

# INFLUENCE OF THE NEW CIVIL CODE ON THE CODIFICATION OF PRIVATE INTERNATIONAL LAW IN CHINA

## INFLUÊNCIA DO NOVO CÓDIGO CIVIL NA CODIFICAÇÃO DO DIREITO INTERNACIONAL PRIVADO NA CHINA\*

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**Abstract:** The article examines the actual problem of new Civil Code influence on the private international law codification in China. The last twenty years have been characterized by the multilateral development of international cooperation and interaction at various levels between states, commercial structures, public organizations, scientific communities. Diversified international contacts cover not only the field of state, business, but also private relations, thereby creating a need for their legal regulation, as well as, in certain cases, in solving controversial issues in court. This determines the objective prerequisites for increasing attention to the branch of private international law. The research materials were the Constitution of the People's Republic of China in 1982, the Civil Code of the People's Republic of China in 2021, the Conflict Law in 2010, as well as clarifications of the Supreme People's Court of China on conflict of laws. The research methodology is based on a systematic approach and includes a number of general scientific methods (analysis, synthesis, induction, deduction, formal-logical analysis), as well as a number of special methods: content analysis of scientific literature on the research topic; historical and legal analysis.

**Keywords:** Codification. Private international law. Civil Code. China. Regulation of civil law relations. International cooperation.

**Resumo:** O artigo examina o problema real da influência do novo Código Civil sobre a codificação do direito internacional privado na China. Os últimos vinte anos têm sido caracterizados pelo desenvolvimento multilateral da cooperação e interação internacional em vários níveis entre estados, estruturas comerciais, organizações públicas, comunidades científicas. Os contatos internacionais diversificados abrangem não apenas o campo do Estado, dos negócios, mas também das relações privadas, criando assim a necessidade de sua regulamentação legal, bem como, em certos casos, na solução de questões controversas em tribunal. Isto determina os pré-requisitos objetivos para aumentar a atenção ao ramo do direito internacional privado. Os materiais de pesquisa foram a Constituição da República Popular da China em 1982, o Código Civil da República Popular da China em 2021, a Lei de Conflitos em 2010, bem como esclarecimentos do Supremo Tribunal Popular da China sobre conflitos de leis. A metodologia de pesquisa é baseada em uma abordagem sistemática e inclui uma série de métodos científicos gerais (análise, síntese, indução, dedução, análise lógico-formal), bem como uma série de métodos especiais: análise de conteúdo da literatura científica sobre o tema de pesquisa; análise histórica e jurídica.

**Palavras-chave:** Codificação. Direito internacional privado. Código Civil. China. Regulamentação das relações de direito civil. Cooperação internacional.

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## 1. INTRODUCTION

The research topic relevance is due to the fact that private international law is the basis for the regulation of civil law relations with the foreign element participation (COEN AND PEGRAM, 2018; ABOU-NIGM, 2019). On January 1, 2021, the Civil Code of the PRC entered into force on the territory of the country (LI, 2021).

The Civil Code of the PRC in 2020 is the first civil code in the entire history of the PRC since its establishment-1949, which contains the word «code» in its name. The Civil Code of the PRC contains general norms of civil law.

We should note that after the PRC formation, attempts to codify civil legislation were made four times (RICHARDSON, 2021).

At the third attempt in 1979 (after the start of the reforming and opening up policies), it was recognized that the necessary conditions for the creation of a civil code in the PRC were still lacking (HERBOTS, 2021).

Since the beginning of the 1980s, the PRC has adopted several laws regulating certain types of civil relations (GUANGJIAN, 2020).

In 2001, the Standing Committee of the National People's Congress, published a project of Civil Code of the PRC, which consisted of nine sections.

In the next twenty years, the PRC Law «On Property Rights» (2007), the Law «On Tort Liability» (2009), the Law of the People's Republic of China «On the Application of Law to Civil Relations Complicated by a Foreign Element» appeared (CONFLICTS LAW OF 2010), containing the conflict of laws rules of private international law (DECREE OF THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF CHINA, 2021).

In 2017, the General Part of Civil Law of the PRC was adopted, which replaced most of the provisions of the General Provisions of Civil Law of 1986 (AYALEW, 2020). The Civil Code of the PRC (2020) replaces most of the above laws (RIGAUX, 2020).

In the opinion of some Russian scientists (SHULAKOV, 2018) the sectoral codification disadvantages are known: multiple duplication of norms permitting general provisions of private international law.

The modern codified legislation of private international law is more meaningful and systematic (WILSON, 2021).

The purpose of our study is to examine the impact of the new Civil Code of the PRC on the development of the codification of private international law.

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## 2. METHODOLOGY

The research materials were the Constitution of the People's Republic of China (1982) (CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, 2021), the Civil Code of the People's Republic of China (2021) (CIVIL CODE OF THE PEOPLE'S REPUBLIC OF CHINA, 2021), the Conflict Law (2010) (DECREE OF THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF CHINA, 2021) as well as clarifications of the Supreme People's Court of China on Civil Code of the People's Republic of China.

The research methodology is based on a systematic approach and includes a number of general scientific methods (analysis, synthesis, induction, deduction, formal-logical analysis), as well as a number of special methods: content analysis of scientific literature on the research topic; historical and legal analysis; method of scientific generalization and systematization of sources of international private law in China.

## 3. RESULTS

Our analysis of the private international law sources in China showed that the Constitution of the PRC of 1982 established the basic principles in accordance with legislation on private international law develops, and also for the first time provides for the civil status of foreign legal entities and individuals (Articles 18 and 32) (CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, 2021). In 1986, the General Provisions of Civil Law of the PRC were published, a separate chapter of which is devoted to civil relations with a foreign element. These General Provisions contain 9 articles (Articles 142-156) (WILSON, 2021) which establish the main provisions of private international law (LI, 2021).

There are a number of problems in the current system of legislation on private international law. Among them, we can note the following:

1) in the law of China there is no such system of legislation that covers the legal norms in this area as a whole. In China, there are no legislative norms that would solve such basic issues of private international law as the use of referral, return referral, etc. Regarding modern civil relations, especially legal issues related to the use of the Internet, there are no regulations at all;

2) the norms of private international law in various laws are independent of each other, sometimes even contradict each other, and sometimes duplicate. For example, paragraph 1 of Article 36 of the Law on Inheritance is contrary to Article 149 of the General Provisions of Civil Law of the PRC;

3) an excessive number of judicial clarifications leads to an unstable state of law enforcement and the rules establishment outside of lawmaking, which do not correspond to the transparency principle of the World Trade Organization (HERBOTS, 2021).

In addition, the new Civil Code does not include a section on private international law, so the Law «On the Application of Law to Civil Relations Complicated by a Foreign Element» will exist separately (DECREE OF THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF CHINA, 2021). Secondly, the norms of marriage and family law in the PRC are included in the Civil Code and are contained in Section 5 (CIVIL CODE OF THE PEOPLE'S REPUBLIC OF CHINA, 2021).

As a general rule, the Civil Code of the PRC does not have retroactive effect: the norms of the Civil Code apply only to legal relations that arose after the entry into force.

In the Civil Code some old rules are being improved (for example, the law applicable to tort relations), as well as gaps in the legislation of private international law, such as referencing and some other basic concepts of private international law, are being filled. After the entry into force of the Civil Code, the norms in individual articles of sectoral laws became invalid.

#### 4. DISCUSSION

The results of our study are corroborated by such authors as Tu (2016), Alimova (2019), Ayalew (2020), Herbots (2021). Historical and legal analysis of the process of codification of private international law in China was carried out in the studies of Qu (2020), Huang and Cheong (2021), Li Yunda (2020). Such authors as Maxin (2018), Hu and Luo (2020), also agree with our theses. Certain provisions and norms of the Civil Code, as well as explanations of the Supreme People's Court, are analyzed in the works by Twigg-Flesner (2022), Wang (2018). The analysis of the main sources of private international law in China was carried out in the works by such researchers as Huo (2019) and Župan (2020). Nevertheless, despite the extensive historiography of the topic under study, the conceptual impact of the codification of private international law in the Chinese

Civil Code on the development of this branch of law should be constantly studied for a more complete understanding of the state of conflict of law in China.

## 5. CONCLUSION

Summing up the study results, it can be noted that the considered acts, laws and Chapter 9 of the Civil Code, which came into force in 2021, indicate a serious update, expansion and change of Chinese legislation on private international law. Therefore, it is more expedient to create a single law on private international law, which corresponds to the main trend in the development of modern legislation on private international law in the world, provided that the creation of a special law or code in this area meets historical traditions and corresponds to the social preparedness of the country.

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