EUROPEANIZATION AND UNIFICATION OF PRIVATE INTERNATIONAL LAW

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Abstrakt
Práce se zabývá vytvořením evropského justičního prostoru coby právního rámce pro unifikaci kolizních norem v Evropě, jež určují výběr právního řádu použitelného na vztahy s mezinárodním prvkem. Jedna část práce je věnována otázkám evropského kolizního práva obecně, včetně otázky nutnosti a prospěšnosti jednotné úpravy. Další část potom používaným metodám a dosavadním unifikačním snahám v této oblasti.

Klíčová slova
Evropeizace, evropské mezinárodní právo soukromé, unifikace práva kolizního a hmotného, soukromé a mezistátní unifikační snahy

Abstract
The article deals with the European area of justice as a legal framework for the unification of conflict-of-law rules in Europe that determine the law applicable to legal relations involving an international element or having a cross-border implication. Its first part introduces the European private international law as such, including the question of necessity and utility of the unified regulation. The second part is focused on conflict-of-law methods and actual unification achievements in this field.

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

1 Introduction

In the ceaseless and fast moving process of the global as well as the European integration, the states attempt to cross their own borders and to create larger cooperating units, which bring to them (not only but foremost) economic advantages. The cooperation started first in the field of trade that necessarily called for administrative and subsequently legislative changes too. Intervention in the public law regulation could not stay without any response in the private sector. Still increasing amount of trade and migration of inhabitants have required cooperation among the states also in other areas, justice not excepting.

Acceding to the European Union, the Czech Republic happened to be a part of the European area of justice which is one of the integration steps within the EU. On 1st May 2004 all the EC regulations became legally binding also in the territory of our state and consequently some of the Czech law acts have been inapplicable to legal relations falling within the scope of these EC norms. In the field of judicial cooperation in civil matters the Act on the Private International Law is concerned.[1]

This article deals with the European area of justice as a legal framework for the unification of conflict-of-law rules in Europe that determine the law applicable to legal relations involving an international element or having a cross-border implication. Its first part introduces the European private international law as such, including the question of necessity and utility of the unified regulation. The second part is focused on conflict-of-law methods and actual unification achievements in this field. The findings are to be applicable to both contractual and non-contractual obligations.

[1] Act No. 97/1963 CL, on the Private International Law.

2 From Unity to Diversity and an Attempt to Get Back

The European continent is a region with specific evolvement of law. The beginning of the legal culture in Europe is associated with the legal system of ancient-Greek polis and later with the Roman law which laid the foundations of so-called *Ius Commune*. It is understood as uniform legal culture that survived till the era of national civil codes starting in the 19th century.[2] Although stemming from the Roman law, these national codices reflected and reflect historical, social and political development of the individual states. Thus they have necessarily distinguished themselves from the others not only in the perception of particular legal institutes but also in conception of and attitudes to the whole areas of law.

After the dissolution of the great colonial powers and notably after the World War II in the period of "reconstruction" of depleted Europe, exigency of mutual cooperation arose; especially in economic sphere. One of the first motions to integration was the European Recovery Program, known as Marshall Plan (1947) for reconstruction of the allied countries of Europe in years 1948 – 1952. The programme was followed by many international conferences that brought into being number of international organizations.[3]

In 1950 the French Jean Monnet submitted a plan (later called after French Foreign Minister – Schuman's Plan), introducing a common steel and coal market, that led to the creation of the European Communities,[4] nowadays one of the largest economic and political organization in Europe. Originally purely economic community gradually advanced to other areas of cooperation. Citizens of the Member States ceased to be seen only as workers, a sort of economic entities, and started to be considered as members of society, citizens, married couples, students, parents or the bereaved.[5] This view introduced a new social dimension

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[2] For details see VRANKEN, M., *Fundamentals of European Civil Law and Impact of the European Community*. London: Blackstone Press, 1997, p. 19 af., or also TICHÝ, L., *Spontánní europeizace soukromého práva*. Evropské právo, 2000, No. 2, p. 2, STEIN, P. G., *Roman Law in European History*. Cambridge: Cambridge University Press, 1999, and others.

[3] In short – foundation of the OEEC (April 1948), European Congress in the Hague (May 1948), on the basis of documents adopted there, the Council of Europe was established (May 1949), military alliance NATO (April 1949). Further in FIALA, P., PITROVÁ, M., *Evropská unie*. Brno: Centrum pro studium demokracie a kultury, 2003, p. 38 af. The post-war integration in Europe does not fall within the scope of this article; numerous publications devoted to this topic are referred to.

[4] The European Communities is an overall name for three organizations founded in the 1950's on the ground of the foundation treaties: Paris Treaty from 1951 that laid the foundations of the European Coal and Steel Community was in force for 50 years till July 23, 2002, and further the Treaties of Rome from 1957 establishing the European Economic Community (in 1993 renamed European Community) and the European Atomic Energy Community.

[5] From the very beginning far more attention was focused on the legal persons, the producers of goods and services as well as competitors taking part in the European economic competition.

to the previous economic perception of persons. It was essential to secure the realization 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 became a stimulus to the integration and accomplishment of the Four Freedoms – the free movement of goods, persons, services and capital. The public law of the Community thus has to be considered as a base for the realization of the private institutes.[6]

The need for the European private law contributed to rediscovery of the common European tradition,[7] on which it should have been based. This begs the question: Are we going back to the ancient model of *Ius Commune*?[8] Is the way back indeed possible? Some authors[9] maintain a negative position to harmonization and unification of private law respectively, because the diversity of legal regulation of the Member States is conceived as a part of national identity and culture of each of the countries. Entire unification of substantive law could according to some experts create barriers to "progressive development of law".[10]

Do the European Union and its citizens want to wend the way of uniformity? In my point of view a certain degree of harmonization and unification of law in the "Euroregion" is desirable and necessary; not only for achievement of the Community's goals but in the first place for the effective functioning of the Common Market and legal certainty to be assured. On one side, some extent of unification seems to be in the interest of both the Union and its citizens, but on the other side, the power to decide upon this "extent" is still in hands of the Member States. It only depends on their common will whether they will or will not confer the power to the supranational Community.

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[6] ROZEHNALOVÁ, N., *Principy evropského smluvního práva*. In Ročenka evropského práva 1997, Svazek III., Brno: Masarykova univerzita, 1998, p. 70.

[7] TICHÝ, L., *Spontánní europeizace soukromého práva*. Evropské právo, 2000, No. 2, p. 2.

[8] Compare e.g. SCHULTZE, R., *Vom Ius commune bis zum Gemeinschaftsrecht*. München, 1991.

[9] BETLEM, G., HONDIUS, E., *European Private Law after the Treaty of Amsterdam*. European Review of Private Law, 2001, No. 1, p. 18, or also VAN GERVEN, W., *Harmonization of Private Law: Do We Need It?* Common Market Law Review, 2004, No. 2.

[10] ROZEHNALOVÁ, N., op. cit. 6, p. 69.

3 Process of Europeanization

Private international law (further "PIL") is one the instruments regulating social relations in a situation of conflicting legal orders, in other words, social relations with a foreign element. As a consequence of the above described process of integration, the exigency of such norms in the European area is even heightened. How far *common* is the Common Market if all the transactions being grounded on the Four Freedoms are governed by national conflict-of-law regulation that is *not common* to all Member States?

For this reason, in the process of so-called Europeanization the European private international law (further "EPIL") was formed within the European law (sometimes narrowed to the EC law).[11] Under the notion of Europeanization we may understand a shift of competences from the intrastate to the European level.[12] Contrary to Private international law the EPIL is not part of any national legal system, but the international. It might be seen as a set of unified conflict-of-law rules on a higher than national level, regulating relations with a "European" element. Thus it bridges the differences between national legal orders for the needs of the European market.[13]

The attention to procedural issues of the EPIL – international jurisdiction, recognition and enforcement of judgements – was paid already in the turn of 1960's and 1970's. The question of unification of conflict-of-law rules was brought into play only in 1980's. Nowadays, the EPIL is considered as a means to achieve legal certainty which is necessary more than ever,[14] although there are different opinions of its successfulness.[15] Considering that the unification of private substantive law is not reachable under present conditions, the unification of the EPIL is in my point of view an acceptable compromise.

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[11] In my opinion the European law should also include other legal instruments, primarily international treaties adopted on the ground of the EU or other organization that form a part of the European legal area, and thus should not be restricted only to the EC law.

[12] Compare TOMÁŠEK, M., *Vytyčování hranic prvního a třetího pilíře Evropské unie*. Právník, 2005, No. 7, p. 691 af., or also TOMÁŠEK, M., *Lesk a bída "evropeizace" občanského práva*. Právník, 2004, No. 1. Tomášek defines the Europeanization as a shift of competences from the national to the EU level – in a narrow sense only to the 2nd and 3rd pillar (which becomes irrelevant after the Lisbon Treaty), in a broad sense also to the "European" level, i.e. the European Community. Similarly as stated above, the Europeanization might be generally seen without these restrictions to the Union or Community level only, respectively. See supra 11.

[13] ROZEHNALOVÁ, N., TÝČ, V., NOVOTNÁ, M., *Evropské mezinárodní právo soukromé*. Brno: Masarykova univerzita, 1998, p. 26.

[14] LANDO, O., *The EC Draft Convention on the Law Applicable to Contractual and Non-Contractual Obligations*. Rabels Zeitschrift für ausländisches und internationales Privatrecht, 1974, No. 1, pp. 6-7.

[15] ROZEHNALOVÁ, N., TÝČ, V., *Evropský justiční prostor (v civilních otázkách)*. Brno: Masarykova univerzita, 2006, p. 29.

4 Unification of Conflict of Laws

This chapter ought to be prefaced that its aim is not to give any comprehensive list of all former and later groups aspiring to unify law, but rather to categorize them pursuant to their level of organization and unification methods used.[16] Some of them will be discussed into more details.

4.1 Institutionalized groups

The first attempts on unification originated in the 19th century when The Hague Conference on Private International Law (further "HC" or "the Conference") was established.[17] Arising from its name, the HC goes the traditional way of the PIL.[18] Soon it was followed by the others. At the beginning of the 20th century The International Chamber of Commerce, The International Institute for the Unification of Private Law (UNIDROIT) and later on under the patronage of the United Nations, The UN Commission for International Trade Law (UNCITRAL) were founded. Except for the directly applicable UN Convention on Limitation Period in the International Sale of Goods (1974) and the UN Convention on Contracts for the International Sale of Goods (known as Vienna Convention of 1980), all three initiatives went rather the way of alternative unification, notably in the form of standardized contract terms (INCOTERMS), issued by the International Chamber of Commerce), UNCITRAL model law, and UNIDROIT Principles of International Commercial Contracts respectively.[19]

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[16] Compare TICHÝ, L., op. cit. 7, p. 1. Unlike prof. Tichý I have chosen criterion of the form of organization (extent of institutionalization) for the categorization of the groups, and not the unification methods. Used methods cannot play the main role in the classification because most of the groups combine them all. Besides that I introduce another criterion of searching approach (see below).

[17] The first session of The Hague Conference took place already in 1893. On its seventh session in 1951 the Statute of the Hague Conference was adopted and its irregular meetings were converted into the international organization. The Czech Republic has been a member of the HC since 1993. *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* and *Convention of 4 May 1971 on the Law Applicable to Traffic Accidents* belong among the most important deeds of the Conference. Significant amount of the drafts, however, never came in force because they were not ratified by the required number of states. Despite the fact, they are of considerable importance in the field of the PIL as they served as a source of inspiration to later achievements.

[18] Traditional methods of the PIL are regulations via (i) conflict-of-law rules and (ii) directly applicable norms (treaties). It is not within the scope of this article to analyze the PIL methods, thus in details it is referred to KUČERA, Z., *Struktura a třídění kolizních norem*. In Studie z mezinárodního práva, Svazek 16, Praha: Nakladatelství Československé akademie věd ACADEMIA, 1982; KUČERA, Z., *Mezinárodní právo soukromé*. 4. vydání. Brno: Doplněk, 1999; or ROZEHNALOVÁ, N., TÝČ, V., NOVOTNÁ, M., op. cit. 13.

[19] They are usually overall named as *lex mercatoria* or transnational law commercial law. ROZEHNALOVÁ, N., op. cit. 6, p. 70. For closer explanation see ROZEHNALOVÁ, N., *Transnacionální právo mezinárodního obchodu*. Brno, 1994.

Last but not least, the European Community is also one of the institutionalized and organized initiatives. On its ground and on the ground of the EU, number of crucial EPIL documents was drafted; e. g. Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (1968) and the Convention on the Service in the EU Member States of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (1997).[20] However, as a principal document of the EPIL is to be considered the Convention on the Law Applicable to the Contractual Obligations (known as Rome Convention of 1980).[21] The part dealing with the non-contractual obligations, nonetheless, never came in force. Only in late 1990's the European Group for Private International Law (EGPIL) drafted a proposal for a convention on the law applicable to non-contractual obligations.[22] Although this proposal was never ratified, it stood as a cornerstone for further unification work.

After 1999, when the Treaty of Amsterdam came in force, the secondary Community instruments (mainly directives, harmonizing the law of the Member States, but lately regulations as well)[23] have started to play more important role in the process of unification of the PIL. The EC secondary law assures the unified application of the law in the European area of justice.

Finally, alongside these European continental methods there are other PIL methods, typical for common law system, that do not regard the diversity in approaches necessarily as a negative feature. Using various criteria, they attempt to find the most appropriate law.[24]

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[20] Presently, each of them has its "mirror" instrument in a form of regulation – Regulation (EC) No 44/2201 (Brussels I Regulation) and No 1348/2000.

[21] The Czech Republic met its commitment in the Convention 2005/C/169/01 on the accession of the Czech Republic (and other new Member States) to the Convention on the law applicable to contractual obligations, by ratification of the Convention "Rome I" that became legally binding to date of July 1, 2006. KRÁLOVÁ, M., *Úmluva o právu rozhodném pro smluvní závazkové vztahy*. Bulletin advokacie, 2006, No. 9.

[22] FALLON, M., *Proposition pour une convention européenne sur la loi applicable aux obligations non contractuelles*. European Review of Private Law, 1999, No. 1.

[23] ROZEHNALOVÁ, N., TÝČ, V., *K vývoji mezinárodního práva soukromého a procesního ve státech Evropské unie*. In Ročenka evropského práva 1998, Svazek IV., Brno: Masarykova univerzita, 1999, p. 168.

[24] B. Currie came in the 1960's with his method of "*Governmental Interest Analysis*" as a reaction to rigid rules of former "*Vested-Rights*" approach. The choice of law is made via an analysis of "interests" of the involved legal orders; therefore it is purely material choice. A newer method of "*Better Law Consideration*" by R Leflar goes even more to extremes in this respect. Its only criterion of choice is "the better" law for a legal relation in question. As for the others, "*Local Law Theory*" by W. W. Cook and E. G. Lorenzen or "*Principles of Preference*" by D. F. Cavers might be named. An analysis of these methods, however, does not fall within the scope of this article. Abovementioned publications (see supra 18) or for the foreign authors e. g. CURRIE, D. P., KAY, H. H., KRAMER, L., *Conflict of Laws – Cases – Comments – Questions*. 6th Edition. St. Paul: West Publishing Co., 2001 are referred to.

4.2 Spontaneous initiatives

Current trend is going towards spontaneous private codifications,[25] an antipole of organized unification groups. These study groups work mainly with the alternative methods that, unlike the traditional PIL methods, do not lead to binding legal instruments but to a model private law. Both forms coexist on general European level as well as the EC level.

Fig. 1: Outline of the most important institutionalized and spontaneous enterprises aspiring to unify private law on the European as well as the Community level.

Any absolute classification into purely European and purely Community groups is not nor possible, neither desirable, because most of the so-called European study groups comment also the Community regulation and vice versa. The borderline between the two categories is only vague.

There are two different approaches to research[26] among all the groups, using either traditional or alternative methods. The comparative approach based on comparison of national legal orders, typical for the US law, is nowadays common likewise in Europe. For instance it is employed by Londo's group[27] in its research work.

[25] TICHÝ, L., op. cit. 7, p. 1, and also TICHÝ, L., *Unifikace soukromého práva v EU a naše kodifikace*. Právní rozhledy, 2005, No. 6, p. II.

[26] SCHULTZE, R., *European Private Law and Existing EC Law*. European Review of Private Law, 2005, No. 1, p. 7-8.

[27] Ole Lando together with Hugh Beale are the leading figures of the Commission on European Contract Law, also known as Lando's Commission. It was founded already in 1982 and with the support of the European Commission it has been working on the restatement (private commentary) of European contract law since the very beginning. BETLEM, G., HONDIUS, E., op. cit. 9, p. 19.

The second approach being inspired by the European Commission's Action Plan[28] is call *acquis* approach. It is aimed at unified European contract law drawing on patterns from the EC law, is supported by the European Commission and coordinated by the Center for European Private Law (Acquis Group in Münster). Both approaches are focused first and foremost on the contract law.

One of the most important steps sure is presented by the Principles of European Contract Law (PECL, 2003)[29] formulated by Lando's Commission. Its objective ought to be an introduction of framework principles and rules for national courts as well as a motion for national parliaments. Moreover, the Principles should serve as a bridge between the continental and Anglo-American common law system.[30]

The Study Group on a European Civil Code sets itself far more ambitious task. It has responded to the Resolution of the European Parliament[31] calling upon to formulate a European Civil Code. This initiative combines the alternative methods of questing for common principles and fundamentals in national legal orders and the traditional methods as the final stage should lead to adoption of a binding, directly applicable document. The form of the instrument is, however, still discussed. Some authors are convinced that a way of total unification of substantive private law is under the present circumstances burdensome and almost closed, and therefore the Code ought to go the time-tested way of common principles.[32] Others look further and assert that the EC has not enough legal power to adopt any complex civil code. It would be necessary to limit the regulation only to contractual and related issues hence this attempt would get stuck in a half way between the unification and existing fragmented regulation in the national legal orders.[33]

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[28] Communication from the Commission to the European Parliament and the Council – A more coherent European contract law – An action plan; 15 March 2003, OJ 2003 C 63/01. It was followed by the Communication on European Contract Law of 13 September 2001 (OJ 2001 C 255/01).

[29] For further details see ROZEHNALOVÁ, N., op. cit. 6, and ROZEHNALOVÁ, N., *Evropský justiční prostor ve věcech civilních, část XIV. – Principy evropského smluvního práva a další iniciativy směřující k vytvoření jednotného smluvního práva*. Právní fórum, 2006, No. 3, and for the foreign authors BERGER, K. P., *The Principles of European Contract Law and the Concept of the* „*Creeping Codification*". European Review of Private Law, 2001, No. 1.

[30] TICHÝ, L., op. cit. 7, p. 3.

[31] Resolution of the European Parliament on the Harmonization of Certain Sectors of the Private Law of the Member States, 6 May 1994, OJ 1994 C 205/518, that follows up the Resolution of the European Parliament of 29 May 1989 (OJ 1989 C 158/400) and calls upon the Commission to formulate a common European Civil Code with reference to the Commission on European Contract Law.

[32] TICHÝ, L., op. cit. 7, p. 2. Compare with BAR, CH. VON, HARTKAMP, A. S., *Towards a European Civil Code*. 2nd Edition. Nijmegen: 1998.

[33] BASEDOW, J., *Codification of Private Law in European Union: the Making of a Hybrid*. European Review of Private Law, 2001, No. 1.

Although the contractual law stays usually in foreground, recently attention has been drawn to the tort law as well.[34] The European Group on Tort Law (originally called Tilburg Group) represents one of the pioneers in this field. It was established in 1992 in Tilburg, the Netherlands, as a group of scholars with a main figure of professor Spier. The group employs the comparative approach and alternative methods in its work that supports the Roman tradition is recognizable similarly in the field of tort law.[35] It introduces a research project that seeks after common elements of tort liability across the spectrum of the European legal orders. The objective of the group is to formulate the fundamental principles of European tort law, analogously to Lando's PECL or UNIDROIT Principles. The Principles of European Tort Law (further "PETL") was for the first time published on a conference in Vienna in May 2005 and afterwards on a conference of Academy of European Law (ERA) in Trier, Germany, in November 2006. It is supposable that similarly to the PECL the Principles of European Tort Law will wait to see their amended version or versions.[36] There are, however, some opinions calling these endeavours into question.[37] Their cardinal argument against the unification of tort law lies in variety of economic demands of subjects and in competition that requires differential regulation. In my point of view, nonetheless, the need of legal certainty as a consequence of unified law is so urgent that it prevails. Despite the fact that the economic subject save a significant part of their costs if they act within an area of unified rules than if they have to comply with more (often even antagonistic) requirements of several legal orders.

Likewise the above mentioned Study Group on a European Civil Code and lately also Research Unit for European Tort Law in Vienna deal with tort law, employing the *acquis* approach. The Hamburg Group for Private International Law has to be mentioned as well. The Hamburg Group jointly with Max-Plank Institute commented a proposal for the Rome II Regulation, important legal instrument of tort law, finally adopted in July 2007.[38]

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[34] Professor Tichý speaks in this context about the Europeanization of tort law caused by "an enormous growth of cross-border fluctuation as a result of the free movement of persons". TICHÝ, L., op. cit. 7, p. 3 af.

[35] Principal publications of the group are: SPIER, J., *The European Group on Tort Law*. In KOZIOL, H., STEININGER, B. C., *European Tort Law 2002*. Vienna: 2003; a KOZIOL, H., *Die* "*Principles of European Tort Law*" *der* "*European Group on Tort Law*". Zeitschrift für Europäisches Privatrecht, 2004. For further details see its web site http://civil.udg.es/tort

[36] Further details in KOCH, B. A., "*European Group on Tort Law*" *and Its* "*Principles of European Tort Law*". American Journal of Comparative Law, 2006, No. 1.

[37] For instance VAN DEN BERGH, R., VISSCHER, L., *The Principles of European Tort Law*: *The Right Path to Harmonization?* European Review of Private Law, 2006, No. 4.

[38] Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ 2007 L 199/40

All above mentioned private codifications constitute unified law regulation that serves as an outline for law-making bodies as well as private parties. They can refer to the principles (*soft law*) and thus make them effective and binding. 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. The process of Europeanization has thus advanced from the level of private law to the level of legal science.[39]

The shift of competence in Europe to the EC institutions has already overstepped mere common public and administrative rules and procedures towards common regulation of private law. As mentioned above the unified European private law has been an illusory vision so far; that is true for both contractual and non-contractual obligations. Notwithstanding, there is the possibility of unified conflict-of-law rules as a solution *per medias vias* between the code and non-obligatory principles or codifications which in their present form do not lead even to unified application of law, therefore they leave space for the dissimilar national legal orders.

[39] TICHÝ, L., *Unifikace soukromého práva v EU a naše kodifikace*. Právní rozhledy, 2005, No. 6, p. II.

5 Conclusion

Bearing in mind the goals and objectives of European Community, notably the functioning of the internal market, as well as needs for predictability for parties in private transactions, a common regulation in a field of the conflict of laws is desirable and necessary. 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. International treaties and conventions still personify the traditional means of the conflict of laws (so called *hard law*). As an antipole or an alternative we can find non-binding private codifications of general legal principles and model laws (*soft law*). They form a modern stream of the unification of law.

It cannot be agreed with opinions saying that the European unification of law destroys cultural heritage and diminishes national identities of states by blurring demarcation lines between national legal orders. In my point of view, this is rather a new quality of law, common to all participating states and fruitful for their citizens. Moreover, the unification of the European conflict of laws is only a *via media* between two extremes – one of an ideal (however today a utopian) vision of the unification of substantive law and the other one of crumbled national legal regulations. It is a means of choosing the most proper applicable law, and thus the national legal orders are affected only in a minimalist way.

According to some authors we cannot comprehend the private codifications as an autonomous legal system but only as a means of international commercial praxis bridging the gaps between the national legal orders.[40] Despite all that, they are of a significant value because they document social needs for legal regulation and may serve as an impulse for further law-making activity. This begs the question. Would it be ever possible to come to a code of the unified substantive law? Is Europe waiting to see a modern version of *Ius Commune*?

[40] Compare KUČERA, Z., *Mezinárodní právo soukromé*. 4. vydání. Brno: Doplněk, 1999, p. 41 and 206 af.

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