

Consolidation of Regulatory Legal Acts in the Russian Federation and Abroad

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Abstract

In this research article, the author addresses the theoretical problem of consolidation, a form of systematization of normative legal acts. Particular attention is paid to the fact that the concept of consolidation differs in the Russian Federation and abroad. The article provides examples of various consolidated acts adopted both during the Soviet era and in the modern period of Russian statehood, as well as corresponding acts of France, the United States, and England.

Keywords

systematization, normative legal act, codification, consolidation, incorporation, Russian science, foreign countries.



I. Introduction

It appears that the relevance and, at the same time, significance of the identified problem are determined by at least two circumstances. Firstly, insufficient attention is paid to consolidation, a form of consolidation, compared to codification, incorporation, and even the accounting of normative legal acts, as recognized by some scholars. Moreover, it should be noted that in a number of cases the latter is not even recognized as a form of systematization of normative legal acts [26; 34]. We believe that, to a certain extent, this is explained by the fact that consolidation has become a subject of scientific research relatively recently. And, as Tatyana Vasilyevna Kashanina rightly believes, there are compelling reasons for this. The acceleration of social life makes codification not entirely suitable for the effective regulation of constantly changing social relations. It turns out, the author reasons, that for a code created with such great time, material, and human costs to exist for a sufficiently long time, it should enshrine only the most general provisions. This is why practice has shifted to a more standardized approach: the consolidation of legal documents [12].

Secondly, this is due to the fact that general theoretical issues concerning the consolidation of regulatory legal acts are typically supported by Russian scholars with very few examples from domestic legislation alone.

II. Research Methods

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

2.1 Research Methods

- general philosophical (dialectical-materialistic), which is used in all social sciences;
- a. 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;

- b. special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
- c. private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Result and Discussion

3.1 On the concept of consolidation in modern Russian legal science

Supporters of the consolidation of normative legal acts offer various definitions. Thus, Dmitry Evgenievich Petrov believes that consolidation is a form of systematization, which combines several normative legal acts in force in the same area of public relations into a single consolidated normative legal act without changing their content [21]. However, the author, unfortunately, does not provide any examples. This definition of consolidation leads to the conclusion that it has some features of both codification and incorporation. A consolidated act is consolidated, and this brings it closer to codification. The fact that it does not introduce anything new in the regulation of public relations makes it similar to incorporation. At the same time, during consolidation, editorial corrections are carried out, a purely external processing of the instructions so that they are all presented in a uniform style, using standardized terminology. Contradictions, repetitions, and unnecessary length are eliminated, outdated terminology is corrected, and similar norms are combined into a single article.

Vladik Sumbatovich Nersesyants takes a somewhat different position on the issue under consideration. He wrote that, with regard to a consolidated act, the latter is adopted in due course by the competent legislative body of the state; at the same time, all previous consolidated acts lose their legal force and cease to be effective upon the adoption of the new act. The author also drew attention to the fact that, unlike incorporation, consolidation represents a form of official legislative activity, as it involves the amendment and repeal of obsolete norms, the establishment of a number of new norms, and the overall adoption of a new legislative act [20].

As Ilya Igorevich Mozzhenko rightly notes, "in the process of preparing a consolidated act, all the norms of previous acts are arranged in a certain logical sequence, and the general structure of the future act is developed" [18].

Nikolai Andreevich Pianov believed that in the Russian Federation, consolidated regulations are most often issued by ministries and central agencies as acts consolidating various departmental lawmaking acts [27].

Consolidation is used in lawmaking primarily to streamline regulations on governance, taxation, and administrative matters, i.e., in cases where the concentration of disparate regulations is necessary to improve the quality of law enforcement.

During consolidation, dozens, and sometimes hundreds, of regulations on the same issue are combined into a single consolidated act, which is approved by the lawmaking body, and the previous disparate acts are declared invalid.

It should be noted that in such a process, regulations of equal legal force are subject to consolidation. Vladimir Ivanovich Shepelev clarifies, stating that a new, large, integrated regulatory act effectively replaces other, smaller, and less sophisticated regulations reflected within it. The author emphasizes that this occurs through the adoption of the said act by a competent official law-making body; unofficial structures cannot carry out this type of systematization of normative acts [42].

Scholars often present consolidation as a unique law-making technique [6]. Thus, Tatyana Vasilyevna Kashanina asserts that "...consolidation is very close to codification and therefore has, first and foremost, a law-making nature..." [12].

3.2 Consolidation of regulatory legal acts in foreign countries

We believe that in the context of our article, it is especially important to note that consolidation is understood somewhat differently abroad. For example, in the European Union, consolidation is considered the incorporation of multiple laws, including all amendments and subsequent revisions, into a single law, which has no formal value, since each consolidated act contains a list of all legal acts with all their requisites [22]. This results in something close to official incorporation.

While consolidation is uncommon in Russia, according to Roman Mikhailovich Romanov, it has become widespread in foreign countries (for example, in Great Britain and France) [28].

A number of scholars have drawn attention to this fact. Thus, a team of authors—Igor Vladimirovich Goyman-Kalinsky, Galina Ivanovna Ivanets, and Vladimir Ivanovich Chervonyuk—notes that in Germany, a consolidated act such as the Social Code is in effect [7]. In France, the practice of issuing consolidated legislative acts, known as codes, is widely used (labor codes, road codes, agricultural codes, tax codes, savings bank codes, and others). Researchers note that France entered the modern era of its history with a vast array of legal acts outside the scope of codification. The main method of regulating this body of legal acts was the creation of codes, similar to industry-specific collections, which include both laws and by-laws. Beginning in the mid-19th century, several such codes were adopted, which classify and consolidate existing law by legal nature. These codes, firstly, focus on very narrow areas.

French jurist Rémi Cabriac notes in this regard that "...the revival of codification...is associated with the rejection of the classical codification schemes of the 19th century." and the use instead of them of the so-called continuous codifications of law, which consist in a rational regrouping of the current law without introducing changes to it. Perhaps the most striking example of such a practice is the French experience" [11].

Here, it seems, the position of another French lawyer, Norbert Rouland, deserves attention, who notes that in France at the end of the twentieth century, legal thinking formed by textbooks is collapsing before our eyes, and other constructions are appearing that relate to groups rejected by official law. In place of traditional categories (public, private, criminal, civil law, etc.), varieties of law are emerging that regulate the activities of individual groups: business law, social security law, urban planning law, labor law, hiring law, insurance, public activity; trade union law, notarial law, commercial law, etc. [32].

We draw attention to the fact that these codes achieve a logical reorganization of already adopted legislative acts and regulations, rather than attempting to "rethink" the totality of norms in a particular branch of law. This codification has exhausted the principle of the rule of law—codes, in its generally accepted understanding [33].

Leonid Vitalyevich Golovko notes that "the French doctrine is based on a functional understanding of the code, and not on a formal understanding inherent in Russian legal science. For a French lawyer, codification is any form of bringing together legal norms scattered across various sources, regardless of whether we formally abolish these norms, creating in their place a new large law-code (the Napoleonic concept), or leave the codified norms in force, only structuring them in a new way, i.e. giving them a new form without changing the content (the Roman or modern French concept" [9].

If we consider the structure of French codes, it is necessary to keep in mind that they usually consist of several parts: the first part includes norms of a legislative nature; the second part contains norms from decrees of the president, government, which are adopted only on the basis of the opinion of the State Council and have the greatest legal force among acts of the executive branch; the third - the norms contained in the so-called simple decrees of the Prime Minister, which do not require the opinion of the State Council; the fourth - the norms prescribed by resolutions of ministries and departments; the fifth - circulars of the executive branch. The majority are so-called regulatory Codes that include only the norms contained in executive acts (the Code of Economic Contracts, the Code of Military Pensions for Disability and Pensions for War Victims, the Code of Crafts, etc.).

In connection with this circumstance, Mikhail Nikolaevich Marchenko notes that a common feature of French consolidated acts is that "they can include norms issued not only by legislative means, but also through regulatory acts" (This refers to regulatory acts (reglements) issued, according to Article 37 of the French Constitution, on matters "not within the scope of legislation" by executive bodies represented by the government, ministers, and also authorized administrative bodies at various levels - Vladimir Valentinovich Kozhevnikov). Moreover, the scope and significance of the regulatory component in France is quite large. By carefully limiting the scope of legislative activity of parliament and clearly dividing existing laws into financial, programmatic, and organic, the French Constitution "represents matters not outlined in the constitutional "[...] broad possibilities for legal regulation through acts issued by executive and administrative and other government bodies" [17].

The authors note that, in the process of codification, principles for distributing regulatory material across specific codes were developed. Basically, the division of legal norms into individual codes and groups of codes is carried out in accordance with the object of legal regulation or the sphere of government activity (development of entrepreneurship, protection of certain freedoms, etc.).

However, a more specific criterion can also form the basis for codification (for example, the relevance of legal norms to a specific group of persons - disabled persons, pensioners, businessmen). Guided by these criteria, the Higher Commission for Codification divided all codes into four main groups: codes in 1) the economic sphere; 2) the social sphere; 3) the intellectual sphere; 4) the political (public) sphere [24].

Irina Yuryevna Bogdanovskaya believes that the more well-known form of statutory systematization in common law countries is consolidation—the amalgamation of legislative provisions on a single issue into a single act. The author notes that, since consolidating acts incorporate provisions of statutes already passed by parliament, a simplified parliamentary procedure is provided for their adoption. For example, in Great Britain, the Consolidation Process Act was passed in 1949. Considering that the mechanical summation of current regulations cannot always ensure that legislation corresponds to the level of development of society, this law allows for the introduction of "changes and minor improvements," which are understood as "amendments made with the aim of eliminating ambiguity and questionable provisions, bringing outdated provisions into line with modern practice, or eliminating unnecessary or incorrect provisions that are of no significant importance. The scholar emphasizes that consolidation "continues to be the leading form of systematization." [4] Alexander Vasilyevich Malko and Alexey Yuryevich Salomatina argue that "...it is not codification, but consolidation, that distinguishes English legal life" [15].

At the end of the 19th century, a powerful movement for the introduction of codification arose in the United States, focusing all its attention on commercial law, which

was due to revolutionary changes in the economic sphere: the era of the emergence of railroads, telegraph, telephone, and business, which immediately captured many states. In 1892, the Conference of Commissioners on Uniform Laws of the United States was founded. The first "uniform" law proposed by the conference was the Negotiation Documents Act (1896) concerning checks, stock market securities, and debt obligations. The next step in lawmaking was the Uniform Sales Act (1906). The commissioners created a considerable number of other laws, some of which, like the previous ones, gained popularity [39].

With regard to the modern US federal legal system and state legal systems, scholars note that the official consolidation of federal statutory law exists in the United States Code, which is divided into 50 titles: General Provisions; Congress; President; Flag and Seal; etc. The Code of Federal Government Regulations also has 50 subject sections. Similar consolidations exist at the level of various states, which use different names [39].

Afghan comparative scholar Hashmatullah Behrouz, arguing that "common law is uncodified; here we are still talking about systematization through consolidation" [3], draws attention to the fact that in the 1830s The process of consistent transformations of English legislation begins, which, as Russian researchers have rightly noted, due to the dominant role of case law in the English common law system, represented "an ever-growing collection of disordered, poorly coordinated, and even directly contradictory statutes, adopted beginning in the 13th century under a wide variety of circumstances and often continuing to operate in completely changed historical conditions" [28].

During this period, Parliament adopted numerous legislative acts that consolidated the normative provisions on the most significant institutions of civil and criminal law, previously adopted by Parliament, and received the general name "consolidated legislation." The author emphasizes that over the course of several decades, legislative acts were issued consolidating legal norms on the most significant institutions of common law, and by the end of the 19th - beginning of the 20th centuries, Legislative regulation through consolidated acts covered branches of English law (for example, the Family Relations Act of 1857, the Partnership Act of 1890, and the Sale of Goods Act of 1893). Another important fact mentioned by the author is that in 1965, a Law Commission was established in England, which was tasked with drafting major consolidated legislative acts in various branches of law, with the aim of ultimately reforming the entire law of England, including its codification [3].

Mikhail Nikolaevich Marchenko held a similar position on the issue under consideration, believing that "at the end of the 19th century and throughout the 20th century, when the need to systematize numerous parliamentary acts particularly increased, consolidation continued to be and remains the main form of streamlining British legislation" [16].

3.3 Consolidation of regulatory legal acts in the USSR and modern Russia

While agreeing that consolidation is accepted in all countries, it is difficult to accept the position that "it is not applied in Russia" [5], "...has no significant application" [41].

A successful example, which has become a classic in 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 Memorial Days," which replaced 48 regulatory acts. Each of these documents at one time introduced a particular holiday or memorial day, and the adopted Decree, without changing the essence of the regulatory framework, streamlined the regulatory material by combining it into a single document. Such measures, as emphasized, are carried out by competent authorities, and therefore, in this

case, the consolidation is official. A successful example of consolidation is Resolution No. 186 of the USSR Council of Ministers of September 2, 1982, "On the Procedure for the Creation, Reorganization, and Liquidation of Enterprises, Organizations, and Institutions." According to Roman Anatolyevich Romashov, an example of a consolidated act is the Russian Constitution from April 1992 to December 1993, since during this period, the Federal Treaty of March 31, 1992, was included as an additional section in the Constitution [31].

It seems that the Federal Law "On Veterans" of January 12, 1995, which consolidates several hundred regulatory acts establishing social benefits for this category of citizens, defines the types of veterans, and lists social support measures for each type, can also be considered as such.

As for our country, consolidation has not really taken hold. The limited adoption of consolidation in the USSR can be explained, in part, by the fact that 20-30 years after the creation of certain legislative acts, their consolidation (i.e., systematization without amendment) proved inappropriate. This was particularly evident during the preparation of the "Collection of Current Legislation of the USSR." Several consolidated acts were issued, combining a significant number of disparate government acts on agricultural matters and the procurement of agricultural products. However, during the process, it became clear that the acts being processed were very diverse, fragmented, and issued at different times, making it quite difficult to create a single, coherent act without certain adjustments to existing regulations. This work was not widely developed and subsequently ceased completely [41].

In the modern period of Russian legal development, consolidation has not been widely developed, although there are examples of some government bodies consolidating the normative legal acts of higher-level government bodies.

A unique approach to systematizing legislation was demonstrated, for example, in the creation of Order No. 865 of the State Customs Committee of Russia dated August 6, 2003, "On Export Customs Duty Rates," and its predecessors with the same title. These acts first reference all Russian Government decrees introducing export duties, followed by a list of goods and their duty rates [25].

Land legislation includes a Collection of Prices (Estimated Rates) and Time Standards for Inventorying Lands in Populated Areas, which was recommended for study by the letter of the Russian Federation Committee on Land Resources and Land Management dated April 25, 1993, No. 5-11/385. This collection brought together several normative legal and normative technical acts of varying legal force and subject to adoption.

3.4 On the objectives and prospects for the development of consolidation of regulatory legal acts in the Russian Federation

In general, the identification of consolidation as a form of systematization of legislation has, as previously noted, given rise to heated debate in the scientific literature.

Some researchers recognize and justify the existence of this form of streamlining regulatory legal acts as a completely independent one [34; 30], while others, as previously noted, do not see the necessary specificity in it [37].

It seems that Sergei Sergeevich Alekseev took an intermediate position on the issue under consideration, recognizing codification and incorporation as types of systematization in law, but simultaneously drawing attention to the fact that "in addition to these two main methods, there are other techniques aimed at making the law more systematic and maintaining legislation in an orderly state (in particular, the publication of consolidated acts, reference and information work, etc.)" [1].

According to most scholars, the essence of consolidation consists of creating a single normative legal act based on several existing ones, which, upon its adoption, are deemed invalid. The multiple normative legal acts being consolidated must regulate a single group of social relations, form a single legal institution, etc.

In addition to these provisions, Lyudmila Aleksandrovna Morozova, in our opinion, identifies other, quite fundamental, properties of consolidation: consolidation is carried out only by law-making bodies and in relation to acts adopted by them (and not by others), i.e., it involves "authorial streamlining of acts"; most often, acts on taxation and administrative liability are streamlined [19].

Other authors cite other clarifying features of consolidation. In particular, they emphasize that, as a rule, consolidation is applied in cases of preparing normative legal material for codification, as well as when there is either no need or no possibility of codifying a certain area of legal regulation of social relations. However, their systematization is extremely important and essential for legal practice [14].

As scholars emphasize, the main characteristic feature of consolidation is the baseness of the content of the legal regulation of the relevant social relations [34].

In other words, consolidation is "nothing more than a special type, a method of external processing of legislative materials" [37].

This form of systematization is especially effective when "combining current norms from different acts, of which only individual fragments remain, and issuing unified acts on specific issues" [23].

As previously emphasized, during consolidation, some editing of the texts of the normative legal acts being combined is permitted: obsolete norms, contradictions, and repetitions are eliminated, terminology is standardized, and the text is presented in a uniform style. We draw attention to the fact that these same actions, along with the recognition of certain provisions or regulatory legal acts as a whole as no longer in effect, are also characteristic of the incorporation of legislation, which gives grounds for opponents of the identification of consolidation as an independent form of systematization to consider it "merely a technique that can be applied in the incorporation of legislation" [37].

Despite this, Inna Anatolyevna Ignatyeva believes, there is an indicator by which these forms of systematization cannot be equated. As the author writes, the essential distinguishing feature of consolidation is the resulting single regulatory legal act, consolidating legal provisions from several. As for incorporation, it represents the systematization of current law through its unification in a collection or code of legal acts [10].

Both supporters and opponents of legislative consolidation note that the development of regulated social relations, requiring the 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 revision to one degree or another in essence, since in this case, the practice of applying the norms, new demands put forward by life, etc., cannot be ignored" [37].

Albert Semenovich Pigolkin, a proponent of consolidation as an independent form of legislation, once noted in his analysis of the experience of creating consolidated acts: "Creating a single, logically consistent act without certain adjustments to existing regulations was quite difficult. The corresponding work was not widely developed and then ceased completely. This was primarily due to the fact that the process of consolidating regulatory acts was not combined with the updating of existing regulations that reflected the interests of the time, their modernization" [23].

Consequently, in most cases of consolidating acts, "we are talking about the creation of consolidated acts that not only combine the provisions of existing acts on the same issues, but will also contain significant innovations in legal regulation" [30]. And, since the process of consolidating legal acts often requires not simply external revisions, but rather changes to the content of legal regulation, such as its expansion or the creation of new legal norms, consolidation in its pure form has virtually no prospects among other forms of systematization [10].

Nevertheless, according to Albert Semenovich Pigolkin, even if the necessary modernization of legislation is carried out during the consolidation of regulatory legal acts, such work should not be considered codification, since the characteristic features of the latter, along with those mentioned, include "the creation of a large and structurally complex act that serves as the central document in a particular branch of law or legislation, distinguished by its stable content" [23].

It was noted above that, according to Russian scholars, consolidation requires the amalgamation of provisions of equal legal force [34].

However, according to Inna Anatolyevna Ignatyeva, 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 linked to the requirement of generalization and streamlining of acts and norms of only one legal force, then this is even more impossible to assert about consolidation, which has absorbed some features of the former and the latter" [10].

In our opinion, Tatyana Nikolaevna Rakhmanina has most accurately formulated the objectives of consolidation and the scope of its application: "The need to overcome triviality, eliminate the multiplicity of acts on the same issues, ensure the compactness and better visibility of legislation" [30].

Speaking about the consolidation of regulatory legal acts, Vitaly Viktorovich Sorokin believes that this type of systematization manifests itself in the transitional period in the publication of so-called large-block legislative acts [36].

Boris Nikolaevich Topornin, who advocated the development of this trend, believed that "... laws will be able to successfully 'work' if the entire flow of legislation becomes coordinated" [38]. Valery Vasilyevich Lazarev and Sergey Vasilyevich Lipen believe that the systematization of legal acts can be aimed at improving either the content of legal norms (so-called internal systematization) or the arrangement of normative material (so-called external systematization). Incorporation represents only external systematization; codification encompasses both external and internal systems; consolidation is primarily external consolidation and, to a lesser extent, internal [13].

It is believed that, in the future, the consolidation of regulatory acts should acquire a broader scope of application, as it allows legal entities not only to navigate the mass of laws and regulations but also to receive precise guidance on which of them, and in what form, should be used in determining their legally significant behavior.

As previously emphasized, consolidation can result in various collections of current legislation alone. At the current stage of development of Russian society, the technical means used (for example, the legal information database SPS "Garant") make it possible to regularly update such collections, maintaining them in such a state that laws and regulations are presented only in the current version. The authors believe that consolidated collections of regulatory legal acts provide the opportunity to more effectively navigate the vast and constantly changing array of current legislation and are highly sought after in practical life [39].

IV. Conclusion

In conclusion, it is necessary to emphasize the importance of aligning ourselves with those scholars who believe that consolidation will play a significant role in the systematization of all-Russian regulatory legal acts concerning taxes, employment, unemployment, etc. [2].

Anastasia Nikolaevna Golovistikova is convinced that the task of consolidating existing acts and consolidating legislative blocks that incorporate several (sometimes dozens) of existing acts on a single issue is currently becoming one of the priority areas for streamlining legislation [8].

It seems that the scholars' position on the need to utilize the potential of regulatory legal consolidation to a greater extent is compelling, especially given the trend toward codification.

Tatyana Vasilyevna Kashanina, in particular, draws attention to this circumstance, emphasizing that sometimes legislators refer to a law as a code, but in reality it is a purely consolidated act. As an example, the author cites the Water Code of the Russian Federation, where numerous acts on water use issues are mechanically arranged according to the following scheme: ownership of water bodies, management of their use and protection, use of water bodies, and dispute resolution [12].

While agreeing with the need to utilize the potential of regulatory consolidation, we believe that when implementing this process in relation to domestic legislation, the wealth of experience accumulated over centuries in foreign countries should be taken into account.

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