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**CONFLICT OF LAWS AS INTERBRANCH INSTITUTE
OF THE RUSSIAN LAW**

PhD Dissertation Summary
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GENERAL DESCRIPTION OF PhD THESIS

The relevance of the research is mainly due to the fact that the term «conflict of laws» is often used in modern Russian legislation and in Russian doctrine.

However, an unambiguous answer to this question, what should be understood by it, is difficult to give, since conflict of laws is called both a branch and an institution of law, and an instrument for resolving legal conflicts and an instrument for preventing law-making mistakes and legal defects.

Such a difference of opinion among modern scientists is mainly due to the fact that in the national legal science there is no monistic approach to the system of law, to its structure, to the criteria for the allocation of branches of law.

For example, A.A. Golovina suggested such criteria as : «the high importance of regulated social relations», «the presence of a codified normative legal act In addition to the traditional subject and method of legal regulation» in her PhD thesis «Criteria of independent branches in the system of Russian law.

From this point of view, conflict of laws cannot be called a branch of law. But may it be a branch of legislation? It is also controversial, because it is impossible to name any regulatory legal act that would contain only conflict of laws. Such norms are embedded in a variety of legal structures of normative legal acts, which belong to different branches, both legislation and law.

In this regard, in the Russian legal doctrine there are various hypotheses about the legal nature of conflict of laws, from the one hand, it would be more logical to consider conflict of laws as a section or institution of emerging science or, more correctly, a scientific direction called «legal conflictology». On the other hand, if we continue to develop the theory of the system of law (G. Ellinek, N. Luman, S.S. Alekseev, D.E. Petrov, etc.), bringing it to a new step of development of law, it will be relevant to explore this concept from the perspective of the theory of inter-sectoral institutions.

The degree of scientific development of the topic. The problem of the existence of intersectoral institutions in law is not an absolute novelty, as early as in 1947, the famous Professor V.K. Reicher put forward a provision on the presence of basic and complex branches of law .

In the PhD thesis we define the place of conflict of laws in the system of Russian law, as well as in the system of legal conflictology. Meanwhile, the theory of intersectoral institutions has been studied before. One of the first was to develop it in the second half of the twentieth century. Professor S.V. Polenina, who noted that interbranch institutions are the most common type of complex legal phenomena, and that they arise at the junction of various branches of law, the subject of regulation of which has a certain commonality. Nevertheless, despite the fact that some attempts to study interbranch institutions as legal entities in the structure of law have already been made, this area remains little studied.

The scientific novelty of the PhD thesis lies in the development of the author's concept of conflict of laws, which includes not only scientific and theoretical concepts and categories of conflict of law and applied scientific, methodological and empirically based technologies, but also scientific forecasts related to the development of modern social and legal conditions of conflict of law. For the first time in the theory of law conflict of law was investigated not just as an interbranch functional legal institution, but its place in the structure of the legal system and legal conflictology, which allowed to establish its legal nature and to determine the trends of its development in Russia. In addition, the study revealed the axiological significance of conflict of laws as an interdisciplinary legal institution in the Russian legal system.

Criteria of separation the right into branches, sub-branches and institutes of the right are allocated, and the subject of legal regulation is added by such criterion as conceptual and categorical device. With obsteretics positions showed signs of stability rights, foremost among which is escallations law. The ways of prevention and resolution of conflicts in order to combine them into a conflict-of-laws method of legal regulation are identified and improved.

In addition, the thesis identified trends in the development of conflict of laws and made a legal forecast about the possibilities of development of conflict of law in the system of Russian law.

An important research achievement was the definition of the place of conflict of law in the system of law, its role and importance in it.

The interbranch nature of the study allowed not to be limited to the study of conflict of laws only from the standpoint of the General theory of law. In this connection, the conflict of laws was investigated by us from the point of view of industry, with special attention paid to private international law. This is mainly due to the fact that conflict of laws rules are often found, namely, in private international law, so it was investigated by us as an integral part of the Russian national conflict of laws.

The theoretical basis of the PhD theses consists of scientific researches of both national and foreign scientists-lawyers (D.M. Azmi, S.S. Alekseev, Yu.G. Arzamasova, M.I. Baitin, S.V. Boshno, N.A. Vlasenko, M.V. Voronin, A.A. Golovin, G. Ellinek, M.V. Zakharova, R. Iering, O.S. Ioffe, V.P. Kazimierczuk, M.A. Kaufman, T.V. Kashanina, D.A. Kerimov, E.A. Kirimova, V.V. Lazarev, A.V. Malko, M.P. Marchenko, N.I. Matuzov, D.E. Petrov, N.A. Pianova, T.N. Radko, V.K. Reicher, L.I. Petrazhitsky, V.D. Sorokin, A.F. Cherdantsev, G.F. Shershenevich, etc.)

The author also relied on the researches of experts of private international law (P.L. Anufriyeva, K.A. Bekyashev, I.V. Getman-Pavlova, G.K. Dmitrieva, T.N. Neshataeva, etc.), conflict of laws (I.V. Alenina, C.V. Akhmetzhanova, N.A. Vlasenko, N.N. Voplenko, V.V. Denisenko, A.M. Zanin, S.A. Kondrat'eva, Z.A. Neznamova, O.A. Polyakov, I.V. Sinitsa, I.A. Starodubtseva, Yu.A. Tikhomirov, L.V. Tolstoy, etc), interbranch legal institutions (Yu.K. Osipov, S.V. Polenina, O.E. Repetivel, I.V. Reshetnikova, S.A. Khalatova, etc).

Special attention was paid to the study of General and legal conflict, in particular the scientific researches of such scientists as G. Zimmer, L. Coser, I.G. Kozyrev, V.N. Kudryavtsev, R.A. Romashev, T.V. Khudanina, etc.

The object of the PhD thesis is social relations associated with different types of conflict of laws.

The subject of the PhD thesis is conflict of laws as an interbranch element of the system of law and as part of the legal conflictology.

The methodological base of the PhD thesis is represented by a set of General scientific, special private law research methods. In particular, in the first Chapter of the thesis in identifying the essence of conflict of laws used as General scientific methods (analysis and synthesis, extrapolation, dialectical method, hypotheses) and private legal methods (legal analysis, comparative legal method). In the second Chapter, establishing the place of conflict of law in legal conflictology, we also used the dialectical method of research, as well as the method of legal modeling and forecasting, together with the logical method, as well as the instrumental method in the study of ways to prevent and resolve conflicts of law, as well as the system-structural method. In the third Chapter, to determine the role of conflict of laws in the system of law, used historical and logical methods, functional method and systematic approach, as well as such private law research methods as the method of legal modeling and legal forecasting, the method of legal analysis. The system-structural method of research was also applied.

The purpose of the PhD thesis is to reveal the legal nature of conflict of laws and to determine its place in the system of law and legal conflictology.

The issues of the PhD thesis are:

- identification of the causes of conflicts of law;
- identification and consideration of scientific theories, which reflect the conflict of law, consideration of approaches to the concept of conflict of law and the identification of signs of conflict of law;
- development of the author's definition of the conflict of laws;
- implementation of the classification of conflicts of law;

- studying of the nature and structure of legal conflictology, the definition of the essence of the conflict in law and the identification of the relationship of legal conflict with the legal conflict;

- determination of actual methods and methods of legal regulation in the field of conflict social relations;

- studying of the concept and the basic elements of the system of law, identifying the properties of the system of law, the ratio of the concepts of «system of law» and «structure of law», the development of its own concept of allocation of elements of the system of law, making proposals to improve the allocation of elements of the system of law;

- conducting a comprehensive theoretical study of the law Institute, determining its place and role in the system of Russian law, the disclosure of the social nature and legal nature of legal institutions, studying of their functions. Particular attention is paid to the nature of interbranch legal institutions, their nature and functions; identification of criteria for the division of intersectoral institutions into types;

- definition of the role of conflict of laws in the system of law and its study as an institution of law;

- identifying the features of the Institute of conflict of laws in private international law;

- definition of conflict of laws rules and their types;

- studying of conflict of laws rules in the mechanism of legal regulation;

- identification of problems of legal regulation of conflict of laws;

- making proposals to improve the mechanism of legal regulation of conflict of laws;

- development the primary structure of the training course «Conflict of laws».

The normative and empirical base consists of acts of international law, the Constitution of the Russian Federation, Federal legislation and other Russian laws,

judicial practice of the Russian Federation, as well as personal experience of the author as a practicing lawyer, researcher and teacher.

The practical and empirical significance of the results of the PhD thesis is to identify ways to prevent and resolve conflicts in law, identify their weaknesses and offer recommendations for their improvement. As well as in determining the place of conflict of law in the system of law. The research materials can be used in the practice of law enforcement agencies, as well as taken into account in legislative activity. Of particular interest is the present study in a comprehensive study of the legal system and its individual structural elements.

In addition, the materials of this study can be used in the legislative process in the preparation of the modern draft of the Federal law «on normative legal acts in the Russian Federation», as well as in the teaching of the course of legal conflictology and the special course «Conflict of laws».

The thesis for protection:

1. There is no the single approach to the Genesis of conflicts of law in the national doctrine of conflict of law. In our opinion, the causes of conflicts of law can be divided into three groups.

The first group includes objective reasons that are virtually independent of, or to a small extent depend on, the subjects of rule-making and the subjects that provide different types of rule-making process.

The second group of causes of conflicts are the subjective causes that arise due to the fault of individual subjects of legislation (chambers of Parliament, government, Minister), or the developer of the draft normative legal act, or the entity providing a particular type of rule-making process. Among this group there are both indirect reasons, for example, when the draft regulatory legal act has not passed the RIA or has not been agreed with the authorities concerned, and direct.

The third group consists of mixed causes of legal conflicts, which are caused by both objective and subjective factors. The following examples can be given: the emergency situational nature of the adoption of legislative acts as a response to certain facts that have occurred; the urgent change in the order of legal regulation

associated with the application of sanctions against Russia; the introduction of several changes in the already changed norms of laws, etc.

2. Conflict of laws is a multilevel concept. Structurally, it consists of three levels that allow not only to understand the legal nature of this phenomenon of the Russian legal system, but also its importance, value and determine the prospects for its development in the legal system and in legal conflictology.

The first level is normative and instrumental, which helps authorities, officials and other participants of legal processes to choose the right methods of prevention and resolution of legal conflicts.

The second level is scientific. Conflict of laws is an area (scientific direction) of the General theory of law and the state, which, in turn, should be structured into two sections. The first of them is the basic theoretical system of knowledge, which studies the conflict of law itself and aims to determine its nature, classification of legal conflicts, as well as to identify the causes and conditions of their occurrence. The second section of conflict of laws, as a scientific direction, is empirical. It is primarily concerned with the development, verification and selection of methods and techniques for resolving and preventing conflicts of law applied in practice, as well as with the development of a mechanism for identifying conflicts and accumulating jurisprudence on the issue of resolving conflicts of law. This should also include the institution of monitoring of normative legal acts and normative agreements for the presence of conflicts in them.

The third level of training, it is associated with the extrapolation of scientific and empirical knowledge developed by science and proven practice, legislators, law enforcement, students. The structure of the studying programme «Conflict of laws», in our opinion, should consist of two parts. The first (General part) should represent the basic theoretical system of knowledge, containing the doctrine of the nature of conflict of law, the classification of legal conflicts, as well as identifying the causes and conditions of their occurrence. The second part of the programme is empirical (special), connected with didactic methods of transfer of knowledge,

skills in resolving and preventing conflicts in law, as well as teaching modern techniques of identifying conflicts in law.

3. Interbranch Institute of law is a group of legal norms, United by a common object of regulation of public relations of the several branches of the law with common characteristics and performs certain legal functions, aimed at regulation of public relations and the protection of the legitimate rights and interests of subjects of law of various methods of legal regulation of permissive or mandatory characteristic fields of law governed social relations. In this context, private international law is an interdisciplinary law Institute.

4. The problem of correlation between the concepts of «conflict of law» and «competition of law» is solved in favor of differentiation of concepts. Competition of legal norms is proposed to be considered as a type of legal conflict. Thus, a conflict is a clash of laws and consists in the fact that the collision exists in the normative legal acts, but may not be detected, so the conflict of law is a passive collision. Competition of rules of law is a conflict that has already been directly detected and needs to be overcome, that is competition is an active conflict, a clash that must be overcome in the process of law enforcement.

5. Conflict of law is correlated and inextricably linked with legal conflictology as «General» and «special». Legal conflict stands out as an acute form of legal conflict. Conflict of law is special in relation to legal conflictology and is part of it. However, since the causes of legal conflicts are much broader and do not relate only to conflicts of law, these concepts are not identical and are not absorbed by each other. Conflict of law should be considered as part of legal conflictology, as this area provides a very large layer of normative and legal non-normative information for the prevention and resolution of real legal conflicts, which contributes to the preservation of legal order and the development of trust in law as an effective regulator of public relations.

6. All ways of dealing with conflicts should be divided into ways to prevent possible conflicts and ways to resolve existing conflicts. In turn, the ways of resolving conflicts can be classified into ways to eliminate (elimination of conflicts

in the course of law-making) and ways to overcome (elimination of conflicts in the course of law enforcement).

A number of effective legal methods and methods of legal regulation are used to resolve and prevent conflict situations. Sometimes, to achieve this goal, it is not enough to use one method of legal regulation, in this regard, it is necessary to use several of these methods simultaneously, an integrated method. The essence of the conflict of law is dictated by the impossibility of identifying the conflict of law method of legal regulation, in principle, since, as an interbranch institution consisting of General rules that determine the rules for the selection of the necessary regulatory legal norms in any branch of law, it is impossible to foresee the emergence of those legal instruments that will be necessary to resolve or prevent conflicts of law. Since the conflict in law is situational, it is impossible to develop binding methods and ways to resolve this conflict. And, therefore, conflict of laws uses a set of already known means, techniques and methods used to eliminate conflicts of law, taken from other areas of law. In accordance with the objectives of conflict of laws, these borrowed from different branches of law are only an effective tool for resolving and preventing conflicts of law, but they can not constitute a single method of legal regulation within the framework of conflict of law.

7. The modern legal science has not yet developed a single approach to the concept of the legal system and the criteria for the allocation of its structural elements. It is necessary to unite legal norms, first of all, on the basis of such criterion as «homogeneity of regulated social relations». Homogeneity of social relations is the main distinguishing feature of branches, sub-sectors and institutions of law. Moreover, the smaller complex of law rules, the more narrow one of public relations regulated by them. The boundaries of regulation of social relations are strictly defined by the framework of the Institute of law or branch of law and do not go beyond it. One criterion is no longer enough to single out branches, sub-sectors and institutions of law in modern conditions. In this regard, it is proposed to Supplement the criteria of differentiation of legal communities with such criteria

as: «homogeneity of regulated social relations»; «special determinations» and «autonomy of functioning».

8. The Institute of conflict of laws international private law is part of the structure of national conflict of laws. It is proved that, despite the different nature of these two systems, their heterogeneous subject and subject composition, to talk about the conflict regulation of interethnic social relations, as a separate legal entity, not included in the system of national law, is incorrect, because it still does not have its own ways of legal regulation and conflict of laws rules are used at any level of legislation, and at the national level, including, although much less than in private international law.

The transformation of some generally accepted theoretical concepts affects the individual, applicable conflict of laws, means of legal regulation. One such influence is a new perspective on the problem of conflicts between national and international law. In case of conflict between the legal norms of foreign and national legislation, the choice of law should be made in favor of national legislation. This conclusion is made on the basis of logical links between law and its purpose, as well as on the basis of the practice of the constitutional Court of the Russian Federation.

9. The methods and techniques of prevention and resolution of conflicts in law developed by the conflict of laws should be considered within the framework of the theory of values of law. The tasks performed and the properties possessed by the category of «stability» can be attributed to its social values right (S.S. Alekseev, O.F. Skakun, N. Nenovsky). I. Karaseva identifies a number of classifications of values of the law according to various criteria, in which the concept of «stability» occurs. We have among the signs of stability of the law were identified: a) obligation, b) conflict-free, C) predictability. Non-collisionality is the main sign of stability, without which other signs lose their significance for determining the category of stability, although they are quite important.

10. In the Russian legislation, taking into account the latest achievements of legal science, it is necessary to consolidate the status of conflict of laws as a

mechanism for resolving possible conflicts between the rules of law in the current Russian legislation. In this regard, there is an urgent need for the accumulation and perception of the experience of foreign countries and its normative consolidation in the Federal law "on normative legal acts in the Russian Federation".

As an additional criterion applied in addition to the principles of justice and humanism in resolving conflicts by means of conflict-of-laws rules, the protection of the interests of the individual must be applied, which in some cases allows for a violation of the principle of legality.

11. The nature of conflict of laws, first of all, revealed through the rules of conflict of law and their Association within the system of law. Conflict of laws rules in the system of Russian law have their own characteristics. First, when classifying them, they can not be unconditionally attributed to many groups of norms allocated in the system of Russian law. It is almost impossible to classify these rules by functions, since these rules do not directly regulate any relationship, but only show the law enforcement officer what rules should be chosen for effective legal regulation in the presence of competition between the rules of law.

From the perspective of industry sector, these standards can be sectoral in nature, and the overall spreading enshrined in their rules of choice on various social relations.

According to such criteria as their «the regulation of the substantive content of legal regulation, or the procedural order of its implementation», conflict rules can be material, as in private international law, when they indicate the law of which country should be applied in a particular case, and procedural, when it comes to General Federal or regional rules.

Secondly, these rules in terms of ways of presentation of normative material, are reference, because they do not contain certain rules of conduct, but only refer to the law enforcement to other rules of law.

Third, these norms should be referred to specialized norms, whose task is not to regulate social relations, but only to promote the implementation of this regulation. At the same time, conflict-of-laws rules help law enforcement to make

the right choice of law, when there is a clear contradictory regulation of the same social relations in different ways. In this respect, conflict-of-laws rules are similar to a number of operational rules of law, which only transfer them to a new circle of public relations.

Approbation of the research results was carried out by publishing a number of articles, which reflected the main provisions of the dissertation research. The main results of the dissertation research were discussed at various scientific conferences and other scientific events, such as: VI International scientific and practical conference Kutafin readings «Harmonization of the Russian legal system in terms of international integration» (report: «Problems of harmonization of law as a way to eliminate and overcome conflicts of law», Moscow, April 3-5, 2014, Kutafin Moscow state law University, XVI International scientific and practical conference and IX International scientific and practical conference Kutafin readings «Strategy of national development and tasks of Russian legal science» (report: Determining the place of structural elements of the legal system as one of the tasks of legal science (on the example of conflict of law), Moscow, November 24-27, 2015, Kutafin Moscow state law University), student round table «Problems of improvement of the Russian legislation» (report: Conflicts of law as an obstacle to the creation of uniform application of legislation, Moscow, December 7, 2015, Bauman Moscow State Technical University), Winter school of young scientists-2016 «Legal system of the Russian Federation and international law: problems of interaction and law enforcement» (Moscow, January 28-February 2, 2016, Kutafin Moscow state law University), IV Winter school of young scientists – 2018 «Transformation of the Institute of legal responsibility in changing social practice» (Moscow, January 9-February 2, 2018, Kutafin Moscow state law University), International scientific-practical conference «Modern problems of legal interpretation» (report: the Interpretation of the law as a way of overcoming of conflicts of law, Moscow, 29 February 2016, the Institute of legislation and comparative law under the Government of the Russian Federation), Russian scientific-practical conference « Zhidkov's readings – 2016» (report: Protection of

interests as a criterion of conflict resolution, Moscow, March 25-26, 2016, RUDN University), Russian scientific and practical conference of teachers, postgraduates and students «Science for the benefit of humanity-85» (report: Conflict of laws as an inter-branch Institute, Moscow, April 19, 2016, Moscow state regional University), V Summer school of young scientists «Legal Personality: fundamental and applied problems» (Moscow, June 26-July 1, 2018, Kutafin Moscow state law University) and others.

Results of the dissertational research have found application in its research activities as an trainee-researcher in the laboratory of monitoring of risks of sociopolitical destabilization, National Research University «Higher school of Economics», as well as practical activities for lectures and seminars within the course «Legal systems of modernity» (teaching at the Open school of law at the Research University «Higher school of Economics»), «History of state and law of foreign countries», «the Theory of law», «Law» (teaching activity in the Research University «Higher school of Economics»), «Municipal law-making», «Land law», «Labor law» and «Administrative law» (teaching activity in the Electrostal branch of Moscow psychological and social University).

The researcher also published eight scientific articles on the topic of PhD thesis.

The structure of the dissertation research is determined by the logic of scientific research (from particular to General) and reflects the main aspects of the developed topic. The author investigated the private components of conflict of laws and on the basis of scientific research has collected a complete picture of the essence of conflict of law.

The dissertation research consists of an introduction, three chapters covering ten paragraphs, conclusion, Annex 1, which is a table that reflects the proposed criteria for the division of legal communities into elements of the legal system, Annex 2, which is a table with the differentiation of ways to prevent, eliminate and overcome conflicts of law, Annex 3, which is a draft Chapter on conflict of laws for the Federal law «on normative legal acts», as well as a list of regulatory sources

and a list of references, Annex 4, which is a draft of Teaching Programme of Conflict of Laws.

BRIEF CONTENT OF THE THESIS

The introduction substantiates the relevance and novelty of the dissertation research, defines the object, subject, purpose, objectives, as well as research methodology.

The first Chapter «the Essence of conflict of laws» accumulates the basic doctrine of conflicts of law and conflict of laws.

In paragraph 1.1, «the Concept of conflict of law», different approaches to the term «conflict» are investigated. The concepts of «conflict of law» and «competition of law» are distinguished.

The legal conflict should be understood as a passive clash of rules governing the same social attitude, enshrined in the law and articles and paragraphs of normative legal acts of different or the same level and source of publication.

The paragraph substantiates the impact of legal conflicts on the stability of the law. Due to the fact that the state of stability is possible only with certainty, certainty and predictability in legal phenomena, in order to achieve it, the most logical and effective will be the desire to achieve conflict-free law.

The second paragraph, «Classification of conflicts of law», deals with the classification of legal conflicts. It is concluded that they are sufficient to identify the essence of conflict of laws, the nature of conflicts, the causes of their occurrence and the development of an effective mechanism for preventing and resolving conflicts. There is currently no need to «split» conflicts into smaller subgroups.

In the third paragraph of the first Chapter «the Concept of conflict of law» it is noted, despite the fact that the term «conflict of law» is well-established in legal terminology, in Russian science has not yet formed a consensus on the place of conflict of law in the system of Russian law. In this regard, we have studied the legal nature of conflict of law and its structure.

The main point on which attention is focused is that conflict of laws should be based on a combination of theory and practice.

In the second Chapter, conflict of laws is studied in the framework of the scientific direction of legal conflictology.

In paragraph 2.1 «the Concept and structure of legal conflictology» investigated the concept of «legal conflictology», «conflictology», also considered the structure of legal conflictology. Social conflict is studied mainly from the point of view of management theory. Various approaches to the concept of «legal conflictology» and its structural elements are investigated.

In paragraph 2.2, «the Concept of conflict of law», it is stated that the study of the conflict should proceed from its understanding as a contradiction that occurs between subjects of law or other social groups. The contradiction between normative legal acts and other legal documents cannot be considered a conflict, and, consequently, normative legal acts cannot be parties to the conflict either.

Paragraph 2.3 «Non-Normative legal ways of preventing and resolving legal conflicts and legal conflicts» justifies the conclusion that all ways of dealing with conflicts can be divided into ways of preventing possible conflicts and ways of resolving existing conflicts. In turn, the ways to resolve conflicts can be divided into ways to eliminate (elimination of conflicts in the course of law-making) and ways to overcome (elimination of conflicts in the course of law enforcement).

All methods of prevention and resolution are analyzed, delineating concepts concerning such closely related methods as harmonization, unification, implementation of the law are given.

The ways of improving the legislation, including such as legal monitoring, regulatory impact assessment, assessment of the actual impact, model legislation. The practice of model legislation in the CIS countries, USA, Scandinavia is analyzed.

Special attention is paid to the interpretation of law as a way to prevent and overcome conflicts in law.

Work to eliminate the causes of conflicts of law is also important. And here it is necessary to highlight such a way as the elimination of gaps in the law.

Examining basic methods of prevention and resolution of legal disputes, we came to the conclusion about the impossibility of their Union as a conflict method of legal regulation.

In the third Chapter «Conflict of Laws as an element of the system of law» a study of the system of law and its structure. Conflict of laws investigated in the position of the theory of law.

In paragraph 3.1, «the Concept and structure of law» analyzed the relationship that allow you to call a set of elements of the system. It is noted that the structure of the legal system can be influenced by a specific type of legal understanding.

The well-known criteria of division of the right into structural elements, including the subject and method of legal regulation, are investigated

In paragraph 3.2 «the place of conflict of law in the system of Russian law» is determined by the place of conflict of law in the system of law, it relates to the elements of the system of law and legal analysis, the conclusion is made, signs of which of the elements of the system of law conflict of law corresponds to a greater extent.

Special attention is paid to the discussion on the rejection of the branch division of the system of Russian law.

It is noted that at present the dispute over the division of law into branches has practically lost its relevance, since the overwhelming majority of scientists and researchers in the field of law recognize the principle that each branch has its own subject and method.

The analysis made it possible to conclude that the conflict of laws does not have its own method of legal regulation.

The lack of a method of legal regulation is one of the arguments of consideration of conflict of law within the framework of the legal institution.

The analysis of such conceptual structures as «complex legal Institute», «inter-branch legal Institute» and «mixed legal Institute»" for their coincidence and difference.

It is concluded that the necessity and possibility of using the methods of legal regulation and principles from other industries allows to define this legal institution as mixed. At the same time, it is noted that mixed legal institutions do not exist as independent. Confusion is a characteristic of intersectoral legal institutions. The property of complexity is characteristic, to a greater extent, for the branch of law.

The presence of conflicts in various branches of law indicate inter-sectoral relations of conflict of laws.

The analysis made it possible to determine the conflict of laws as a regulatory cross-sectoral functional legal institution, which is based on General and special principles of law, has its own subject of legal regulation, consisting of legal norms of various branches of law, regulating social relations associated with the choice of the applicable law and developing a universal mechanism for resolving and preventing conflicts of international and national law.

In paragraph 3.3, «the Institution of conflict of laws in private international law», it is noted that the existence of conflicts in the internal law of a particular state has been known for a long time. The existence of local law and order as a result of its own communal statutes in Italy, the various coutyums in France, or the «Pravda» in Germany in the middle Ages, and the problem of the application and choice between them of the necessary rule of law points not to the exclusive international character of conflict of law, but also to the internal problems of this institution of law.

In order to determine the relationship of conflict of law with the Institute of international conflict of law, an analysis was conducted to identify what these legal entities converge and what is not, to compare their goals, means and structures.

The analysis allowed to conclude that due to the natural differences of collisions in the international private law and national law are not identical and the

set of tools used to resolve conflicts, and subject composition, and the subject of legal regulation, however, the overall goal, purpose and consolidation of the rules of private international law in national law has led to the conclusion about the existence of the conflict of laws international private law in the national conflict of laws as a subsystem.

In paragraph 3.4 «Conflict of Laws rules and their role in the mechanism of legal regulation» investigated the essence of the conflict of laws rules and their classification.

The problem of the priority of international treaties over domestic legislation enshrined in the Constitution of the Russian Federation was studied. It is concluded that in some cases independence and independence from international legal acts is necessary.

The problem of conflict of normative legal act with the principles of humanity and justice was investigated. In the process of making a decision, a judge may face a legal conflict, while a new law in comparison with the old one may not provide additional protection, but, on the contrary, be unprofitable for the subjects of legal relations. In this case, there are questions: «How to be a judge, if there is a similar situation? To observe the principle of legality, violating the principle of humanism and justice? Or to make a humane and fair decision contrary to the principle of legality?». In this case, it was suggested that the criterion of protection of interests should be used to resolve such a conflict.

The problem of adoption of the «law of laws» was also investigated. The need to adopt a Federal law about normative legal acts in the Russian Federation has been discussed in the Russian legal science. In the dissertation research the objective necessity of adoption of such law and fixing of the status of conflict norms as the mechanism of permission of possible collisions between norms of the law is noted.

In conclusion, the main conclusions on the dissertation research and the prospects for the development of conflict of laws.

The main results of the research are presented in the following works published by the author:

Articles published in leading peer-reviewed journals recommended by the Ministry of education and science of the Russian Federation for publication of the main scientific results of the dissertation:

1. Milinchuk D. S. Conflicts between national and international legislation in municipal law // Vestnik of Nekrasov Kostroma state University. 2015. No. 4. P. 203-205.

2. Milinchuk D. S. Stability of legal phenomena in the context of legal values: concept, features, ways of achieving // Russian journal of legal research. 2015. № 4 (5). P. 15-19/

3. Milinchuk D. S. Conflict of laws as an interdisciplinary Institute of the Russian law system. Vestnik of Nekrasov Kostroma state University. 2016. No. 1. S. 196-198.

4. Milinchuk D. S. «To Be or not to be» of conflict method of legal regulation? // Studyings on intellectual property. 2016. Vol. 24. No. 1. P. 104-122.

5. Milinchuk D. S. Conflict of laws as one of the reasons of obstacles for creation of uniform application of norms of the law in Russia // Vestnik of Lobachevsky Nizhny Novgorod University. 2018. No. 3. S. 133-139.

Articles published in other publications:

6. Milinchuk D. S. Problems of harmonization of law as a way to eliminate and prevent conflicts // chapter in the book: Theory of state and law. Materials of the theory of state and law section of the VI International scientific and practical conference «Kutafin readings» - «Harmonization of the Russian legal system in the context of international integration». - M.: Prospect, 2014. P. 84-88.

7. Milinchuk D. S. Determination of the place of structural elements in the system of law as one of the tasks of legal science (on the example of conflict of laws) // chapter in the book: National development strategy and objectives of the Russian legal science: collection of reports of the International scientific and

practical conference, plenary session, sections of the theory of state and law, comparative law, history of state and law, «Philosophy of law» (Moscow, November 24-December 3, 2015). M.: Prospect, 2016. C. 173-177.

8. Milinchuk, D. S. Protection of the interests as a criterion for resolving conflicts // chapter in the book: the Interests of law. Zhidkov's readings = Interests in Law. Zhidkov's readings: proceedings of the all-Russian scientific conference. Moscow, 25-26 March 2016 / resp. edited by M. V. Nemytina. - Moscow: RUDN, 2017. P. 420-425.