

Переклад з української мови на англійську мову
Translation from Ukrainian into English

CONCEPT AND TYPES OF SYSTEMATIZATION OF LEGISLATION

Annotation: The article is devoted to a comprehensive analysis of the legal phenomenon of systematization of legislation. It examines in detail the types of systematization of legislation, provides opinions of scientists regarding the place and role of each of these types in the process of systematization of Ukrainian legislation and contains specific examples of systematized normative acts. Attention is also paid for the studying of foreign experience in the systematization of legislation, in particular its consolidation.

Key words: systematization, codification, consolidation, incorporation, legislation, legal norms, normative acts, code

In legal science, a very ambiguous situation has developed regarding the definition of the concept of "systematization of legislation". On the one hand, there are many works that offer definitions of this concept that are close at first glance in meaning. However, on the other hand, there is virtually complete uncertainty of this concept, its limitation to superficial representations, which gives little to understand the content of this legal phenomenon. The reason for this is probably that even in modern textbooks on the theory of law, some authors devote separate paragraphs or entire chapters to the characteristics of systematization [13, p. 347], others write about "systematization of regulatory acts" [15, p. 278–281], and still others do not mention this problem at all [7, p. 616–627]. At the same time, some authors consider the concept of systematization of legislation from the point of view of the system of legislation, others - lawmaking or legislative technique [21, p. 12–15, 59–72].

Among all the considered options for defining the concept of "systematization of legislation", I see the definition given in his scientific article by Professor S.V. Petkov as the most universal.: "Systematization of legislation is an activity to organize existing regulatory legal acts into a single, coordinated system in order to ensure effective legal regulation" [11, p. 5]. The main goal of systematization of legislation, a well-known Ukrainian jurist sees, is to achieve internal unity of legal norms, i.e., to eliminate conflicts and gaps, which should result in increasing the efficiency of legislation and organizing legal material, placing it in certain sections and headings, i.e., classification, which ensures the convenience of using the legislative body. According to S.V. Petkov, systematization is divided into internal and external. The purpose of internal systematization is the internal processing of regulatory acts, which contributes to achieving internal unity of legal norms. The purpose of external systematization is the internal processing of regulatory acts, their classification [11, p. 5].

In the legal literature, there are almost no discussions about the main forms or types of systematization of legislation, most scientists adhere to the point of view according to which its main types are accounting of regulatory acts, incorporation, consolidation and codification. In order to establish the features, features and goals of systematization of legislation, it is necessary to provide a characteristic of each of the above forms. Therefore, accounting of regulatory acts in most cases is understood as the activity of collecting, recording in a logical sequence and storing regulatory acts, maintaining them in a control (current) state, taking into account all changes and additions, as well as creating special systems for their accumulation and search. The main task of this type of systematization is to maintain regulatory acts in such a state that allows you to quickly obtain the necessary information [16, p. 21]. The object of accounting can be any legal acts, in particular, regulatory, interpretative, law-enforcement, law-enforcement. Accounting for regulatory acts can be both official, if it is carried out by authorized state authorities, and unofficial, if such accounting is carried out by institutions, organizations and other private individuals. Today, there are several methods of accounting: 1) documentary accounting, which is carried out by compiling alphabetical subject dictionaries, card files, filling in accounting journals, etc.; 2) electronic, which is carried out by using automated reference and search systems ("League", "Legislation", etc.) [1, p. 21]. Thus, accounting for regulatory acts can be defined as one of the forms of systematization of legislation, which has as its purpose the collection, storage and registration of

regulatory, interpretative, law-enforcing and law-enforcing acts, which can be carried out both by an authorized state authority and by private individuals.

Codification plays an extremely important role in the process of systematization of legislation. The term "codification" was introduced into scientific circulation by I. Bentham. The term "codification" itself comes from the words "codex" and "facere" and means the creation of a consolidated law, the systematization of state laws in individual branches of law, as a rule, with the revision and abolition of outdated legislation [10, p.239]. Codification of legislation can be considered in two planes: firstly, as an independent branch of science, developing on an empirical basis, secondly, as a type, form of law-making activity, which takes place on a scientific basis [2, p.24]. The Legal Encyclopedic Dictionary states that codification of legislation is a form of systematization of legislation, which consists in the qualitative processing of existing legal norms, the elimination of inconsistencies and contradictions in legal regulation, filling gaps and abolishing outdated norms [20, p. 176]. In modern legal literature, codification is characterized as a form of systematization that allows for the processing of legal norms in terms of content, as well as their systematic, scientifically based presentation in a new law (codification, code, foundations of legislation, etc.) [5, p. 312]. In a broader sense, codification is considered as a form of radical processing of existing regulatory acts in a certain area of relations, a way of qualitatively organizing legislation, ensuring its coherence and compactness, as well as clearing the regulatory array, getting rid of norms that have become outdated and have not justified themselves [9, p. 384].

In the process of codification activity, a review of the current legislation is taking place. Codification of legislation means a qualitative leap from the old to the new state in the development of one or another of its structural units. Codification is a real means of solving the tasks of putting the legal system in order, sharply reducing the number of departmental instructions, explanations, methods, etc., which do not always correspond to the current legislation. Legal provisions that have been tested by time and have proven their viability in relation to the established social relations are organically included in the regulatory act, which is created as a result of codification of legislation. Thus, the principle of continuity and renewal is implemented when creating codified acts. This property of codification activity is in some cases fixed in the regulatory order. At the same time, along with the revised norms, the codification act always contains legal provisions that are issued for the first time.

One of the goals of codification is to achieve the quality of the code, which largely determines the effectiveness of its action. The quality of the code is determined by its content. However, the content is always embodied in a certain form, the perfection of which determines the simplicity and volume of the code, the logical arrangement of articles in chapters, the clarity of wording and, as a result, its quality and accessibility. This is extremely important, because codes are used not only by judges, prosecutors, lawyers, other professionals with a legal education, but also by ordinary citizens. The vague wording of the articles of the code, the complexity of their construction, the lack of legal definitions of legal concepts, other imperfections of the form of the code are a potential source of violations of the law, and therefore, the emergence of disputes. Clarity, accuracy of wording, accessibility for perception of the norms of the code are ensured by a number of techniques used in its preparation and improvement, in particular: the size of the article, definition of legal concepts, language of the code, references to other norms, etc. [10, pp. 128-129].

A significant number of authors (P. M. Rabinovich, V. V. Kopeychikov, V. Z. Livshits, authors of the textbook "General Theory of State and Law") also distinguish incorporation among the types of systematization of legislation. They consider it as a way of ordering regulatory acts without processing their content, that is, this is the form of systematization that is carried out outside the law-making process. According to the scientific position of M. M. Rassolov, the peculiarity of incorporation is that any changes in the content of the above-mentioned acts are not made to the collections and the content of legal regulation does not change in essence. It is this property of incorporation, that is, preserving the content of regulatory regulation unchanged, that distinguishes it from codification [14, p. 220]. Incorporation, according to most scientists, is an independent form of systematization of regulatory acts with features inherent exclusively to it [18, p. 44]. Therefore, incorporation should be considered an independent form of systematization of legislation, carried out by competent state bodies, their officials

and other subjects through external processing and unification of regulatory material into collections, in a certain order without changing their content, the purpose of which is to ensure the convenience of searching and accessibility of regulatory material. An example of such systematization of legislation on the example of the agrarian law of Ukraine can be given in the educational and practical manuals "Agrarian Law and Legislation of Ukraine" and "Reference and Logical Schemes for the Academic Discipline "Agrarian Law of Ukraine and Agrarian Legislation of Ukraine" [3, p. 4-5]

One of the important means of systematization of legislation is consolidation. Some authors note that consolidation is an independent logical-epistemological and hierarchical type of systematization of regulatory legal acts that can be combined according to institutional and sectoral characteristics [8, p. 5]. The term "consolidation" comes from the Latin word *consolidation*, which means unification, commonality, compatibility, etc. and is one of the ways of systematization of legislation, in the process of which several acts are combined in one document. A new act adopted in the process of consolidation completely replaces the combined ones, since it is newly adopted by the competent law-making body [19, p. 268–269]. In legal literature, consolidation of legislation is considered as a form of systematization, in the process of which dozens, and sometimes hundreds of regulatory acts on the same issue are combined into one consolidated act. Such an act is approved by the regulatory body as a new, independent source of law, and the old separate acts are recognized as having lost force. In the process of consolidation, the association is subject to regulations of equal legal force [17, pp. 409–410].

To understand the legal nature and essence of the consolidation of legislation, it is necessary to study the features of such activity. Thus, the scientist V. S. Nersesyants emphasizes that the peculiarity of consolidation is that a new, consolidated act does not change the content of legal regulation, does not introduce changes and novelties to the current legislation. In the process of preparing a consolidated act, all the norms of previous acts are arranged in a certain logical sequence, the general structure of the future act is developed, contradictions, repetitions are eliminated, outdated terminology is corrected, and norms that are close in content are combined into one article, paragraph, etc. [13, pp. 358–359]. Among the main features of the consolidation of regulatory legal acts, T. V. Kashanina highlights the following: 1) consolidation, unlike codification, does not establish new regulations; 2) the consolidated act acquires its own requisites, accordingly, the previous acts lose not only their requisites, but also legal force; 3) consolidation is official in nature; 4) consolidation acts are binding on the addressees.

Today, consolidation of regulatory legal acts is practically not used in the modern legal system of Ukraine, despite the fact that such activity is a positive factor in terms of avoiding conflicts in legislative regulation. The question of the form of a new consolidated act remains unresolved. Thus, some scholars emphasize that the result of consolidation, and not codification, is the Labor Code of Ukraine [6, pp. 174–175]. Legal scholar G. Znamensky, studying the issue of codification and harmonization of economic legislation of our country, notes that the Commercial Code of Ukraine also became the result of the consolidation of regulatory legal acts, since it only combines regulatory provisions on one issue, without significantly replacing the content of the norms [4, p. 4]. In contrast to Ukrainian realities, the world practice of adopting consolidated acts is quite wide. Take at least Great Britain, where dozens of such acts are issued, combining acts of parliament adopted on the same subject of regulation for the entire time of its existence. An example of consolidation is the adoption of the Law on Trade Unions and Labor Relations, which united more than 10 laws that fully or partially regulated the activities of trade unions [12., p. 160–161]. Due to the constant increase in the number of regulatory legal acts in the legal system of Ukraine that regulate a homogeneous sphere of social relations, it would be very appropriate if consolidation became one of the priority areas of systematization of national legislation in our country.

Having studied the legal phenomenon of systematization of legislation from various scientific points of view, we can conclude that the study of this legal phenomenon in domestic legal science is incomplete. The main issue is the approach of scientists to the issue of systematization, as more or less significant for the development of science. The question of the correlation of the concepts of "systematization of law" and "systematization of legislation" also remains unresolved. At the same time, the systematization of legislation plays an extremely important role for legal practice, being the basis for increasing the effectiveness of legislation and its accessibility for both representatives of the legal

professions and ordinary citizens, harmonizing Ukrainian legislation and bringing it into line with the legislation of the European Union. Given the exceptional practical importance of systematization of legislation and in order to achieve the necessary balance between legal theory and practice regarding this legal phenomenon, the systematization of legislation requires a greater degree of attention from legal scholars and conducting further thorough scientific research.

References

1. Borshchevsky I. V. *Teoretychni zasady systematyzatsiyi zakonodavstva* [Theoretical principles of systematization of legislation] / Borshchevsky I. V. // Journal of Kyiv. University of Law. – 2007. – No. 3. – P. 19–24.
2. Hryshchuk V. K. *Kodyfikatsiya kryminal'noho zakonodavstva Ukrayiny: problemy istoriyi, metodolohiyi ta teorii* [Codification of criminal legislation of Ukraine: problems of history, methodology and theory: author's abstract. dissertation for the degree of Doctor of Law]: special 12.00.08 "Criminal law and criminology; criminal executive law" / V. K. Hryshchuk ; Kyiv. Taras Shevchenko University. – K., 1992. – 50 p.
3. Zhushman V. P. *Naukovi osnovy systematyzatsiyi aharnoho zakonodavstva* [Scientific foundations of systematization of agricultural legislation] / V. P. Zhushman, O. M. Savelieva // *Teoriya i praktyka pravoznnavstva* [Theory and practice of law]: electronic scientific professional publication of the National University "Law Academy of Ukraine named after Yaroslav the Wise". Issue 1 (2), 2012. – P.1-17.
4. Znamensky G. *Kodyfikatsiya i harmonizatsiya ekonomichnoho zakonodavstva* [Codification and harmonization of economic legislation] / G. Znamensky // Jurist. Visn. Ukrainy. – 2003. – No. 38. – P. 1, 4.
5. Korelsky V. M. *Teoryya hosudarstva y prava* [Theory of state and law]: textbook [for law universities and faculties] / V. M. Korelsky, V. D. Perevalov. – M.: Publishing group Infra-MNORMA, 1997. – 570 p.
6. Lysenkova O. S. *Teoretychni problemy konsolidatsiyi yak formy systematyzatsiyi zakonodavstva Ukrayiny* [Theoretical problems of consolidation as a form of systematization of the legislation of Ukraine] / O. S. Lysenkova // *Systematyzatsiya zakonodavstva Ukrayiny : problemy teorii i praktyky* [Systematization of the legislation of Ukraine: problems of theory and practice.] – K., 1999. – 218 p.
7. Marchenko M. N. *Problemy teoryy hosudarstva y prava* [Problems of the theory of state and law]: textbook / M. N. Marchenko. – M.: TK Velby; Prospect, 2006. – 690 p.
8. Melenko S. G. *Konsolidatsiya yak vyd systematyzatsiyi normatyvno&pravovykh aktiv* [Consolidation as a type of systematization of regulatory and legal acts]: abstract of dissertation ... candidate of legal sciences: 12.00.01 / Serhiy Grigorovich Melenko. – K., 2002. – 19 p.
9. Obshchaya teoryya hosudarstva y prava. [General theory of state and law.] Academic course in 3 volumes / editor-in-chief prof. M. N. Marchenko. – M. : IKD "ZertsaloM", 2001– . – 2001. – T. 2. – 528 p.
10. *Osnovopozhnyi pryntsypy kodyfikatsiyi zakonodavstva* [Fundamental principles of codification of legislation] / D.E. Vergeles // Almanac of law. — 2012. — Issue 3. — P. 127-130.
11. Petkov S.V. *Naukovyy visnyk Mizhnarodnoho humanitarnoho universytetu*. [Scientific Bulletin of the International Humanitarian University.] Ser.: Jurisprudence. 2017 No. 29 vol.
12. *Porivnyal'ne pravoznnavstvo* [Comparative jurisprudence]: textbook / S. H. Poprebn'yak, D. V. Lukyanov, I. O. Bylya-Sabadash and others. ; ed. by O. V. Petryshyna. – Kh.: Law, 2012. – 272 p.

13. *Problemy obshchey teoryy prava y hosudarstva [Problems of the general theory of law and state]:* textbook / under the general editorship of V. S. Nersesyants. – M.: Norma, 2004. – 832 p.
14. Rassolov M. M. *Problemy teoryy hosudarstva y prava [Problems of the theory of state and law]:* textbook / M. M. Rassolov. – M.: UNITI; Law and law, 2007. – 431 p.
15. Skakun O. F. *Teoryya hosudarstva y prava [Theory of state and law: textbook]* / O. F. Skakun. – Kh.: Konsum; Un-t vnutr. del, 2000. – 256 p.
16. Smorodinsky V. S. *Systematyzatsiya natsional'noho zakonodavstva yak yurydychnyy instrument zabezpechennya prav lyudynyS [systematization of national legislation as a legal instrument for ensuring human rights]* / V. Smorodinsky // Problems of lawfulness: republican interdisciplinary scientific collection – 2008. – Issue 99. – P. 19–29.
17. *Teoriya derzhavy i prava. Akademichnyy kurs [Theory of State and Law. Academic Course]:* Textbook / Ed. O. V. Zaychuk, N. M. Onishchenko. – K.: Yurinkom Inter, 2006. – P. 410
18. *Teoryya hosudarstva y prava [Theory of State and Law]:* Textbook / Ed. V. P. Salnikov. – M.: St. Petersburg. – 2002. – 148 p.
19. *Yurydychna entsyklopediya [Legal Encyclopedia]:* in 6 vols. / Ed.: Yu. S. Shemshuchenko (res. ed.) et al. – K.: Ukr. encyclo., 1999. – T. 3: K-M. – 792 p.
20. *Yurydycheskyy entsyklopedycheskyy slovar' [Legal Encyclopedic Dictionary].* – M.: Soviet Encyclopedia, 1987. – 528 p.
21. Yushchik O. I. *Kodyfikatsiya zakonodavstva Ukrayiny: teoriya, metodolohiya, tekhnika [Codification of Ukrainian legislation: theory, methodology, technique]:* monograph. / O. I. Yushchyk, P. M. Gorbunov and others. ; ed. O. I. Yushchyk. – Kyiv: Parlam. Publishing House, 2007. – 205 p.

Annotation: The article is devoted to a comprehensive analysis of the legal phenomenon of systematization of legislation. It examines in detail the types of systematization of legislation, provides opinions of scientists regarding the place and role of each of these types in the process of systematization of Ukrainian legislation and contains specific examples of systematized normative acts. Attention is also paid for the studying of foreign experience in the systematization of legislation, in particular its consolidation.

Key words: systematization, codification, consolidation, incorporation, legislation, legal norms, normative acts, code

Переклад з української мови на англійську мову виконано в Департаменті Перекладів при «Асоціації Перекладачів та Філологів» перекладачем Віктором Олександровичем.

The document was translated from Ukrainian into English by Viktor Nikishov, the translator, at the Department of Translations under the "Association of Translators and Philologists".

