

Translated from Ukrainian into English

Section 1. National and International Law.

INCORPORATION AS A PRINCIPLE OF EFFICIENT CODIFICATION OF JUVENILE LAWS

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Key for further development of regulatory control of juvenile justice in Ukraine is implementation of efficient systematization procedures, in particular as far as it concerns adoption of the Juvenile Code. One of the key principles of codification of juvenile laws is incorporating harmonization of existing laws and regulations. Hence, general theoretical study of incorporation features is a relevant field of research in modern jurisprudence.

Certain aspects of incorporation of laws were studied by such representatives of Ukrainian jurisprudence as K. V. Holovko, O. V. Petryshyn, S. P. Pohrebniak, V. S. Smorodynskyi, Yu. S. Shemshuchenko and others.

Incorporation (from the late Latin “Incorporatio” – inclusion) shall mean bringing together laws and regulations into collections or statutes, placing them in a certain order without changing their contents. The result of incorporation shall be external processing of existing laws [2].

Main feature of incorporation is its “synthetic nature” – joining certain parts into one whole without changes in properties of such parts. This feature means that, as a rule, no changes are made to the contents of laws and regulations assembled in collections, thus ensuring stability and sustainability of legal control.

One should agree with K. V. Holovko, who proposed variants for classifications of incorporation of law: “a) depending on a criterion for grouping respective regulations – based on time, subject, alphabet, etc.; b) depending on implementation timeframe – periodical (continuous) and one-time; c) depending on a circle of persons, to whom respective legal regulations apply – incorporation of the national legislative regulations and incorporation of local legislative regulations; d) depending on incorporation performing subject – official and unofficial incorporation of laws” [1, p. 23].

Modern theory of law proposes to divide incorporation into official or semi-official (term proposed by V. S. Nersesiants) and unofficial, depending on legal force of the issued legislative collections and statutes.

We believe that a more correct method is binary classification model, according to which incorporation can be official and unofficial (classification criterion here is legal force of the incorporation result and status of incorporation performing subject).

As far as incorporation performing subjects are concerned, in our research we support theoretical studies of representatives of Kharkiv school of law, who, in particular, distinguish two groups of subjects: “the first group includes competent public authorities and local self-government authorities carrying out official systematization. Its results include adoption of codified laws and regulations (codes), issuance of official legislative statutes (as a rule, marked as originating from a competent ministry or department), methodological guidelines for public authorities, etc. The second group of systematization performing subjects consists of individuals and organizations. They carry out systematization at their own initiative for the purpose of legal support of commercial, scientific, educational or other activities. Such systematization is called unofficial. Its results include issuance of printed collections, computer databases and others” [3, p. 221-222].

Positive results of incorporation may be as follows: 1) making a list of recommendations regarding new laws and other legal regulations aiming to eliminate defects and gaps in laws



identified by incorporation; 2) receiving information required for addressing multiplicity of legal regulations governing relations on one and the same matter; 3) harmonization of laws and regulations, shaping them into a defined system; 4) placement of legal materials based on thematic or chronological sections; 5) placement of legal materials based on legal force of regulations subject to incorporation; 6) identification of the most essential legal standards based on the subject and method of legal control; 7) systemic combination of laws and regulations containing specific provisions about tasks of incorporation; 8) development of recommendations for further harmonization of laws and regulations; 9) identification of repetitions, conflicting clauses, clauses needed to be replaced (detection of defects in legal materials).

The above results of incorporation shall become source principles for efficient codification procedures, including codification of juvenile laws.

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