EUROPEANIZATION AND UNIFICATION OF PRIVATE INTERNATIONAL LAW

LENKA ČERVENKOVÁ
Faculty of Law, Masaryk University, International and European Law Department

VLADIMÍR TÝČ

Key words
Europeanization, European private international law (conflict of laws), unification of private international and substantive law, private and inter-state unification groups

Resume
With the growth of private transactions and migration of the EU citizens, the original economic organization has been tending to more social and political one. Administrative rules and measures have no longer been sufficient for regulation of private contracts, legitimacy of ownership and proprietary relations, family and marital issues, inheritance as well as resolution of disputes arising out of these legal relations. Private legal transactions have become a stimulus to the integration and accomplishment of the Four Freedoms – the free movement of goods, persons, services and capital. This onward process of integration has heightened the exigency of unified norms in the European area.

Recently, the common European legal tradition as a basis for unification of law has been revealed by numerous comparative legal researches. There are two ways of unification. First, the international treaties and conventions still personify the traditional means of the conflict of laws (so called *hard law*). They are concluded on an inter-state level, usually under the patronage of an international organization.

Second, as an antipole or an alternative to the traditional way of the international treaties we can find non-binding private codifications of general legal principles and model laws, generally called *lex mercatoria* (*soft law*). Although these private codes and principles are not obligatory, their formulation, comparison, exchange of opinions and cognition of other legal

institutes might serve as a motion to self-reflection and subsequently to more effective solutions. They form a modern stream of the unification of law.

However, disadvantages of both of them – on one hand, rigidity and prolixness of ratification procedure, and only recommendatory nature on the other – have led to searching for a solution *per medias vias*. Such a solution might be presented by unified conflict-of-law rules, either in a form of an international treaty (lengthy procedure), or recently rather in the form of the EC measure. As the EC secondary law assures the unified application of the law in the whole European area of justice, it leaves minimal space for the application of dissimilar national legal orders and the result of a case should be the same irrespective of a forum.

If there is a time in the future for a modern version of *Ius Commune*, a body of unified European substantive law, so far we have to be appreciative of the means of choosing the most proper applicable law, avoiding the crumbled national legal regulations.

Contact – email: lenka.cervenkova@gmail.com