

Clarification of meaning of concept of “consolidation of legislation”

Уточнення змісту поняття «консолідація законодавства»

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consolidation of legislation, codification of legislation, incorporation of legislation.

Ключові слова:

консолідація законодавства, кодифікація законодавства, інкорпорація законодавства.

Considering the systematization of legislation as an activity aimed at streamlining and improving regulations, the legal literature traditionally distinguishes four types (or forms) of systematization of legislation: accounting, incorporation, consolidation and codification. Legislation is accounted for by collecting, recording, storing and maintaining up-to-date regulations (written – on cards, in special journals; automated – using computer technology). The incorporation of legislation encompasses activities that integrate regulations by chronological and/or subject criteria into various types of printed collections (“collections”).

Consolidation of the legislation is the unification of legal regulations relating to the same subject and of equal legal force into one consolidated act without changing their content. Finally, the codification of legislation is the creation of a new normative legal act (code), as a result of significant revisions to the content of the old normative legal acts that have a common subject of legal regulations.

In researching these activities, scientists point out what is common and different between them. Thus, a significant difference between certain types of systematization of legislation is that if the former two types are always carried out outside of the process of rule-making, the latter two are usually within it¹. In particular, O.I. Yushchuk writes that by placing codification, consolidation and incorporation as forms of legislation systematization in one logical series, researchers remain within the boundaries of traditional misconceptions. Incorporation is limited to classification procedures for processing information about the legislation only, its classification analysis, and does not reach the level of system analysis and system processing (systematization) of regulatory material. Incorporation can be considered as one of the prerequisites for the systematization of legislation, the preparatory auxiliary stage of its implementation².

L.M. Dobrobog notes that such a feature of consolidation as merging current regulations without changes into a new legal act (only certain editing is carried out) makes it similar to incorporation. The difference between them is that incorporation is a way of organizational and methodological activity, and consolidation is a way of law-making activity. The result of incorporation is a collection of regulations, and consolidation is a legal act³. V.V. Kozhevnikov draws attention to the fact that consolidation has some features of both codification and incorporation. The consolidated act is integrated, which brings it closer to codification. The fact that consolidation does not bring anything new to the regulation of social arrangements, brings it closer to the incorporation⁴.

In our opinion, it is first and foremost necessary to make a clear distinction between the activities that are the object of the legislation, and the result of which is a new qualitative state of legislation (in terms of content and / or form), and the activities whose object is information about legislation, and the result of which is a new qualitative state of presentation of information on legislation.

¹ Загальна теорія держави і права: підручник для студентів юридичних вищих навчальних закладів / М.В. Цвік, О.В. Петришин, Л.В. Авраменко та ін. ; за ред. д-ра юрид. наук, проф., акад. АПРН України М.В. Цвіка, д-ра юрид. наук, проф., акад. АПРН України О.В. Петришина. Харків : Право, 2009. С. 315.

² Кодифікація законодавства України: теорія, методологія, техніка / Ю.С. Шемшученко, О.І. Ющик, Л.М. Горбунова, М.О. Теплюк, Л.В. Гульченко, В.І. Риндюк; за заг. ред. О.І. Ющика. Київ : Парламентське вид-во, 2007. С. 71.

³ Добробог Л.М. Інкорпорація та консолідація законодавства як форми його систематизації. Наукові праці Національного університету «Одеська юридична академія». 2014. Т. 14. С. 368.

⁴ Кожевников В.В. К проблеме консолидации нормативных правовых актов в Российской Федерации. Вестник Омского университета. Серия «Право», 2019. № 1. С. 29–30.

Therefore, it is inaccurate to consider the accounting and incorporation of legislation as the types (forms) of systematization of legislation, because the legislation itself does not undergo any changes as a result of these activities. Accounting and incorporation are the forms of ordering, systematization of information on legislation (legal information) and should be studied separately.

Only consolidation and codification can be considered as types (forms) of systematization of legislation, since the legislation changes (systematizes, organizes) as a result of these activities. What is common to the consolidation and codification of legislation is that they are law-making activities (always of an official nature, carried out exclusively by law-making entities); they result in the adoption of a new unified legal act (enlarged or codified, respectively).

The difference between consolidation and codification is that if consolidation is the merging of regulations that have the same subject matter without changing their content, the codification is about changing the content of regulations. In determining the characteristics of consolidation of legislation, various authors point out that it is carried out without changing the content of legal regulation, normative content of acts or without introducing any novelties to the current legislation. The changes are of editorial nature, it is an external processing of regulatory material; new rules of law do not appear; it is assumed that there will be no modification of regulations, etc. Accordingly, when determining the features of codification of legislation, the opposite is pointed out. Namely, that as a result of codification the content of normative legal acts changes; the content of legal regulation changes; legal norms are changed, abolished or supplemented; a significant novelty is introduced in the regulation of society, a certain reform of legislation is carried out, and so on.

What is meant by the words "without change of content" and "with change of content"? We are talking about the content of legislation (as a set of regulations). Therefore, in order to clearly define the difference between consolidation and codification, it is necessary to dwell on the characteristics of legislation as the object of these activities.

Dialectics argues that every phenomenon or object is a unity of form and content. Content cannot be without a form, just as a form cannot be meaningless. Content is a category that captures the formation of an object as a whole system. The table of contents reflects the system of connections and relations between the elements, with their inherent properties and qualitative certainty. That is, the content determines the structure of the object. Form is a category that captures individual persistent manifestations of content. Form is a way of external expression of content. For example, the content of the textbook is the material presented in it, and the form – the way it is presented, the distribution of topics⁵.

Thus, legislation, like any other phenomenon, has its own meaning and form. If we consider the legislation as a way of existence, the external expression of the rules of law in the sources of law (in particular, regulations), the rules of law are the content of legislation, and regulations – its form. The content of the legislation determines the set of rules of law distributed by branches, subsectors and institutions of law (legal system). The form of legislation is a set of regulations (system of legislation), as well as their structural elements (preambles, chapters, sections, paragraphs, articles, paragraphs, sub-paragraphs, regulations) in which the relevant rules of law are expressed.

In our opinion, to distinguish between consolidation and codification of legislation, it is necessary to indicate more clearly that the consolidation of legislation changes only its form (i.e. regulations and their structural elements), while the content of legislation (i.e. law) remains unchanged. Some authors also draw attention to this sign of consolidation. In particular, it is noted that consolidation is a change of form with unchanged content⁶; in the process of consolidation the form of legal acts changes, but not their content⁷; when consolidating "... there is an external processing of regulatory material without changing it in essence"⁸. Accordingly, during the codification of legislation, both its form (i.e. regulations and their structural elements) and content change (i.e. new rules of law are created or old ones are changed). In particular, the concept of codification of legislation is defined as a form of systematization of legislation carried out by authorized public authorities in the process

⁵ Філософія: підручник / Л.Г. Дротянко, О.А. Матюхіна, В.І. Онопрієнко; за ред. Л.Г. Дротянко, В.І. Онопрієнка, О.А. Матюхіної. Київ : НАУ, 2014. с. 228.

⁶ Калинин С.А. Проблемы использования консолидации при систематизации нормативных правовых актов. Сучасні проблеми правової системи України: зб. матеріалів міжнар. науково-практичної конференції, 29 жовт. 1 лист. 2009 р., Алушта, Київ. ун-т права. Київ, 2009. С. 54.

⁷ Скаун О.Ф. Теорія держави і права (енциклопедичний курс) : підручник. Харків : Еспада, 2006. с. 385.

⁸ Пьянов Н.А. Консультации по теории государства и права : учебное пособие. Иркутск : Иркут. гос. ун-т, 2010. С. 199.

of lawmaking and bylaw regulation, resulting in the adoption of a new form and content of the codification act (code, legal framework, regulations, statutes, rules etc)⁹.

During consolidation, multiple legal acts that have the same subject of legal regulation and the same legal force are combined into a single, consolidated and integrated legal act. Once the consolidated regulations become effective, the old (previous) numerous disparate regulations that were part of it are recognized as repealed. Relevant changes in the texts of normative-legal acts have exclusively technical-legal character and do not change their content.

In the process of preparation of the consolidated act, all legal provisions of previous acts are arranged in a certain logical sequence, the general structure of the future act is developed. Regulations are included in the structure of the consolidated act in the form of separate chapters, articles, paragraphs. Some editorial editing of normative and legal provisions is carried out in such a way that all of them acquire stylistic unity, so that terminology is unified. Contradictions, repetitions, unjustified verbosity are eliminated, outdated terminology is corrected, norms similar in content are combined into one article, paragraph, etc¹⁰.

In his dissertation research of the consolidation of legislation, S.G. Melenko notes that consolidation is one of the important factors in the formation and development of:

- legal norms, their hypotheses, dispositions, sanctions (detection of repetitions of hypotheses, dispositions and sanctions of legal norms in regulations);
- legal institutions (as the consolidation process is based on the formation of a certain center around which the legal norms governing a certain area of homogeneous social relations are united (branches of law));
- branches of law can only be formed due to appropriate consolidation work, without which further codification of regulatory material is impossible)¹¹.

At the same time, today the consolidation of legislation is practically not applied in Ukraine. Accordingly, there are very few examples of consolidation of legislation in the legal literature. Some scholars emphasize that the Labor Code of Ukraine and the Commercial Code of Ukraine is the result of consolidation, not codification^{12,13}.

In this regard, the question of distinguishing consolidation as an independent form of systematization of legislation in jurisprudence is debatable. There is a school of thought that does not recognize the independent nature of the consolidation of legislation, or does not mention it at all¹⁴.

Consolidation is mainly seen as a component of codification of legislation. S.G. Melenko notes that consolidation is the starting point of the codification process, without which it becomes impossible. In the first place, by forming the so-called consolidation centers, consolidation groups the regulatory material on certain grounds, namely – on the subject, method, object and subject of legal regulation of social relations. It substantially determines the structure of the future codified act, indicates inconsistencies, inconsistencies, gaps and overlays in the array of legal material¹⁵.

It is argued that modern legislation in the countries of continental law is too dynamic to use consolidation merely as an instrument for mechanical combination to issue regulations. If we consider the systematization, which includes editorial or substantive revisions, restructuring of legal material, repeal of obsolete legal regulations and the inclusion of short stories by issuing a new regulation to replace the previous ones, this type of systematization cannot be divided into consolidation and codification¹⁶.

⁹ Гетьман Є. Консолідація як форма систематизації законодавства України. Вісник Національної академії правових наук України. 2015. № 3. С. 24.

¹⁰ Теорія держави і права. Академічний курс: підручник / За ред. О.В. Зайчук, Н.М. Оніщенко. Київ : Юрінком Інтер, 2006. С. 410.

¹¹ Меленко С.Г. Консолідація як вид систематизації нормативно-правових актів : автореф. дис... канд. юрид. наук : 12.00.01; Київ. нац. ун-т ім. Т. Шевченка. К., 2002. С. 6–7.

¹² Загальна теорія держави і права: підручник для студентів юридичних вищих навчальних закладів / М.В. Цвік, О.В. Петришин, Л.В. Авраменко та ін. ; за ред. д-ра юрид. наук, проф., акад. АПРН України М.В. Цвіка, д-ра юрид. наук, проф., акад. АПРН України О.В. Петришина. Харків : Право, 2009. с. 320.

¹³ Гетьман Є. Консолідація як форма систематизації законодавства України. Вісник Національної академії правових наук України. 2015. № 3. С. 26.

¹⁴ Безуса Ю.О. Консолідація як форма систематизації законодавства: теоретико-правовий аспект. Науковий вісник Ужгородського національного університету. Серія «Право». 2017. № 43. Том 4. С. 12.

¹⁵ Меленко С.Г. Консолідація як вид систематизації нормативно-правових актів : автореф. дис... канд. юрид. наук : 12.00.01; Київ. нац. ун-т ім. Т. Шевченка. Київ, 2002. С. 6.

¹⁶ Реутов В.П., Ваньков А.В. К вопросу о консолидации как форме систематизации законодательства. Право и современные государства. 2013. № 3. с. 19–20.

In our opinion, given the state of national legislation, the formation of which occurs mainly as a chaotic accumulation of regulations, the consolidation of legislation should become one of the important areas of law-making. N. Kuderska writes "From the beginning of formation of Ukraine as a state, the legislation developed unsystematically, chaotically, inconsistently, illogically, without taking into account priorities, and, as a result, a legislative array was created rather than a legislative system. This not only negatively impacted the effectiveness of legal regulation of society, but also made it unstable"¹⁷. T.S. Podorozhna continues: "Modern Ukrainian legislation is not organized, has no internal coherence, develops unsystematically and chaotically, there is no harmonious relationship between the acts of different levels. Current regulations really represent not so much the harmonious development of the legal system, as a chaotic set of rules and acts that do not have clear structural logical and functional links between themselves and with the entire legal system at all levels (laws and bylaws)"¹⁸.

The purpose of consolidating the legislation is to integrate the "legislative blocks", to eliminate the multiplicity of legislation by uniting disparate provisions that are content related; eliminate repetitions and ambiguities; clear outdated and ineffective regulations that have actually expired and remove invalid legal provisions. As a result of consolidation, the legislation becomes more compact, coherent, structured, which, in turn, has a positive effect on both lawmaking and law enforcement, allows legal entities to better navigate the law. L.M. Dobrobog emphasizes that by depriving it of excessive fragmentation, the consolidation of legislation helps to increase the effectiveness of regulations, which, in turn, allows to develop the rule of law and, consequently, to establish law and order in the relevant field¹⁹. G.F. Shershenevich described the situation of disparity of legislation as follows: "It is difficult to find the relevant law, there is no confidence in finding all the laws relating to this subject, there is a possibility of contradiction between the laws and the difficulty of determining the correct relationship between them"²⁰.

In summary, we can conclude that the consolidation of legislation is a separate area of lawmaking in which separate regulations that have the same subject of legal regulation and legal force, are combined into one consolidated (integrated) act without changing the content of the law (changes the form of legislation with the same content). Due to the significant number of normative legal acts in the legal system of Ukraine that have the same subject of regulation, the consolidation of legislation as a separate direction of law-making activity should become one of the priorities of legal policy in Ukraine.

Summary

The article considers the problem of determining the content of the concept of "consolidation of legislation" in comparison with other types (forms) of systematization of legislation, such as accounting, incorporation and codification of legislation. The article substantiates the approach to understanding the consolidation of legislation as a separate direction of law-making activity, in the process of which separate normative legal acts having the same subject of legal regulation and legal force are combined into one consolidated (integrated) act without changing the content of legal norms (invariability of its content).

Анотація

У статті розглядається проблема визначення змісту поняття «консолідація законодавства» у порівнянні його з іншими формами систематизації законодавства (обліком, інкорпорацією та кодифікацією законодавства). Обґрунтовується підхід до розуміння консолідації законодавства як окремого напрямку правотворчої діяльності, у процесі якого розрізнені нормативно-правові акти, що мають однаковий пред-

¹⁷ Кудерська Н. Законотворча діяльність Верховної Ради України: проблеми та шляхи їх розв'язання. Вісник Академії управління МВС. 2009. № 2. С. 65.

¹⁸ Подорожна Т.С. Правові засади впливу конституційного законодавства на правову систему в контексті внесення змін до Конституції України. Публічне право. 2015. № 3. С. 89–90.

¹⁹ Добробог Л.М. Інкорпорація та консолідація законодавства як форми його систематизації. Наукові праці Національного університету «Одеська юридична академія». 2014. Т. 14. С. 368.

²⁰ Добробог Л.М. Систематизація законодавства як іманентність процесу утворення галузі права. Наукові записки Інституту законодавства Верховної Ради України. 2015. № 3. С. 6–7.

мет правового регулювання та юридичну силу, об'єднуються в один укрупнений (консолідований) акт без зміни змісту норм права (змінюється форма законодавства за незмінності його змісту).

References:

1. Загальна теорія держави і права: підручник для студентів юридичних вищих навчальних закладів / М.В. Цвік, О.В. Петришин, Л.В. Авраменко та ін. ; за ред. д-ра юрид. наук, проф., акад. АПРН України М.В. Цвіка, д-ра юрид. наук, проф., акад. АПРН України О.В. Петришина. Харків : Право, 2009. 584 с.
2. Кодифікація законодавства України: теорія, методологія, техніка / Ю.С. Шемшученко, О.І. Ющик, Л.М. Горбунова, М.О. Теплюк, Л.В. Гульченко, В.І. Риндюк ; за заг. ред. О.І. Ющика. Київ : Парламентське вид-во, 2007. 208 с.
3. Добробог Л.М. Інкорпорація та консолідація законодавства як форми його систематизації. *Наукові праці Національного університету "Одеська юридична академія"*. 2014. Т. 14. С. 365–370.
4. DOI 10.25513/1990-5173.2019.16(1).29-36. Кожевников В.В. К проблеме консолидации нормативных правовых актов в Российской Федерации. *Вестник Омского университета. Серия «Право»*, 2019. №1. С. 29–36.
5. Філософія: підручник / Л.Г. Дротянко, О.А. Матюхіна, В.І. Онопрієнко; за ред. Л.Г. Дротянко, В.І. Онопрієнка, О.А. Матюхіної. Київ : НАУ, 2014. 720 с.
6. Калинин С.А. Проблемы использования консолидации при систематизации нормативных правовых актов. *Сучасні проблеми правової системи України: зб. матеріалів міжнар. науково-практичної конференції*, 29 жовт. – 1 лист. 2009 р., Алушта, Київ. ун-т права. Київ, 2009. С. 53–55.
7. Скакун О.Ф. Теорія держави і права (енциклопедичний курс): підручник. Х.: Еспада, 2006. 776 с.
8. Пьянов Н.А. Консультации по теории государства и права: учебное пособие. Иркутск : Иркут. гос. ун-т, 2010. 583 с.
9. Гетьман Є. Консолідація як форма систематизації законодавства України. *Вісник Національної академії правових наук України*. 2015. № 3. С. 21–28.
10. Теорія держави і права. Академічний курс: підручник / За ред. О.В. Зайчук, Н.М. Оніщенко. Київ : Юрінком Інтер, 2006. 688 с.
11. Меленко С.Г. Консолідація як вид систематизації нормативно-правових актів : автореф. дис... канд. юрид. наук : 12.00.01 ; Київ. нац. ун-т ім. Т.Шевченка. Київ, 2002. 19 с.
12. Безуса Ю.О. Консолідація як форма систематизації законодавства: теоретико-правовий аспект. *Науковий вісник Ужгородського національного університету*. Серія «Право». 2017. № 43. Том 4. С. 9–13.
13. Реутов В.П., Ваньков А.В. К вопросу о консолидации как форме систематизации законодательства. *Право и современные государства*. 2013. №3. С. 16–20.
14. Кудерська Н. Законотворча діяльність Верховної Ради України: проблеми та шляхи їх розв'язання. *Вісник Академії управління МВС*. 2009. № 2. С. 63–72.
15. Подорожна Т.С. Правові засади впливу конституційного законодавства на правову систему в контексті внесення змін до Конституції України. *Публічне право*. 2015. № 3. С. 89–95.
16. Добробог Л.М. Систематизація законодавства як іманентність процесу утворення галузі права. *Наукові записки Інституту законодавства Верховної Ради України*. 2015. № 3. С. 5–9.

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