THE MODEL CODE OF CIVIL LITIGATION OF THE COMMONWEALTH OF INDEPENDENT STATES AS A WAY OF CIVIL PROCEDURE HARMONIZATION

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The article addresses the Model Code of Civil Litigation of the Commonwealth of Independent States (CIS) as an example of harmonization (approximation) method of civil procedural norms of the Member States of this organization. Herewith the positive and negative sides of the model law are explored, both those common for all acts of such type and those that are connected directly with the project of the Code. A conclusion on the reasons of the Code's failure is made as well as author's own opinion on the possibility of future adoption of other model-type procedural acts within the framework of the CIS.

Šis straipsnis skiriamas Nepriklausomų Valstybių Sandraugos (NVS) civilinės teisenos pavyzdiniam kodeksui kaip potencialiam šios sąjungos šalių narių civilinio proceso normų harmonizacijos (suartėjimo) būdui. Jame nagrinėjami teigiami ir neigiami pavyzdinio įstatymo bruožai: bendri tiek visiems tokio tipo aktams, tiek tiesiogiai susiję su Kodekso projektu. Daroma išvada dėl Pavyzdinio kodekso nesėkmės priežasčių. Autorius pateikia savo nuomonę dėl kitų NVS pavyzdinių procesinių aktų galimo priėmimo ateityje.

Introduction

In times of growing globalization ties between states tend to strengthen, and most of them cooperate in a number of areas. Mutual approximation of national legislation is a logical process bearing both spontaneous and purposeful character. Currently, many of the areas of municipal law are subject to *harmonization*, including such a conservative and rooted in the national traditions one as Civil Procedure. This area in present circumstances faces necessity to regulate cross-border relations. The need for harmonization there was argued elsewhere[1] and is beyond doubt, especially taking the states of one region, actively cooperating and wising to expand their interplay.

The purpose of the current article is to evaluate the possibility of procedural harmonization by means of model legislation based on one particular example – that of the Commonwealth of Independent States (hereinafter – CIS) and its particular act – Model Code of Civil Litigation. On that occasion it sets as its objectives: (1) to give a characterization of 'model law' as such (since it is vitally important to have a notion of the object of study to proceed with subsequent analysis); (2) to give a brief view of the political and legal conditions in the region of CIS that sufficiently distinguish it from such entities

[1] See: STORME, M. L'unification de la procédure civile en Union européenne: rêve ou réalité? *2d European Jurists Forum. Athens, 2009, p. 428; LINDBLOM, H. Harmony of the Legal Spheres: a Swedish View on the Construction of a Unified European Procedural Law. European Review of Private Law, 1997, Vol. 1, p. 14.*

as European Union, North American Free Trade Agreement (NAFTA), Association of Southeast Asian Nations (ASEAN) and other major regional blocs (and thus noticeably influence the directions, speed and success of harmonization in these or those areas); and (3) to show whether the model legislation may be an adequate way of harmonization and why it has gained sufficient proliferation in such regions as CIS. We will try to determine as well (4) whether the failure of the Model Code (which was never finally adopted) derives from its form and content, or is rather connected with external, political reasons and does not cast doubt on the further potential of model lawmaking.

The main object of our study is the conception of the Model Code itself (a preparatory draft on a way to eventual text), which will be accompanied by the study of other relevant model acts of CIS in procedural field for comparative purposes.

The present research has value for the law scholars of the CIS as well as other regions in both its theoretical and comparative aspects, while the conclusions on the role and importance of model-law regulation in the field of Civil Procedure bear a universal character.

The work highly relies on technical juridical and comparative methods, historical and systemic approach, analysis and synthesis, induction and deduction.

The work draws on the previous writings in the relevant field of scholars both from various CIS countries (A. Amonov, R. Dragneva, N. Chechina, V. Komarov, B. Lapin, N. Pavlova and A. Zverev) and European Union (K. Anderson, J. Kernochan, V. Mikelėnas, C.H. van Rhee and Z. Vernadaki). At the same time, we note the lack of works, systematically considering the role of the model laws in the approximation of legislation as well as providing conclusions on the aim and objectives posed by the present research. The legislative activity of CIS in the field of civil procedure remains almost unexplored in both Post-soviet and Western legal literature. This proves a great relevance and scientific novelty of the current study.

1. General Observations on the Model Acts as Harmonizing Instruments

1.1. The Concept of a Model Act

Talking about harmonization phenomenon, we have noted that it may have both spontaneous and purposeful character. The latter is impossible without legal instruments, the best known of which on international level are treaties (conventions) or (within such regions as the EU) – supranational legislation with direct effect[2]. They are of normative and binding nature, their result is a legal norm that can be compulsorily implemented on the national level. At the same time, they are not always effective in the world formed on the concept of state sovereignty and still characterized by significant differences between states[3].

Another, less hard form of harmonization is model legislation that consists in preparing and adopting by a special institution of an act with no legal power in itself, being a sample based on generalization of best practices, and giving an orientation to the national lawmaker in a particular field of relations. The latter may transpose the content of such act wholly or in part into the national law, or ignore it entirely[4].

From the definition above we may single out main features of a model act: (1) it is a method of harmonization as it serves to increase the quality of national legislation and to achieve similarity of

[2] CRAIG, P.; DE BÚRCA, G. *EU Law: Text, Cases and Materials*. Oxford, 2011, p. 180–189.

[3] ANDERSON, K. Testing the Model Soft Law Approach to International Harmonisation: a Case-Study Examining the UNCITRAL Model Law on Cross-Border Insolvency. *Australian Year Book of International Law*, 2004, Vol. 23, p. 1.

[4] ZVEREV, A. Afterword: EBRD Support for CIS Model Laws. *Review of Central and East European Law*, 2011, Vol. 36, p. 501.

regulation of particular relations[5]; (2) it is adopted, as a rule, on an international level; (3) it is based on the synthesizing of previous experience of the parties taking part in its elaboration, which allows it to achieve 'harmonizing effect' and not to impose standards in an unilateral manner; (4) it is a non-binding act and does not govern any relations *per se*[6]; (5) it serves as an example for interested states to facilitate for them the drafting of their own laws.

Different institutions and organizations are busy with making model laws, both on the national and international level. Among them are governmental institutions, interstate and intergovernmental organizations, non-commercial organizations (NGOs) as well as professional associations, research centers and collectives of scholars[7]. Model law-making is not unknown in the world: as its most known examples we can name Rules and Principles of Transnational Civil Litigation of ALI/UNIDROIT[8] and the Model Code of Civil Procedure for Ibero-America, on the basis of which the national reforms of civil litigation, manifested in successful assimilation of the common principles were undertaken[9].

1.2. The Advantages and the Disadvantages of the Model Acts

As a method of transnational harmonization of legal rules, the model acts have both their undeniable benefits and significant drawbacks. The former of them include: (1) *simplicity of adoption*. Due to their unofficial status, model laws are more willingly adopted in their final form, finding almost no resistance from the states[10]; (2) *flexibility of content* that allows states to adopt national laws on a common basis, yet with national specificities taken into account[11]. It is especially relevant when changes are required in the areas of law, closely linked to national traditions, the impact on which from the outside may be regarded as an encroachment on state sovereignty[12]; (3) credibility caused by the involvement in their elaboration of highly qualified specialists in legal field from different states that share their experience and choose the most adequate and progressive models[13].

As for the negative aspects of the model acts, the first and foremost the *lack of control over their implementation* by the addressee states must be noted. States decide for themselves what exact provisions of the model law they accept and in what form they do it; they also independently set the deadlines for implementation[14]. In that regard, we call a model law an instrument of harmonization and not of a more profound form of approximation – unification[15].

The other significant problem is the *interpretation of model law's provisions*, which is complicated in the absence of a single body, competent to ensure uniformity of law enforcement. An ordinary

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[5] MIKELĖNAS, V. The Proposed ALI/UNIDROIT Principles and Rules of Transnational Civil Procedure and the New Code of Civil Procedure in Lithuania. *Uniform Law Review*, 2001, Vol. 6(4), p. 983–985.

[6] БОШНО, С. В. Свойства права. *Право и современные государства*, 2014, № 2, с. 47.

[7] KERNOCHAN, J. Model Laws and Law Reform: The National Municipal League. *American Bar Association Journal*, 1951, Vol. 37, p. 152.

[8] GIDI, A. Notes on Criticizing the Proposed ALI/UNIDROIT Principles and Rules of Transnational Civil Procedure. *Uniform Law Review*, 2001, Vol. 4, p. 826.

[9] КОМАРОВ, В. Гражданский процесс в глобальном контексте. *Право Украины*, 2011, № 9–10, с. 294–295.

[10] ANDERSON, K. Testing the Model Soft Law Approach <…>, p. 4.

[11] ДЕМИН, А. В. Феномен „мягкого права": pro et contra. *Вестник Омского университета. Серия „Право"*, 2014, № 4(41), с. 6–10.

[12] VAN RHEE, C. Civil Procedure: A European *ius commune*? *European Review of Private Law*, 2000, p. 598–599.

[13] DRAGNEVA, R. The Reality of Models: Reflections on the CIS Model Law on the Limited Liability Company. *Review of Central and East European Law*, 2001, Vol. 27(1), p. 113.

[14] VERNADAKI, Z. EU Civil Procedure and Access to Justice after the Lisbon Treaty: Perspectives for a Coherent Approach, *Doctoral thesis*, University College London, 2013, p. 215.

[15] On the difference between harmonization and unification *see*: BOELE-WOELKI, K. *Unifying and Harmonizing Substantive Law and the Role of Conflict of Laws*. Leiden/Boston, 2010, p. 32–36.

normative act relies on the 'coercive machinery' of the state that guarantees unconditional and precise compliance with its provisions. More importantly, though, it has an organ to determine what constitutes such 'precise compliance'. A legal act is always something more than its mere text: it forms a sort of system. Model act, on the contrary, is devoid of such systemic character and remains 'fixed' in the form it was adopted; its evolutionary development is impossible.

2. Political and Legal Features of the Commonwealth's of Independent States Approach towards Issues of Civil Procedure

2.1. Commonwealth of Independent States: Peculiarities of the Region

The Commonwealth was established in 1991 after the dissolution of the USSR. It is an international community, the peoples of which occupy a significant part of Eurasian region. These peoples have common historical past, economic interests, customs, traditions and ways of life. As these nations were formerly parts of a single state, they were subject to the same legal norms, doctrine and had similar understanding of law[16]. They equally maintained an inquisitorial type of civil proceedings (with specific soviet peculiarities). In addition – all their laws on Civil Procedure (Codes) reproduced almost exactly the provisions of federal sample – 'Fundamentals of Civil Litigation of USSR' (1961)[17]. At the same time the obvious legal unity was not accompanied by ideological neutrality: the law was highly politicized. The other issue with the USSR was that one Member State – Russia (then RSFSR) had an informal superiority over other republics due to its size, wealth and location within it of the central governmental organs.

These two factors predetermined the development of legislation in the years that followed the collapse of the USSR: on the one hand, newly independent states began to reject distinctly their socialist past and to shift towards modern market relations[18]. On the other hand, most republics were afraid of the possibility to once again fall into dependence on Russia and thus assessed negatively all the projects of interstate integration that had any implications of federative or confederative organization behind them. In other words, at that period it was impossible to establish between these republics a supranational order similar to the contemporary European Union, as mutual distrust and desire to protect from encroachments their restored sovereignties was too high.

There appeared a reasonable threat for the post-soviet nations to lose their existing legal unity. However the question is why is it necessary to maintain it in the circumstances where each of the states has chosen to develop independently and according to its own goals. In our view, there is such necessity as the named states continue cooperation in a number of areas and their economic ties are not weakening, but even strengthening. In this regard, it is impossible not to put on the agenda the issue of common rules' elaboration, which presupposes some legislative convergence[19]. Such convergence was undertaken in part in the field of substantive law and there is no doubt that the law of procedure also needs it. Moreover, in order to address particular problems of international civil procedure some treaties were concluded between the CIS Member States: Kiev Agreement on the procedure for the

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[16] ПАВЛОВА, Н. Н. Сравнительный анализ источников гражданского законодательства стран бывшего СССР. *Вестник Пермского университета. Юридические науки*, 2012, № 3, с. 159.

[17] Закон СССР от 08.12.1961 об утверждении Основ гражданского судопроизводства СССР и Союзных Республик. *Свод законов СССР*, 1990, т. 10, с. 133.

[18] ЛАПИН, Б. Н.; ЧЕЧИНА, Н. А. О проблемах реформирования гражданского судопроизводства в странах Содружества Независимых Государств. *Правоведение*, 2000, № 4, с. 131–133.

[19] АМОНОВ, А. Д. Роль унификации и гармонизации законодательства в осуществлении экономических интеграционных процессов. *Вестник Таджикского государственного университета права, бизнеса и политики*, 2010, № 4, с. 23.

resolution of disputes in the field of economic relations (March 1992)[20], Minsk Convention on the legal aid in civil, matrimonial and criminal cases (January 1993)[21] and some other. They demonstrate that the states still interacted in the field of civil justice and were in need of a strong legal background to cooperate even further.

However a mutual trust may be lost in case there are significant legislative divergences that inevitably arise if the process of lawmaking is not coordinated. The enactment of new laws in the CIS states was especially intensive in the procedural sphere at the end of 1990-s when most of them prepared and adopted new Codes of Civil Procedure. These acts were not drafted with reliance to each other and without taking into account mutual interests. Each of the states wished to build up the most progressive system of civil litigation (in its view)[22].

As a result, there is now a need for approximation of national branches of Civil Procedure, which is almost impossible in its 'hard' form, meaning that the desired result may be achieved through 'softer' and less formal means, such as a *Model Code of Civil Litigation*[23].

2.2. CIS Interparliamentary Assembly as the Subject of Model Lawmaking

Model lawmaking is known in the CIS region and is actively used to pursue the goals of integration and harmonization. In 1992 the Interparliamentary Assembly (hereinafter – IPA[24]) was established here, consisting of parliamentary delegations from the Member States[25] and aiming at developing and strengthening cooperation between legislatures of the CIS states and busy with drafting typical (model) acts, on the basis of which approximation of national legislation was possible[26].

The IPA may draft recommendatory acts on the matters within common interests of the CIS states. It may adopt model laws and codes, standard provisions, statutes, agreements and recommendations of various types[27]. During its existence the IPA has adopted more than 300 different acts, among them Civil, Criminal and Criminal Procedure codes, Statute of the railroads, model laws on the consumer protection, on the support of small businesses, on insolvency and so on. Many authors claim that the CIS states managed to switch to market economy rules greatly due to the adoption by the IPA of such model acts as the Model Civil Code and the Model Taxation Code, as well as other laws in the field of market regulation[28].

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[20] Соглашение о порядке разрешения споров, связанных с осуществлением хозяйственной деятельности. Киев, 20.03.1992 г.

[21] Конвенция о правовой помощи и правовых отношениях по гражданским, семейным и уголовным делам. Минск, 22.01.1993. *Собрание законодательства Российской Федерации*, 1995, № 17, с. 1472.

[22] *СНГ: реформа гражданского процессуального права*. Под. ред. М. М. Богуславского и А. Трунка. Москва, 2002, с. 30–31.

[23] Там же, с. 4.

[24] DRAGNEVA, R. Is Soft Beautiful – Another Perspective on Law, Institutions, and Integration in the CIS. *Review of Central and East European Law*, 2004, Vol. 29(3), p. 300.

[25] Регламент МПА государств-участников СНГ. Санкт-Петербург, 15.09.1992 г., ст. 1(1).

[26] Положение о разработке модельных законодательных актов и рекомендаций МПА государств – участников СНГ. Санкт-Петербург, 14.04.2005 г., п. 1.2.

[27] Там же, п. 1.3–1.5.

[28] ЛАПИН, Б. Н. Реформирование правовой регламентации судебно-гражданской юрисдикции стран СНГ. *Проблемы современной экономики*. 2002, № 3–4 [интерактивный. Дата обращения: 2015-02-10]. Режим доступа: <http://www.m-economy.ru/issue.php?num=3#58>.

3. Model Code of Civil Litigation: the Way of the CIS

3.1. Conception and Structure of the Model Code

The work on the project of Model Code in the field of civil litigation started at the beginning of 2000-s, and in that connection its conception (document, stipulating views on possible contents of the act and strategy of its enactment) and preliminary structure (it contained titles of all Code's articles that were systematized into chapters and sections) were drafted. The IPA approved both documents on 16 June 2003[29]. At the same time the IPA charged its permanent commission with the task to continue preparation of the final text.

The choice of a codified act could be explained by the magnitude of the tasks set before the document: to become a basis for the national Civil Procedure, to bring together the approaches of states on quite a wide range of questions: from the regulation of certain types of court procedures to the special proceedings and even enforcement of judgments.

According to its drafters, the Model Code should have contained 10 sections, 71 chapters, comprising 1131 articles[30]. According to B. Lapin (the main author of the text), such volume was 'optimal enough' for the organization of Civil Procedure and could give possibility to resolve all problematic issues in this area[31]. In our view, however, such a large number of articles cannot be seen as an achievement. Despite the fact that many foreign Codes are distinguished by detailed regulation of the subject matter, in their case we speak of domestic legal acts that come from the local traditions and grow with the history of nation. As for the model laws, the more textual material they contain, the less possible it is to guarantee completeness and accuracy of their implementation.

It is possible to object nonetheless that a large number of articles may sufficiently help the CIS states to conduct their own procedural reforms: they could borrow from the totality of norms those that they need the most. However at the moment of start of preliminary work on the project of the Code, most CIS states had already finished their own reforms and adopted new Codes. They would hardly be interested in new large-scale reforms of their legislation in case of some divergences between it and the Model Code.

Some remarks can be made to the potential content of the Code itself. Thus, it does not seem appropriate to establish in it a priority of particular model of proceedings and only one possible way of judicial organization and the system of internal jurisdiction (as is proposed in draft arts. 30–76). The reason is that CIS Member States already have their own and quite different judicial systems and it is unlikely that they will change things only to ensure uniformity. As for the model of court proceedings, in Georgia and Azerbaijan it became less inquisitorial and more adversary-like, while in Russia and Belarus it still bears a mixed character[32]. Another controversial decision is to enshrine the concept and status of 'public prosecutor' in civil procedure within the Code (draft arts. 98–101). The role of this litigation participant is not the same in the CIS states – in Belarus he still has supervisory powers over the court[33], whereas in Russia he is devoid of such competence[34].

In principle, the differences between states in questions mentioned above do not prevent them from cooperating efficiently and thus it is improbable that a hard unification is required here[35]. At the same

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[29] Постановление МПА СНГ о Концепции и Структуре модельного Кодекса гражданского судопроизводства для государств-участников СНГ. Санкт-Петербург, 16.06.2003 г., № 21–6.

[30] *СНГ: реформа гражданского процессуального права* <…>, с. 33.

[31] ЛАПИН, Б. Н.; ЧЕЧИНА, Н. А. О проблемах реформирования <…>, с. 144–145.

[32] Постановление МПА СНГ о Концепции и Структуре модельного Кодекса <…>.

[33] Гражданский процессуальный кодекс Беларуси от 11.01.1999 г., № 238-З, ст. 23.

[34] МАЛЕШИН, Д. Я. Самобытность развития российского гражданского процесса. *Правоведение*, 2010, № 4, с. 227.

[35] KERAMEUS, K. Procedural Harmonization in Europe. *American Journal of Comparative Law*, 1995, Vol. 43(3), p. 402–403.

time it must be observed that the role of the Model Code consists in harmonizing not only norms, used for transnational cooperation, but purely national provisions as well, those that could function better in case they would be based on the most optimal standard. In essence, a Model Code is intended to be a point of reference to states in a situation where they cannot develop relevant norms themselves.

But is there any necessity to approximate something where it is impossible to find and establish 'the best' possible norm? In the end the Code would fix only one of the possible norms, most likely, copied from one of the states, and thus would not succeed in persuading other states (having other, different norms) in its necessity. In such circumstances, the very inclusion of 'disputable' norms into the Code may appear to be a waste of time and efforts.

The conception of the Code has at the same time a lot of positive solutions. One of them is a proposition to set textually a list of principles guarding Civil Procedure (draft arts. 8–29), its glossary, questions of international jurisdiction, working with evidence, legal representation (especially the issues of the standards of granting legal aid), addressing the court and the structure of the court action, transmission and service of documents and the contents of protocols[36].

Talking about principles we mean, of course, the neutral ones and typical for most democratic nations, those that find their fixation in such authoritative sources as the European Convention on Human Rights[37] (we shall note that not all of the CIS Member States participate in it[38]). Among them, the Code mentions access to trial, public and oral hearing, etc. Traditional principles existing in CIS Member States' codes also find their place here (continuity of trial, immediacy in the study of evidence, obligatory force of final judgment).

As for the glossary, in our view it is quite an important part of the act seeking harmonization of national law, as without common terminology it would be difficult to achieve uniformity in other areas. The proposed Code devotes art. 1 to the definition of the main terms used. With all this, the description of the terms shall be definite, clear and concise, without any unnecessary references to third acts. Though states may ignore the proposed definitions, there is little sense in it if they agree in general to adopt the Code as choosing other descriptions may affect its systemic unity.

Another important thing that could be done is standardization of procedural documents (claims, petitions, etc.). Their similar contents and style could allow states for a more effective cooperation in civil matters and for greater trust in the acts of each other[39]. Samples of these forms may be included in annexes to the Model Code. Unfortunately, the existing conception of the Code misses this opportunity.

Summarizing all the said it must be noted that the Code was designed to solve two tasks: to preserve existing similarity in approaches to Civil Procedure that has already existed among CIS nations and to prevent further discrepancies, and only in the second place to introduce new norms and institutes. In practice, the whole work on the project resulted in several academic conferences and the drafting of preliminary structure of the future act[40]. The IPA adopted only the conception and structure of Code – preparatory documents on the way to the final act.

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[36] LAPIN, B. A Draft Model Code of Civil Procedure for the CIS: Principal Conceptual Bases. *Review of Central and East European Law*, 2000, Vol. 26(4), p. 482.

[37] *Конвенция о защите прав человека и основных свобод*. Рим, 1950.11.04. *Собрание законодательства РФ*, 2001, № 2, ст. 163.

[38] ТЕРЕХОВ, В. В. Европейский Суд по правам человека об обязанности государства признавать решения иностранных судов. *Вестник Омского государственного университета*, 2014, № 1(38), с. 129.

[39] ХЕСС, Б. Европейский судебный приказ – модель для модернизации национального права. *Российский ежегодник гражданского и арбитражного процесса*, 2011, № 9, с. 494–495.

[40] Концептуальный проект структуры модельного кодекса гражданского судопроизводства для стран СНГ. *СНГ: реформа гражданского процессуального права*. Москва, 2002, с. 213–248.

3.2. The Reasons to the Code's Non-acceptance

Academic literature does not clarify sufficiently the reasons for the suspension of the work on the Code. One of the positions is that Member States had already adopted their own procedural codes before the idea of the Model Code was proposed and thus were inactive in preparation for new reforms[41]. However many model acts in the CIS were adopted precisely after the introduction in the Member States of their own laws on a similar subject matter. This helped a lot to exchange best practices and to borrow well-tuned solutions.

Another explanation is that CIS states began to pursue their own goals and the role of the Commonwealth diminished[42]. This entity was designed not to integrate its participants, but to ensure their 'civilized divorce'[43] and thus they were not planning to go so deeply into harmonization of their national legislation. Some of current CIS nations seek membership in the EU (e.g. Georgia, Ukraine), while others try to organize approximation through such organizations as the newly established Eurasian Economic Union (Belarus, Kazakhstan). Therefore, political reasons played a significant role in the fate of the Code.

At the same time, the IPA managed to develop a number of acts in procedural field that were luckier than the Model Code, e.g. model law on mediation[44] and the Code on judicial organization and status of judges[45]. These acts have a less global character – they either touch upon certain aspects of civil proceedings or closely related issues.

Thus, the law on mediation was adopted to assist CIS states in the introduction of this form of ADR into their legislations. On that occasion it established the concept of mediation, its guiding principles, the status of mediator, the procedure and so on. It must be noted that the model law was introduced after some of CIS states adopted their own laws on mediation. It is possible to say that the model law is at least partly based on them (for example, on the Russian one[46]) in developing its formulations and main features.

The IPA has also one successful example of a codified act in its practice in an area closely interwoven with civil procedure – that of judicial organization and status of judge. The named act contains a definition of the judiciary (arts. 1,4), a list of courts' tasks and enshrines the basics of the judge's status. The document is interesting due to its alternative rules: thus, it provides for the creation of the Constitutional Court, however supposes that its tasks may be equally attributed to the Supreme Court or another organ of constitutional review (art. 4). It also contains blanket clauses, stipulating that the procedure for the formation of the court and their activity shall be governed by national legislation (arts. 20, 36 *et al.*). At the same time, the requirements for the judge of Constitutional Court (his age, experience, qualification, etc.) are set in an imperative manner (art. 76). Here we may note that the

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[41] FILATOVA, M. Model Laws and National Traditions. *XIV Worldwide Conference of the International Association of Procedural Law*, Heidelberg, 2011 [accessed on 2015-02-10]. Access through: <https://www.academia.edu/5358958/Model_Laws_and_National_Traditions_-_National_Report_Russia>.

[42] МУРЗАКУЛОВА, А. Д. Межпарламентские институты в процессе интеграции СНГ. *Евразийская экономическая интеграция*, 2012, № 2(15), с. 62–63.

[43] МАЛЬКО, А. В.; ЕЛИСТРАТОВА, В. В. Об использовании правового опыта межгосударственной интеграции при создании Евразийского Экономического Союза. *Евразийский юридический журнал*, 2014, № 2, с. 40–43.

[44] Постановление МПА СНГ от 29.11.2013 г. № 39-14 об утверждении модельного закона о медиации (внесудебном урегулировании споров).

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model acts actually use three types of regulation: mandatory rules, references to national law (*conflict of law rules*) and alternative rules that allow the addressee to choose from. It is quite difficult to say which of them is the most optimal; rather the most appropriate is their reasonable combination.

The relative success of these acts makes us believe that there is nothing impossible in the model lawmaking within the CIS *per se*. In our view, the fact is that states do not regard it as a way to solve major problems within the whole area, but quite favorably treat its use in resolving some ongoing issues within sub-areas and law institutes. In this regard, it may be admitted that drafting of the Code, comprising more than 1000 articles and totally covering all aspects of civil procedure is hardly something the IPA could afford. There is moreover no will on the side of the CIS, as well as no necessary resources. Finally, time factor plays against the Code. Civil Procedure nowadays is quite a dynamic area: new procedures are introduced within it, the principles change their meaning and the information technologies[47] are used more often. As a result, any large-scale model act risks becoming outdated to the time of its adoption and thus – devoid of any significance.

Conclusions

Summarizing everything stated above we may come to the following conclusions:

1. an act of model law is an efficient and democratic way of transnational legal approximation that does not impose any reforms, but provides a valuable example of how the national legislation may be modified. It may help to reach even those provisions of municipal law that all other instruments of harmonization are impotent to change due to national states' resistance. All of that is possible because of their authority and irreproachable content;
2. political conditions, however, play a significant part in the ultimate success of model laws. Being developed by special institutions (sometimes unofficial), they may fail to take into account important political realities and the priorities of states-addressees, including the legal reforms they are undertaking or have already partly or fully completed. This is true of the CIS whose Member States were not generally preparing to make sufficient amendments in Civil Procedure legislation;
3. the very idea of a model law in the sphere of Civil Litigation is not, however, bad as such, moreover, it may be used not just to harmonize parts of national legislation, but to make possible its initial formation, including the possibility for states to borrow legal rules from each other and from international sources;
4. from the foregoing it must be admitted that the project of the Model Code was rejected by the Member States as not providing for the possibility to reach that second goal (formation of new legislation). At the same time, it did not prevent them from drafting other acts that appear to be relevant and demanded.

In our view, such 'piecemeal' adoption of procedural acts on key issues will help to ensure effective development of this branch of national law in the near future.

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NEPRIKLAUSOMŲ VALSTYBIŲ SANDRAUGOS CIVILINĖS TEISENOS PAVYZDINIS KODEKSAS KAIP CIVILINIO PROCESO HARMONIZAVIMO BŪDAS

Victor Terekhov

S a n t r a u k a

Pavyzdiniai įstatymai plačiai naudojami tarptautinėje praktikoje kaip teisės harmonizavimo priemonė. Būdamas teisiškai nebūtinas, pavyzdinis aktas sulaukia didesnės sėkmės ten, kur šalys vengia imperatyvaus poveikio. Jo statusas ne visada leidžia užtikrinti visišką normatyvinį vieningumą. Šį įrankį būtina sumaniai panaudoti užsibrėžtiems uždaviniams spręsti. NVS pavyzdiniai aktai yra visiškai deramas suartėjimo būdas, nes atsižvelgia į nacionalinius savitumus ir remiasi valstybių tarpusavio bendradarbiavimo sukaupta patirtimi, išlikusia nuo TSRS laikų. Pagrindinis pavyzdinių aktų kūrimo subjektas yra NVS tarpparlamentinė asamblėja, kurią sudaro šalių narių deputatų delegacijos. Todėl ji visiškai kompetentinga kurti įstatymų projektus. Jai vadovaujant buvo priimta daugiau kaip 300 pavyzdinių aktų, tarp kurių yra tiek labai sėkmingų, tiek ir nevykusių. Pastariesiems, deja, priklauso ir tiriamasis civilinės teisenos pavyzdinio kodekso projektas. Jo kūrėjų sumanymu dokumentą turėjo sudaryti 1131 straipsnis ir kompleksiškai reguliuoti visus sričių aspektus. Jis turėjo tapti ne tik teisės, naudojamos tarpvalstybiniam bendradarbiavimui, harmonizavimo priemone, bet ir pasiūlyti geriausių pavyzdžių, nagrinėjant valstybės vidaus klausimus. Galiausiai buvo priimta tik akto koncepcija ir struktūra, darbas rengiant visą jo tekstą buvo sustabdytas. Mūsų nuomone, taip atsitiko ne dėl to, kad šalys nenorėjo bendradarbiauti proceso srityje, o todėl, kad jos orientavosi į pavienius (atskirus) jo klausimus, negalėjo arba manė, kad netikslinga skirti lėšų tokiam dideliam projektui kurti, be to, jis nereikalingas, nes šalys priėmė savus naujus procesų kodeksus. Tuo remiantis pats pavyzdinis įstatymų kūrimas nėra smerktinas (neteisingas), reikia tik juos kurti tinkamoje vietoje, tinkamu laiku ir reikiamos apimties.

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