


# CODIFICATION OF LEGISLATION IN VARIOUS LEGAL SYSTEMS

## CODIFICACIÓN DE LA LEGISLACIÓN EN DISTINTOS SISTEMAS JURÍDICOS

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### ABSTRACT

This current article makes an attempt to provide a comparative analysis of the codification of legislation in various legal systems. The authors analyze the features of the systematization of legislation in the countries of the Romano-Germanic and Anglo-Saxon legal systems. Several general scientific methods and the methods of logical cognition are utilized in the study, including analysis and synthesis, systemic, functional and formal-logical approaches. Based on the results of the study, it can be concluded that it is the continental legal tradition that is most conducive to codification activity. The low volume of statutory legal norms in the Anglo-Saxon legal system impedes codification, but provides adequate regulatory flexibility. At the same time, recently in common law countries there has been a tendency to increase the share of statutory law in the regulation of public relations. In this regard, the importance of codification work increases in the systematization of legislation.

**Keywords:** systematization of legislation; continental law; Roman-Germanic legal system; Civil law; Anglo-Saxon legal system.

Revista de Investigaciones Universidad del Quindío,  
34(S2), 358-364; 2022.

ISSN: 1794-631X e-ISSN: 2500-5782

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## RESUMEN

Este artículo actual intenta proporcionar un análisis comparativo de la codificación de la legislación en varios sistemas legales. Los autores analizan las características de la sistematización de la legislación en los países de los ordenamientos jurídicos romano-germánico y anglosajón. En el estudio se utilizan varios métodos científicos generales y métodos de cognición lógica, incluidos enfoques de análisis y síntesis, sistémicos, funcionales y lógico-formales. Con base en los resultados del estudio, se puede concluir que es la tradición jurídica continental la que más conduce a la actividad codificadora. El bajo volumen de normas legales estatutarias en el sistema legal anglosajón impide la codificación pero proporciona una flexibilidad regulatoria adecuada. Al mismo tiempo, recientemente en los países de common law ha habido una tendencia a aumentar la participación del derecho escrito en la regulación de las relaciones públicas. En este sentido, la importancia del trabajo de codificación aumenta en la sistematización de la legislación.

**Palabras clave:** sistematización de la legislación; derecho continental; ordenamiento jurídico romano-germánico; derecho civil; ordenamiento jurídico anglosajón.

## INTRODUCTION

A review of some codifications carried out at different historical stages of the development of society, as well as in various legal systems, shows ambiguous approaches to understanding the phenomenon of codification. The general beginning is that it is an operation to bring heterogeneous legal norms into the form of a single whole (Ulugbek & Yuldashevich, 2019).

The relevance of comparative analysis of the process of codification of legislation is due to the fact that the process of convergence of legal systems is currently underway. First of all, this applies to the countries of the Romano-Germanic (continental) and Anglo-Saxon legal systems. The Anglo-Saxon system (the system of common law countries) has recently been increasingly filled with legislative rules that are brought into a specific system. Ultimately, this system is given a codification look. Countries of civil law, on the contrary, attach increasing importance to legal precedents (Borisov et al., 2018).

Analysis of the role and meaning of codification in various legal systems allows us to highlight common features and differing features. This will contribute to the process of unification that will inevitably be present in the coming decades. In particular, the process of unification of the civil legislation of the countries of the European Union is underway.

Proposals were made to develop a unified Civil Code of all EU countries, which should replace the national legislation of countries such as France, Germany, Austria and others. For this, it is necessary to generalize the experience of codification of various states. This is of particular importance for the unification of civil legislation, formed taking into account various codification principles. For example, in France, an institutional model of the civil code has been adopted, while Germany is characterized by a pandekis system of disposing of legislative material. The development of trade relations between the countries of the Romano-Germanic legal family with Great Britain and the

United States of America necessitates the convergence of continental legislation with the legal system of common law. To date, many aspects of the issue under consideration have already been studied in the legal scientific literature for quite a long time (Dainow, 1966; Rohaedi, 2018; Borisov et al., 2018). Codification as one of the forms of systematization of legislation is perceived and implemented in different ways in various legal systems of our time. Within the framework of this article, we consider it necessary to analyze the approaches to codification within the framework of the Romano-Germanic legal family, as well as the Anglo-Saxon legal system.

## **METHODS**

Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, functional and formal-logical approaches. The development of conclusions was facilitated by the application of formal-legal and comparative-legal methods.

## **RESULTS AND DISCUSSION**

The study of the features of codification in various legal systems should begin with the Romano-Germanic legal family.

The presence of codification acts and high importance in the legal system, as well as the legal system as a whole, is one of the key points that delimit continental law from the law of other legal families (primarily from Anglo-Saxon law). The formation of the Romano-Germanic legal system is largely associated with the codifications of French and Germanic legislation. This process was facilitated by the fact that the main legal source, in contrast to the countries of common law, was the law. His authority in connection with the Great French Revolution at the end of the 18th century only increased. It was the codification of legislation that became the last stage in the formation of the legislation of the countries of the continental legal system.

Among the most significant features of Romano-Germanic law, which determine the high value of codification, are the following.

Firstly, the main source of law is a normative act as an official written document of the established form, adopted by the authorized body. Sims (2018) calls the states belonging to this legal family, the countries of «written law». The author says that in these states, lawyers work with the texts of laws. At the same time, the share of other sources of legal regulation occupies an extremely insignificant place.

Secondly, the key role in the formation of law is assigned to the legislator, which is a direct consequence of the special attitude to the law. It is the law-making bodies that are responsible for high-quality and consistent legislation, which is ensured through the implementation of the systematization of regulatory material. As a result, codification is considered as a kind of law-making activity, leading to the achievement of the highest form of systematization.

Thirdly, in this system, a clear distinction is made between the right to public and private, which, in turn, are divided into a number of independent legal branches. This allows, in the course of codification, to focus on individual areas and take into account the qualitative features of both the social relations themselves and the methods of legal regulation applied to them.

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Fourthly, one of the most significant features of the Romano-Germanic legal family is the extremely high level of abstraction inherent in legal norms. This is a consequence of the desire for codification, which has deep historical roots in the Romano-Germanic legal family. This is most clearly manifested in the framework of the pandectic system of presentation of codified acts.

Fifthly, the presence of large acts of codification, called codes in the main branches of law, is sometimes considered to be among the distinguishing features of the Romano-Germanic legal family. At the same time, it should be noted that the presence of such legislative acts in the states of the legal system under consideration is a consequence of all the above characteristics.

The codification of the legislation of the countries of continental Europe is remarkable in that it is divided into two types: institutional (French) and pandectic (German).

The institutional system originates from a collection of sayings by the Roman jurist Guy (2nd century AD) known as *Institutiones*. Their general system is based on the initial position that all the rights that we exercise apply either to persons, or to things (objects), or to claims. The Napoleon Codex is built on a modular basis, which makes it easier to use and improve.

The rapid process of codification at the beginning of the 19th century slowed down due to the growing influence of the historical school of law. In this context, one cannot but pay attention to the dispute between the supporters of the historical school of law and the adherents of the idea of legal positivism, which took place in German legal science in the first half of the 19th century. It is worth noting that this whole century for Germany is characterized by a period of codifications, which affected almost all spheres of society.

The history of the codification of German civil legislation during the 19th century is remarkable in that the main representatives of the historical school of law, with their works, contributed to the greatest extent to the systematization of Roman law, which became the basis for the future all-German civil codification. German legal science for most of this century was engaged in the generalization, systematization and classification of the material contained in the Code of Justinian. The system of civil law developed by them gradually departed from the purely Roman and provided the basis for all civil law. This became the basis of the pandectic (as opposed to institutional) system of presenting normative material. It was this method of constructing legislation that became the foundation for the construction of all codifications of both the Soviet stage and the modern period.

The adopted German Civil Code was a definite milestone in the history of the development of European law. This codification act contained detailed legal institutions that were formalized using new legal concepts and categories. Its differences from the Codex of Napoleon are especially remarkable (Sims, 2018).

Taking into account the fact that the principles underlying the systematics of this document had a significant impact on the legislative codification processes of the Soviet and modern Russian periods, it is necessary to give it a brief description.

First of all, it should be noted that the arrangement of the normative material was carried out according to the pandectic (German) model, which is opposed to the institutional one, embodied in the Napoleon Code. The pandect (German) system arose from the writings of famous German jurists of the 19th

century such as G.F. Puchta, B. Windsheid, G. Dernburg and others. Based on the systematization and generalization of Roman law, they developed a system of concepts that allow describing the actual situation without excessive detail. These include such as: transaction, contract, property rights, property rights, tort and others.

One of the most significant features of the pandectic (German) model is the allocation of general provisions that can be used in the regulation of public relations by the norms of any institutions of the relevant legal industry. The use of such a legal and technical technique allows you to eliminate repetitions in the text of the law, as well as to avoid the casuistic nature of the presentation of the normative text. However, this complicates understanding on the part of persons far from jurisprudence, for which the German Civil Code has been repeatedly criticized.

The pandectic (German) model, widespread on the territory of continental Europe, did not find a special response in the countries of Anglo-Saxon law (legal family of common law), which, first of all, include the United Kingdom and the United States. This is due to the fact that the institutions of Roman law were rejected by this legal system. The idea of codification, which was widely manifested on the European continent in the 19th century, practically did not affect the English legal system. We believe that this is a direct consequence of the specifics of the source basis of law, which in common law countries is represented not by written law, but by precedents (case law). Codification in such conditions is extremely difficult, since there is no single legislative center capable of systematizing and unifying legal regulations.

The legal system of common law countries is based on practical experience in the judicial resolution of legal disputes. The rendered decision, under certain conditions, becomes a model for the resolution of similar disputes in the future. As a result, according to Wienczyslaw J. Wagner, lawyers of common law countries rarely resort to abstract reasoning and generalizations, the use of which is difficult to control in practical situations (Wagner Wencelas, 1953).

In the understanding of English jurisprudence, codification is seen as a «break with tradition», while the «historical continuity» of English law is invariably emphasized. The existence of an opinion about the nature of codification that constrains development is also found in the countries of Northern Europe, namely Denmark, Norway, Finland, and Sweden. The basis of their legal system is Old Germanic law, which was not subject to the borrowing of Roman law. In these states, it is believed that codification «preserves the development of branches of law and living (judicial) law», and codified acts of continental Europe are criticized for «a large number of abstract concepts, abstract definitions and constructions that are alien to the traditional and pragmatic approach of Scandinavian judges who have adopted the American concept of the school. legal realism » (Ulugbek & Yuldashevich, 2019).

The absence of legally established normative rules of conduct in society in the Anglo-Saxon legal system provides adequate flexibility of legal regulation. Jonathan Teasdale in this regard says that after the adoption of codified regulations, judges become obliged to be guided by these rules. This blocks flexibility, which is an important element of the common law legal system. Changing the law becomes possible only through legislation. This takes quite a long time and prevents the timely improvement of the legal regulation mechanism (Teasdale, 2017).

In the countries of Anglo-Saxon law, there are also processes of systematization of regulatory acts. In different states, this process has a different degree of intensity. For example, in the United States,

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legislative acts called statutes occupy a fairly large place in the system of legal sources. In this regard, some authors note the convergence of the American legal system with Romano-Germanic law (Ulugbek & Yuldashevich, 2019), which causes the problem of its ordering. As a rule, systematization is carried out in special forms, which, from the standpoint of the domestic approach, can be regarded as a consolidation of the norms of statutory and case law.

Systematization of legislation is a universal process. Normative acts in various legal systems are systematized, however, the process and procedure for codification in different countries proceeds in different ways. The differences are most noticeable in the countries of the Anglo-Saxon and continental legal systems.

Sometimes in the countries of Anglo-Saxon law there are parts in which the legal system was originally formed under the influence of the Romano-Germanic tradition, which is manifested in the creation of sectoral codes according to the institutional or pandectic model. These are, for example, the legal systems of the Canadian province of Quebec and the American state of Louisiana. These systems are mixed because they combine case law with French law. This is a consequence of the colonial past of these territories, when they alternately came under the control of England and France. The basis of their legal system is the law, which creates the preconditions for codification in its understanding from the point of view of continental traditions. These parts of Canada and the United States have their own codified civil laws, modeled on the French model. The state of Louisiana, in turn, has a European-codified criminal as well as procedural legislation (Murillo, 2001; Verma & Sykes, 2022).

In general, we can say that the Romano-Germanic legal system is characterized by a high level of normative generalizations. This level is achieved through codification, where regulations are formulated in an abstract form. Legal terminology (Sinenko et al., 2020), human rights (Kornyushkina et al., 2017) and the balance of power (Makogon et al., 2019; Makogon et al., 2019; Makogon et al., 2017) are of great importance in this matter. However, the logical system is maintained.

## CONCLUSION

Thus, what has been said about the process of systematizing legal sources in the countries of the Romano-Germanic legal family allows us to agree that codification as one of the ways to systematize legal norms can take place according to an institutional or pandectic system. However, it should be borne in mind that the civil legislation of some European states is a symbiosis of the designated models, which is a consequence of the desire to avoid their negative sides.

In general, we can say that it is the continental legal tradition that contributes most to codification activity. In the most concentrated form, this is justified by the fact that the compared legal systems have different ideas about law. Scientific ideas about law are more characteristic of the lawyers of the countries of Romano-Germanic law. They analyze law as a set of legal norms that are in a certain system. The interpretation of the meaning of a legal norm largely depends on its place in the legal system. Continental jurisprudence strives for abstracted generalizations, which leads to the unification of legal regimes and the systematization of law in general. In contrast, lawyers in the Anglo-Saxon legal system view law as a collection of practical responses to various life situations.

**Conflict of interest:** The authors confirm that the information provided in the article does not contain a conflict of interest.

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