

Published by the decision of the Scientific Council
of Khachatur Abovian
Armenian State Pedagogical University



Department of Philosophy and Logic
named after Academician Georg Brutian



W I S D O M

4(28), 2023

ASPU Publication

YEREVAN – 2023

METHODOLOGICAL ASPECTS OF DIGITALIZATION OF LAW

DOI: 10.24234/wisdom.v28i4.1091

COMPLEX REGIONAL UNIFICATION OF PRIVATE INTERNATIONAL LAW RULES ON THE BASE OF A THREE-PART STRUCTURE: POLITICAL AND LEGAL FRAMEWORK

Alisa BERMAN^{1,*}  | Nikita ERSHOV¹ 

¹ Law Institute, Patrice Lumumba Peoples' Friendship University of Russia (RUDN University), Moscow, Russian Federation

* *Correspondence*

Alisa BERMAN, 6 Miklukho-Maklaya st., Moscow, 117198
E-mail: alisa.berman@mail.ru

Abstract: This article examines the theoretical and legal framework of a complex regional unification of private international law rules on the basis of a three-part structure. The authors analyzed reasons for spread of trends to regional unification of private international law. Special attention in the article is given to the definition of the content and essence of a complex regional unification. The authors define acts of complex unification as acts structured according to the principle of a consistent response to the questions of applicable law, jurisdiction, recognition and enforcement of foreign decisions in the regulated area. The article identifies the key advantages and disadvantages of a complex unification of private international law based on a three-part structure. The authors conclude that, to date, the adoption of acts of complex unification based on the three-part structure is one of the key trends in the unification of private international law.

Keywords: regional unification, complex unification, three-part structure, private international law, international civil procedure, conflict of laws rules.

Introduction

In a rapidly changing world order, one of the main tasks of a civilized society is the preservation and protection of both property and personal non-property rights. The development of national legal systems and processes of international co-

operation are crucial to the existence of civil liberties, legal interrelationship, and the development of economic relations. The issues of private international law are becoming increasingly important as the number of cross-border legal relations is increasing, arising not only in the economic sphere, but also in everyday life. The doc-

trine emphasizes: “A well-developed and harmonized private international law regime is an indispensable element in any economic community” (Oppong, 2006, p. 912).

The effective regulation of relations in international practice requires a mechanism that will adequately address complex legal problems in the course of crossing state borders and the interaction of multinational structural units. Despite the localization of private international law systems, these systems face a number of common problems related to the cultural peculiarities of states and the differences in their legal systems.

In conjunction with these trends, one of the current problems is the issue of choosing the best form of unification of private international law rules. To solve this problem, it is necessary to analyze the current state of the relevant systems and to identify common factors that may accelerate the process of unification. This involves developing a general approach to the implementation of national legal systems in an international context, adapting private international law rules to dynamically changing realities, systemizing and harmonizing international acts. Based on the results of this analysis, a solution is seen in the adoption of regional international acts of complex unification based on a three-part structure.

The purpose of this study is to analyze the trend of complex regional unification of private international law rules. The main objectives to achieve the set goal are: 1) review the processes of complex regional unification of private international law rules; 2) determine the key advantages of complex unification based on the three-part structure in comparison with other structures; 3) identify key disadvantages of acts of complex unification that prevent the development of this legal phenomenon.

Methodology

The system of methods and approaches used to disclose the stated theme of research, is determined by the goals and objectives of research, its object and subject matter. Given the importance and complexity of the nature of the object under study, as a toolkit used to study it, the whole complex of general, general scientific and private scientific methods and techniques of knowledge, including formal-legal, comparative legal, sys-

tem, functional, logical and other scientific methods of research, including the method of legal prediction were used. Such modern general-scientific methods as explanation, analysis, synthesis, analogy, abstraction, deduction are widely used for solution of particular research tasks.

Main Study

Reasons for Spread of the Trend Towards Regional Unification of Private International Law

The regional unification of private international law has been a significant trend in recent years. Regional unification of private international law is a process by which a group of countries in a certain region adopts international instruments to coordinate and unify the rules of private international law in order to facilitate and regularize interaction between the subjects of these countries when entering into civil and commercial relations, as well as to increase work efficiency of state authorities that accompany these relations or resolve disputes arising from their implementation. Every year regional international organizations and associations pay more and more attention to unifying private international law rules in their regions and protecting rights and legal interests of civil relations' participants. As noted in the doctrine: “These regional groupings then eventually metamorphosized into something much more profound and much more protective of the human rights of the individual than could have been envisioned by the original protagonists of economic integration” (Wilets, 2010, p. 769). This trend reflects the recognition that a unified international legal framework is necessary to provide legal certainty, facilitate cross-border transactions and effectively resolve disputes.

As it was indicated before, regional organizations and their international agreements play a crucial role in the unification of private international law by facilitating cooperation and integration among member states. An example of a regional integration association, which is actively engaged in the unification of private international law, is the European Union (EU). The aim of unification of private international law in the EU is to create uniform rules and regulations for civil

law dispute resolution, as well as to settle cross-border relationships arising in situations involving the crossing of EU borders and the interaction of different jurisdictions.

Within the framework of activities of the EU regulatory authorities several important international legal acts were elaborated and adopted, including Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Regulation (EU) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I); Regulation (EU) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) and etc. These and other acts adopted by EU regulatory authorities contribute to the unification of private international law in EU member states. They also facilitate access to legal protection and strengthen interaction and economic integration between EU countries.

The main results of unification of private international law in the EU include the creation of a single legal area, where rules and regulations are applied with a high degree of uniformity and predictability in all member states. This helps to overcome legal conflicts and facilitates trade transactions, civil and commercial cooperation, and protects rights and interests of citizens and enterprises within the EU.

Unification of private international law in the EU continues to evolve and improve in order to ensure stability, efficiency and fairness in international legal relations within the EU and with the rest of the world. However, we can already state that the EU has achieved a high level of unification of private international law.

To summarize, there are many factors that lead to the unification of private international law specifically at the level of regional integration unions.

These factors include, for example, the fact that regional unification of private international law takes into account the particular needs, legal traditions and cultural context of the member states in a particular region. It reveals that a one-size-fits-all approach may not be applicable, and allows for regional adaptations and assumptions to ensure that the rules adopted are consistent

with the particularities of the region. As the doctrine notes: “Growing interaction between societies, markets and cultures that used to be far apart also means coping with more diversity. Some issues of private (international) law can be better dealt with at regional rather than at global level, or can be further refined at regional level” (Loon, 2008, p. 201).

Regional unification of private international law is often driven by the goal of promoting economic integration and the smooth functioning of regional markets. By providing a consistent, systemized and harmonized legal framework, regional agreements stimulate cross-border trade, investment and business activity. The convergence of private international law helps to remove legal barriers and creates a more favorable environment for economic cooperation in the region.

In this regard, regional systematization and harmonization efforts are aimed at establishing clear and predictable rules for the conclusion and enforcement of cross-border transactions and the resolution of disputes within a particular geographic region. Through the unification of private international law, these initiatives reduce legal uncertainty and provide civil parties and courts with a sound legal basis on which they can rely when dealing with cross-border issues. By establishing common rules on jurisdiction, choice of law, recognition and enforcement of foreign judgments, regional agreements contribute to efficient and coordinated cross-border proceedings, saving time and costs for parties and increasing access to justice. This, in turn, contributes to legal certainty, predictability and uniformity in the resolution of cross-border disputes. As noted in the doctrine: “The focus of most PIL treaties and model laws is the creation or recognition of rights directly accessible by private parties and enforceable in courts or otherwise without governmental intervention or approval” (Burman, 2008, p. 741).

This is also borne out by the fact that regional unification initiatives often include provisions for judicial cooperation, such as mutual assistance in gathering evidence, recognition and enforcement of foreign judgments, and coordination of parallel judicial proceedings. These provisions promote closer cooperation between courts in different countries, ensuring effective resolution of cross-border disputes and avoiding conflicting or

inconsistent decisions. As legal scholars stressed: “Large scale international trade needs, in addition to other favorable conditions, a certain measure of security and predictability with regard to the enforcement of obligations” (Yianopoulos, 1961, p. 553).

The Content and Essence of Complex Regional Unification

Traditionally, the approach to the unification of private international law was entitled to adopt separate international agreements dealing with specific aspects, such as jurisdiction, choice of applicable law, recognition and enforcement of judgments. However, a remarkable trend towards the adoption of more complex and “sophisticated” acts of unification based on a three-part structure has been observed.

The trend toward the adoption of acts of complex unification reflects a shift towards the development of a complex legal framework that covers many aspects of private international law in a single instrument. This is important because “private international law rules typically govern (up to) three topics: jurisdiction; applicable law; the recognition and enforcement of judgments” (Block-Lieb & Halliday, 2015, p. 50). Instead of having separate international acts on different aspects of private international law, complex acts combine, systemize and harmonize different legal provisions, resulting in a more coherent and predictable legal framework.

Complex unification acts usually have a three-part structure in which three main components are regulated: conflict of laws rules in private international law, international civil procedural rules and provisions on jurisdictional cooperation. The conflict of laws rules of private international law determine which law applies to a cross-border dispute, while the rules of international civil procedure regulate the procedural aspects of litigation. The rules of jurisdictional cooperation facilitate coordination and cooperation between courts in different member states.

These acts aim to provide a coherent and complex approach to the resolution of cross-border disputes, covering both conflict of laws rules of private international law and procedural aspects. The aim of this trend is to provide a more integrated and coherent framework for re-

solving cross-border disputes within a regional integration association. Such integration allows smoother and more effective treatment of cross-border disputes, since the acts do not only deal with determination of applicable law, but also cover practical aspects such as rules of law, submission of procedural documents, evidence, interim measures as well as recognition and enforcement of foreign judgments. This coherent approach is aimed at streamlining cross-border proceedings and facilitating dispute resolution.

Examples of acts of complex unification based on a three-part structure are Council Regulation (EU) № 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations; Regulation (EU) № 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession; Council Regulation (EU) № 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes; Council Regulation (EU) № 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships and etc.

The adoption of acts of complex unification based on a three-part structure seeks to address the interaction of private international law, international procedural rules and jurisdictional cooperation in a more complex and systematic manner. This approach recognizes the need for a coherent and integrated framework to deal effectively with cross-border disputes.

It is worth noting that although the acts of complex unification aim to systemize and harmonize private international law in the member states of a regional integration association, they also strike a balance with the principle of autonomy of the member states. The acts often leave room for national procedural rules and allow for flexibility in certain areas, taking into account different legal traditions and practices of member states.

Thus, the adoption of acts of complex unification is aimed at improving the effectiveness and productivity of cross-border judicial processes. By unifying the rules of private international law and procedural rules, these acts contribute to the smooth conduct of judicial proceedings, minimize conflicts of law and ensure the enforceability of judgments in the territory of member states.

The Advantages of Complex Unification

A widely growing trend towards the adoption of complex unification acts based on a three-part structure is due to the advantage of such acts over the adoption of separate acts dealing with specific aspects, such as jurisdiction, choice of applicable law, recognition and enforcement of judgments.

Thus, the act of complex unification provides a coherent and consistent legal framework, combining the rules of private international law, international civil procedure and jurisdictional cooperation in a single act. Such integration ensures that the various components of cross-border litigation are dealt with together, reducing conflicts and discrepancies that may arise in the application of separate provisions of different international acts. This contributes to systematization and harmonization of private international law rules in the member states of a regional integration association, since the act of complex unification sets common standards for determining the applicable law, resolving conflicts of jurisdiction, recognizing and enforcing judicial decisions. Complex unification reduces legal fragmentation, provides consistent solutions to cross-border disputes and facilitates the free movement of judicial decisions within a regional association.

The three-part structure helps to systemize and harmonize the implementation of private international law, international civil procedure, and the rules of jurisdictional cooperation. It ensures that these interrelated elements are dealt with together, facilitating a comprehensive understanding of the legal framework and promoting a more coherent approach to cross-border dispute resolution, thereby contributing to the efficiency and predictability of cross-border proceedings. In addition, this structure reduces the

need to systemize and harmonize multiple legal instruments, as all relevant rules and procedures are consolidated in a single act. This facilitates access to justice for natural and legal persons and contributes to a more convenient and efficient legal framework. Thus, litigants and legal practitioners can refer to a single set of rules and procedures, simplifying the legal process and reducing the time and costs involved in resolving cross-border disputes. Instead of having to deal with separate international instruments, interested parties can refer to a single comprehensive instrument. It also allows the courts to apply a single set of rules governing both the conflict of laws and the procedural aspects of cross-border cases, which simplifies the judicial process, minimizes delays and improves the overall efficiency of cross-border dispute resolution.

Complex unification acts increase legal certainty by providing clear and uniform rules for cross-border litigation. Parties to cross-border disputes can have confidence in the application and interpretation of law, knowing that the same set of rules applies uniformly in all member states of a regional integration association. This promotes establishing equal conditions and reduces uncertainty and unpredictability in cross-border litigation (Ermakova et al., 2021, p. 1591).

The inclusion of rules of jurisdictional cooperation in the act of complex unification facilitates the enforcement of judicial decisions in the member states of the regional association. Such an act establishes mechanisms for the recognition and enforcement of foreign judicial decisions, reducing obstacles and delays in the enforcement process. This builds confidence in a regional association's legal framework and encourages cross-border trade and investment (Frolova & Tsepova, 2021, p. 825). At the same time, a complex unification act may include provisions that promote the use of technology in cross-border proceedings. For example, it can regulate and legitimize the use of electronically signed documents, the electronic delivery of procedural documents and the use of online platforms for dispute resolution. This connection with technological developments reflects the evolving nature of cross-border dispute resolution in the digital age.

As noted earlier, despite the desire for systematization and harmonization, the complex

unification act, based on a three-part structure, also respects and accommodates the principle of autonomy of the member states. It strikes a balance between the desire for coherence and allowing member states to maintain their own procedural rules and legal traditions within the boundaries established by the act. This preserves the diversity of legal systems within a regional association, while at the same time helping to maintain consistency in the regulation of cross-border legal relations. At the same time, it ensures that the rules of private international law, international civil procedural provisions and provisions of jurisdictional cooperation work as a unified system. Such coordination minimizes conflicts and maximizes productive cooperation between courts, facilitating the efficient handling of cases and resolving cross-border disputes.

Thus, by adopting a complex unification act based on a three-part structure, the regional association seeks to create a reliable, predictable and efficient legal framework for cross-border litigation, benefiting individuals and entities, as well as the functioning of the internal market. Overall, the acts of complex unification based on the three-part structure provide coherence, efficiency, legal certainty and enhanced cooperation under private international law, which ultimately contribute to the seamless functioning of the internal regional market and the efficient resolution of cross-border disputes.

Disadvantages of Complex Unification

Although complex unification based on the three-part structure in private international law has many advantages, which have been outlined earlier in this research, there are some potential disadvantages that must be taken into account.

Thus, among the disadvantages is the limited flexibility of this instrument. Although the purpose of a complex unification act is to systematize and harmonize private international law among the member states of a regional association, it may also limit the flexibility of individual member states to adapt and develop certain pieces of legislation in accordance with their specific legal traditions and practices. This may be seen as a potential infringement on the autonomy of member states and their ability to formulate their own procedural rules. Member states may find it

difficult to strike a balance between systematization, harmonization and preserving their unique legal characteristics within the boundaries established by the act.

It should also be kept in mind that developing a complex unification act that satisfies the different legal systems and interests of all the member countries of a regional association can be a difficult task. Different legal traditions, cultural factors and political considerations of member states may make it difficult to reach consensus on the provisions of the act (Inshakova et al., 2020, p. 241). This may require lengthy discussions and compromises. Disagreements among member states in a regional association can lead to delays in the legislative process and potential compromises that do not fully satisfy the needs or interests of all parties involved, potentially undermining the effectiveness and coherence of the legislation.

In addition, keeping a complex unification act current and adapting it to changing circumstances and legal conditions can be challenging. As legal systems evolve, new legal issues arise, or international instruments are being updated, the act may require frequent amendments and revisions to accommodate new developments or unforeseen issues. The process of updating the legislation can be time-consuming and may involve complex negotiations among member states, potentially leading to delays and problems in keeping the legal framework current and effective. If the act becomes rigid and inflexible, it will be difficult to adapt to new challenges or changing cross-border legal scenarios.

Potential problems include the fact that a complex unification act may not be able to provide in-depth regulation of specific issues of private international law and international civil procedure. In attempting to cover a wide range of subjects in a single act, there is a risk that certain aspects will receive less attention or detail than they would if they were contained in separate specialized international acts. This could potentially lead to less comprehensive treatment of specific issues or scenarios.

On the other hand, attempting to address all problematic aspects, a wide range of scenarios and contingencies in a single complex act can result in an overwhelmingly prescriptive and burdensome legal framework with an extensive set of rules and regulations. This can make it dif-

difficult for legal professionals and concerned parties to assimilate and interpret the law, which can lead to legal uncertainty and delay. Combining private international law, international civil procedure, and jurisdictional cooperation in a single act can make the legal framework more confusing and difficult to navigate. Legal practitioners and parties involved in cross-border disputes may find it difficult to understand and apply the broad provisions included in the act.

There is also a risk of imbalance between the procedural rules and the conflict of laws rules of private international law in a complex unification act. Although the act seeks to integrate both aspects, the procedural rules may receive less attention or detail than the conflict of laws rules. Such an imbalance may affect the effectiveness and fairness of the legal framework, since procedural rules play a crucial role in ensuring access to justice, fair trial and effective protection of rights.

It is important to note that the disadvantages mentioned above are potential and may vary depending on the specific content and implementation of the act of complex unification. Their impact and significance may vary depending on the specific provisions, the flexibility mechanisms and overall effectiveness of the legislative process, the level of involvement of interested parties and the ability to find a balance between systematization and autonomy of member states.

Conclusion

The problem of unification of private international law rules is becoming increasingly relevant at the current stage of development of international relations and cooperation. Complex regional unification of private international law based on a three-part structure is one of the most effective mechanisms to systemize and harmonize the interests of states in resolving cross-border civil and commercial relations. This form of unification is based on a balanced approach to ensuring the unity of legal regulation and preservation of national interests. The main idea of the tripartite structure is to create a universal system consisting of three levels, which define and coordinate the rules of international law: first, provisions on jurisdiction (the competent court); second, provisions on the applicable law; third,

provisions on the recognition and enforcement of foreign decisions. The need for a complex regional unification of private international law is now being recognized by an increasing number of States.

During the study it was found that the adoption of acts of complex unification on the basis of a three-part structure is expressed in the simultaneous regulation of private international law rules and international civil procedure in a single act, which reflects their close relationship and eliminates the possibility of contradictions and duplication of rules. This is a major advantage of this approach over other types of unification.

However, a complex unification may cause certain difficulties in inter-state systematization and harmonization, as it will require the adoption of joint commitments and agreement on a number of issues relating to the sovereignty of states with different historical, cultural and traditional characteristics.

It is necessary to carefully choose the type of unification and take into account all the features, advantages and disadvantages of each of them, in order to achieve maximum efficiency of the unification procedure of private international law. The functioning of the legal system, based on the principle of a complex regional unification of private international law rules on the basis of a three-part structure, will protect the rights and interests of citizens and companies in international relations, and in general increase the level of effectiveness of international legal regulation and confidence in it.

Thus, a complex regional unification of private international law rules on the basis of a three-part structure is one of the promising areas for improving the international legal regulation of transboundary civil and commercial relations. Such unification is under active implementation and development, and represents a promising mechanism of international legal interaction between states. All advantages and disadvantages of three-part structure of international acts should be carefully studied and analyzed in the process of its implementation, taking into account national interests of each member state of the regional association, uniqueness of the subject of legal regulation and economic and political situation on the world arena. It is important to maintain a balance of interests of states at all levels of complex regional unification, which guarantees

the effective functioning of this mechanism and the sustainable development of international law.

Acknowledgement

This publication has been supported by the RUDN University Scientific Projects Grant System, project No 090222-2-000 “Development of the concept and models of digital dispute resolution in the context of creating a common information area of Eurasian Economic Union countries” (Supervisor: Frolova E.E.).

References

- Block-Lieb, S., & Halliday, C. T. (2015). Less is more in international private law. *Nottingham Insolvency & Business Law e-Journal*, 3, 43-58.
- Burman, H. (2008). Private international law. *International Legal Developments in Review*, 43(2), 741-757.
- Ermakova, E. P., Frolova, E. E., & Sitkareva, E. V. (2021). International economic integration and the evolution of the principles of civil procedure. *Modern Global Economic System: Evolutional Development vs. Revolutionary Leap. Institute of Scientific Communications Conference*, 1589-1597.
- Frolova, E. E., & Tsepova, E. A. (2021). Controlled foreign companies of russian residents in the context of world trends. *RUDN Journal of Law*, 25(4), 814-830.
- Inshakova, A. O., Frolova, E. E., Rusakova, E. P., & Galkina, M. V. (2020). Development of social market economy under the influence of noneconomic factors: Modeling and regulation. *International Journal of Sociology and Social Policy*, 40, 239-252.
- Loon, J. H. A. van. (2008). Remarks on the needs and methods for governance in the field of private international law – at the global and the regional levels. *Making European Private Law – Governance Design*, 197-200.
- Opong, R. F. (2006). *Private international law and the African economic community: A plea for greater attention. International & Comparative Law Quarterly*, 55(4), 911-928.
- Wilets, D. J. (2010). A unified theory of international law, the state, and the individual: transnational legal harmonization in the context of economic and legal globalization. *University of Pennsylvania Journal of International Law*, 31, 753-825.
- Yiannopoulos, A. N. (1961). Conflict of laws and unification of law by international convention: The experience of the brussels convention of 1924. *Louisiana Law Review*, 21(3), 553-585.