

On the Consolidation of Normative Legal Acts in the Russian Federation

Vladimir Valentinovich Kozhevnikov

Department of Theory and History of State and Law, Omsk State University Dostoevsky, Omsk, Russia

Email: kta6973@rambler.ru

Abstract:

The scientific article analyzes such a form of systematization of regulatory legal acts in the Russian Federation as their consolidation. Attention is drawn to the problem of the correlation between codification and consolidation of legal acts. It is noted that this form of systematization has a very limited distribution in Russia in comparison with foreign (France, Great Britain, Germany, USA) countries, in which the consolidation of normative legal acts is understood somewhat differently than in Russian legal science.

Keywords:

systematization of legal acts; consolidation; codification; code; European Union

I. Introduction

I believe that the relevance of this scientific article is due to the fact that the consolidation of legal acts in the Russian Federation, being one of the forms of systematization, which scientists predict will be more widespread in the future, along with other forms (codification, incorporation, accounting for legal acts), is a means of improving Russian legislation, helping to identify contradictions and inconsistencies in regulatory requirements, and promptly eliminate them. Consolidation is also important for law enforcement (optimization of the search for the necessary norm and clarification of its meaning, bearing in mind a systematic way of interpretation).

We believe that both legislators, who need to know the real state of law and its components, and law enforcers who refer to relevant laws, and citizens whose legal culture is based on knowledge of the current legislation, should be interested in the results of systematization of normative legal acts.

II. Research Methods

When preparing a scientific article, the following methods were used:

1. General philosophical (dialectical-materialistic), which is used in all social sciences;
2. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
3. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
4. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Discussion

3.1 The Acceleration of Changes in Social Life Makes Codification not Quite Suitable for the Effective Regulation of Constantly Changing Social Relations

It turns out that in order for the code, created with such great time, material and human costs, to exist for a long time, only the most general provisions should be fixed in it. But in this case, it will inevitably have to be accompanied by more detailed laws. That is why the practice has reached the middle option: the consolidation of legal documents. As a basic definition, let take the following as a basis: the consolidation of legal acts is a form of systematization in which several legal acts that were in force in the same area of public relations are combined into a single consolidated legal act without changing their content.

This definition of consolidation leads to the conclusion that it has some features of both codification and incorporation. The consolidated act is consolidated, and this brings it closer to codification. The fact that it does not introduce anything new in the regulation of social relations makes it related to incorporation. Consolidation occupies an intermediate position between codification and incorporation [1], but tends to the first type of systematization of law. Timofey Nikolaevich Radko suggests calling it partial codification, since, according to its result, it “does not reach” the volume and level of the code [2]. At the same time, editorial editing is carried out during consolidation: contradictions, repetitions and long lengths are eliminated. Consolidation is used in law-making activities mainly in order to streamline regulations on management, taxation and administrative activities, i.e. in cases where the concentration of disparate regulations is necessary to improve the quality of law enforcement. Generally speaking, it can be argued that the inconsistency of normative legal acts that have the same subject of legal regulation gives rise to difficulties that are insoluble for law enforcement entities. The legal means of overcoming the plurality of normative legal acts and the simultaneous form of their systematization is the consolidation of legislation. When consolidating, dozens, and sometimes even hundreds of legal acts on the same issue are combined into one consolidated act, which is approved by the law-making body, and the former disparate acts are recognized as invalid. It should be noted that in such a process, regulatory legal acts, as a rule, of the same legal force are subject to consolidation.

A good example that has become a classic in the educational literature on the theory of state and law is the Decree of the Presidium of the Supreme Soviet of the USSR of October 1, 1980 “On holidays and memorable days”, which replaced 48 normative acts. Each of these documents at one time introduced one or another holiday or memorial day, and the adopted Decree, without changing the essence of regulatory regulation, streamlined the regulatory material, combining it into one document. Such events are carried out by the competent authorities, and therefore, in this case, the consolidation is of an official nature.

3.2 Consolidation and Codification of Normative Legal Acts

A somewhat different understanding of consolidation exists abroad. Thus, in the European Union, consolidation is considered to be the inclusion of many laws with all changes and subsequent improvements into a single law that has no formal value, since each consolidated act contains a list of all legal acts with all their details [3]. In France, the practice of issuing consolidated legislative acts called codes (labor code, road code, agricultural code, tax code, savings bank code, and others) is widely used. It should be noted that France entered the modern stage of its history with a huge mass of legal acts that are outside the codification. The main direction of the regulation of this array of legal acts was the creation of codes on the type of industry collections, which include both laws and by-laws. Since the middle of the 19th

century, several such codes have been adopted, which are acts of classifying and combining existing law by legal nature. These codes focus on very narrow areas [4]. In other words, something close to official incorporation is obtained. Nevertheless, one should agree with Vladimir Nikolayevich Kartashov that consolidation is very close to codification and therefore is primarily of a law-making nature, although as a result of its implementation a great effect is also achieved in the systematization of legal documents [5].

Recently, in Russia, the boundary between codification and consolidation has become even more blurred. Sometimes the legislator calls the law a code, but in fact it is a purely consolidated act. An example is the Water Code of the Russian Federation, where many acts on water use are mechanically arranged according to the following scheme: ownership of water bodies, management in the field of their use and protection, use of water bodies and dispute resolution. The fact that it has a chapter containing general provisions does not change matters. Of course, you can not make a tragedy out of this. It just that once again it forces us to reconsider the possibilities of codification. Comparison of two adjacent types of systematization, which are codification and consolidation, taking into account the growing pace of social life, forces us to recognize that the future belongs to consolidation. Codification does not always make it possible to reflect social changes in a timely manner.

3.3 Consolidation and Incorporation of Regulatory Legal Acts

In general, the allocation of consolidation as a form of systematization of legislation causes lively debate in the scientific literature. Some researchers recognize and substantiate the existence of such a form of regulation of normative legal acts as completely independent [6;7]; others - do not see in it the proper specificity [8].

According to most scientists, the essence of consolidation is the creation of a single regulatory legal act based on several existing ones, which, after its adoption, are recognized as invalid. A set of united normative legal acts should regulate one group of social relations, form one legal institution, etc. As scientists emphasize, the main characteristic feature of consolidation is the immutability of the content of the legal regulation of the relevant social relations [6]. In other words, consolidation is “nothing more than a special kind, a way of external processing of legislative materials” [8]. This form of systematization is especially effective when “combining existing norms from different acts, from which only separate fragments remain, issuing single acts on certain issues” [9].

As previously emphasized, during consolidation, some editing of the texts of the merged normative legal acts is allowed: obsolete norms, contradictions and repetitions are eliminated, terminology is unified, the text is presented in a single style. We draw attention to the fact that these same actions, along with the recognition of certain provisions or normative legal acts as a whole, are also characteristic of the incorporation of legislation, which gives reason to opponents of the allocation of consolidation as an independent form of systematization to consider it “only a technique that can be applied during incorporation legislation” [8]. Despite this, Inna Anatolyevna Ignatieva believes, there is an indicator by which these forms of systematization cannot be equalized. As the author writes, an essential distinguishing feature of consolidation is the receipt as a result of it of one regulatory legal act, consolidating legal provisions from several. As for incorporation, it is a systematization of the current law by combining in a collection or set of legal acts [10].

Both supporters and opponents of the consolidation of legislation notice that the development of regulated public relations, which require constant improvement of legislation,

objectively reduces the possibility of using consolidation. Thus, its opponents believe that “in practice, the unification of a significant group of acts (norms) into one act, as a rule, is associated with their processing to one degree or another on the merits, since this cannot but take into account the practice of applying the norms put forward by life new requirements, etc.” [8].

An adherent of consolidation as an independent form of legislation, Albert Semenovich Pigolkin, analyzing the experience of creating consolidated acts, once noted: “It was quite difficult to create a single logically consistent act without certain adjustments to the current regulation. The corresponding work was not widely developed and then completely stopped. This was due primarily to the fact that the process of consolidation of normative acts was not combined with the updating of the current regulation, reflecting the interests of the time, its modernization” [9].

Consequently, in most cases, when combining acts, “we are talking about the creation of consolidated acts that not only combine the norms of acts acting on the same issues, but will also contain significant novelties in legal regulation”[7]. And, since the work on the consolidation of acts often requires not a simple external editing, but a change in the content of legal regulation, for example, its expansion, the creation of new legal norms, since consolidation in its pure form does not actually have any prospects among other forms of systematization [10]. In connection with these considerations, it can be argued that consolidation can also be considered as a special technique used by the law-making body in improving the current legislation. Nevertheless, according to Albert Semenovich Pigolkin, even if the necessary modernization of legislation is carried out when merging regulatory legal acts, such work should not be considered codification, since the characteristic features of the latter, along with the above, are “the creation of a large and complex act in its structure, which is the main in one or another branch of law or legislation, characterized by a stable content” [9].

Scientists argue that during consolidation, prescriptions of the same legal force are subject to consolidation [6]. However, according to Inna Anatolyevna Ignatieva, it cannot be argued that the opposite situation cannot be called consolidation. As the author writes, arguing his position, “if incorporation and codification are not bound by the requirement of generalization and ordering of acts and norms of only one legal force, then it is all the more impossible to assert this about consolidation, which has incorporated some features of the first and second” [10].

3.4 Modern Consolidated Normative Legal Acts

Consolidation of normative legal acts in domestic legislation has a very narrow scope of application, although in countries such as the UK and France, and other states, it has become widespread. For example, in the UK, dozens of such acts are issued, uniting acts of parliament adopted at different times on the same subject of regulation. France has developed the adoption of codes that combine legal acts on the same issue. These codes include, for example, the Code of Public Roads, the Code of Savings Banks and some others. In Germany, there is such a consolidated act as the Social Code. Indicative in this regard is the legal experience of the United States, where the Code of Laws operates, covering 50 major sections: General Provision; Congress; The president; Flag and seal, seat of government and states; Government organization and civil servants; Guarantee. Bonds, etc. The code of federal government regulations also has 50 subject sections. Similar consolidations exist at the level of various states that use different names.

In Russian legislation, there are cases of consolidation by some state authorities of regulatory legal acts of higher state authorities. A peculiar approach to the systematization of legislation was manifested, for example, in the creation of the order of the State Customs Committee of Russia dated August 6, 2003 No. 865 “On the rates of export customs duties” and the orders preceding it with the same name. In these acts, first, a reference is made to all decrees of the Government of the Russian Federation that introduced export duties, and then a list of goods and duty rates for them is given [11]. In the land legislation there is a Collection of prices (estimated prices) and time standards for the inventory of land in settlements, which was recommended for study by the letter of the RF Committee on Land Resources and Land Management dated April 25, 1993 No. 5-11 / 385.

This collection has brought together several diverse in legal force, subjects for the adoption of legal and regulatory and technical acts. An example of a consolidated normative act is the Federal Law of January 12, 1995 No. 5-FZ “On Veterans”, which combines several hundred normative acts that established social benefits for this category of citizens. The authors of the Law built the material according to a very simple scheme: they identified categories of veterans and listed social support measures for each category. The law was created fairly quickly and made it much easier for veterans to use the law.

3.5 Results

It seems that the results of the presented study can be considered from the point of view of achieving the objectives of activities for the consolidation of regulatory legal acts. In our opinion, Tatyana Nikolaevna Rakhmanina most accurately formulated the tasks of consolidation and the scope of its application:

“The need to overcome small topics, eliminate the plurality of acts on the same issues, ensure compactness and better visibility of legislation” [7]. Speaking about the consolidation of legal acts, Vitaly Viktorovich Sorokin believes that this type of systematization reveals itself in the transition period in the publication of the so-called large-block legislative acts [12,]. Boris Nikolayevich Topornin, who advocated the development of this trend, believed that “... laws can successfully “work” if the entire flow of legislation becomes coordinated” [13]. In other words, the significance of consolidation lies in the consolidation of regulatory legal acts, which, of course, is useful and necessary in terms of streamlining the regulatory array, accessibility and ease of use and application.

IV. Conclusion

It seems that in the conclusion of the scientific article, one should once again pay attention to the place of consolidation of normative legal acts among such aforementioned forms of systematization as codification and incorporation, as well as to the expected prospects for its development in Russian legislation. From the position of Valery Vasilyevich Lazarev and Sergey Vasilyevich Lipen, the systematization of legal acts can be aimed at improving either the content of legal norms (the so-called internal systematization) or the arrangement of regulatory material (the so-called external systematization). Incorporation is only an external systematization; codification covers both external and internal; consolidation is, first of all, external systematization and, to a lesser extent, internal [14]. With regard to consolidation, such a statement is true and justified, despite the fact that in the literature there is and prevails the position that that in this case. There is an external processing of normative material without changing it in essence [15].

It seems that in the future the consolidation of normative acts should receive a wider scope, because it allows the subjects of legal regulation not only to navigate the mass of laws and by-laws, but also to get an accurate indication of which of them and in what form should be guided in determining their lawful conduct. As previously emphasized, the result of consolidation can be various collections of only current legislation. At the present stage of development of Russian society, the technical means used (for example, the legal information base of the SPS Garant) make it possible to regularly update such collections, maintain them in such a state that the laws and by-laws in them are given only in the current version. The authors believe that consolidated collections of legal acts make it possible to more effectively understand the huge and constantly changing array of current legislation and are in great demand in practical life [16].

It is necessary, in our opinion, to stand in solidarity with those scientists who believe that consolidation will play a significant role in the systematization of all- Russian legal acts relating to taxes, employment, unemployment, etc. [17]. Anastasia Nikolaevna Golovistikova is convinced that the task of consolidating existing acts, enlarging legislative blocks that include several (sometimes dozens) of existing acts on one issue, is now becoming one of the priority areas for streamlining legislation [18].

It seems that the position of scientists on the need to use the potential of the consolidation of normative legal acts to a greater extent is convincing, especially against the background of the above-mentioned trend of the latter convergence with codification. Agreeing with the need to use the potential of consolidation of normative legal acts, it should, in our opinion, when it is carried out in relation to domestic legislation, take into account the richest experience of foreign countries accumulated over the centuries. However, not mechanically, but taking into account our real and potential capabilities, the Russian mentality [19].

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