be directed at measuring the internal quality indicators of a code.

The first criterion is the degree of systematization, that is, the logical coherence between the sections, chapters and articles of the code and their conformity to the overall structural principle. The second criterion is the degree of consistency, that is, the extent to which the code is free of collisions, both internally and in its relationship with other normative legal acts. The third criterion is the degree of completeness, that is, the extent to which the relevant social relations are covered by the code and the absence of gaps [10].

The fourth criterion is terminological consistency, that is, the uniform application of key concepts throughout the code. The fifth criterion is the ease of practical application, that is, the extent to which the code is easy or difficult for law-enforcement bodies and citizens to use, which may, among other things, be assessed by analysing the number of judicial disputes arising from the interpretation of the code's norms. The sixth criterion is the degree of stability, that is, the number of amendments introduced into the code over time and the extent to which they conform to the code's overall system.

The regular application of this system of criteria — that is, the periodic monitoring of existing codes — makes it possible to objectively assess how effectively the codification process is proceeding from a legal-technical standpoint, and to plan future improvement measures on a scientifically grounded basis.

CONCLUSION

In conclusion, the legal-technical objectives of codifying legislation — unlike the substantive tasks of legal policy — are directed immediately at the quality indicators of the text of legislation: its systematic character, internal consistency, freedom from contradiction, completeness, conciseness, terminological unity and stability. These objectives constitute the technical-methodological foundation of the codification process. Historical and comparative-legal analysis shows that the success of codification depends, to a large extent, on the degree of consistency and scientific soundness with which these legal-technical objectives are achieved [7].

The full and high-quality implementation of these objectives, in turn, creates the necessary conditions for the stability of legislation, the uniformity of law-enforcement practice, and the growth of citizens' legal awareness and legal culture. Although the experience of codifying the legislation of the Republic of Uzbekistan has, on the whole, produced positive results, work must continue to further improve matters such as ensuring the systematic character of amendments introduced into codified acts and maintaining terminological consistency between codes.

For this reason, the use of scientifically grounded instruments of legal technique in the codification process, together with the improvement of the scientific-methodological support system for this process, remains a relevant issue for legal theory and practice, and constitutes a promising direction for future research.

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