



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.  
José María Pino Suárez 400-2 esq a Lerdo de Tejada, Toluca, Estado de México. 7223398475*

RFC: ATI120618V12

**Revista Dilemas Contemporáneos: Educación, Política y Valores.**

<http://www.dilemascontemporaneoseducacionpoliticayvalores.com/>

**Año: VII      Número: Edición Especial      Artículo no.:86      Período: Octubre, 2019.**

**TÍTULO:** La doctrina de la costumbre jurídica: el concepto y las opiniones de los científicos.

**AUTOR:**

1. Ph.D. Kseniya Kovalenko.

**RESUMEN:** El interés en el tema del derecho consuetudinario en su conjunto y en las costumbres legales como fuente de derecho se debe a la peculiaridad de la situación en la ciencia y práctica teórica y jurídica modernas. No hace mucho tiempo, hace 10-15 años, la costumbre legal era vista como una fuente de derecho obsoleta. Se puede rastrear una actitud particularmente crítica hacia su existencia en los países de la familia jurídica romana-alemana, así como en Rusia.

**PALABRAS CLAVES:** costumbre legal, doctrina, enseñanza, estudiante.

**TITLE:** The doctrine of legal custom: the concept and opinions of scientists.

**AUTHOR:**

1. Ph.D. Kseniya Kovalenko.

**ABSTRACT:** The interest in the topic of customary law as a whole and in legal customs as a source of law is due to the peculiarity of the situation in modern theoretical and legal science and practice. Not so long ago, 10-15 years ago, legal custom was seen as an obsolete source of law. A particularly critical attitude towards its existence can be traced in the countries of the Romano-German legal family, as well as in Russia.

**KEY WORDS:** legal custom, doctrine, teaching, student.

## **INTRODUCTION.**

In the early 1990s, in the context of creating a new domestic financial and economic infrastructure and developing entrepreneurship, in addition to the law and civil law contract, additional sources of legal regulation were required. Therefore, in 1994, the concept of “custom business practice” and its definition were included in the Civil Code of the Russian Federation.

There were references to custom in the domestic legislation of the Soviet period, for example, in the USSR Merchant Shipping Code (1968), but the indications of custom contained there dealt primarily with international trade. In contrast, domestic law allows for the use of customs within the national legal system. We are talking not only about the customs of business practices operating in entrepreneurship, but also about local, national customs - in particular, in environmental management and the social organization of ethnic communities.

Usually, legal rules will not lose their significance in the future, since it is impossible and inexpedient to provide all the nuances of a legal relationship in a law or in an agreement. Customs are also quite active in the field of private international law, especially in international trade and merchant shipping.

## **DEVELOPMENT.**

### **Methodology.**

The methodological basis of the research consists of general scientific and private scientific. The analysis method was used in the interpretation of the study of special legal literature. The synthesis method was used to substantiate the conclusions of the conclusion of the work.

### **Discussion and results.**

Legal custom is an authorized state-protected rule of conduct that has developed as a result of its actual application for a long time (Zaitseva et al., 1997; Utyashev, 2008).

By custom, as a kind of social norm, we mean a rule of behavior that has developed on the basis of a constant and uniform repetition of these actual relationships, which has become familiar and recognized by society (Kovalenko, 2019). However, not any custom becomes legal, but only one that receives official recognition of the state, that is, receives legal force.

Legal custom is distinguished by the certainty of the rule, the continuous and uniform nature of its compliance. The norms of legal custom are often expressed in proverbs, sayings, aphorisms.

For modern studies of the essence and functional role of custom within the framework of the general theory of state and law, one of the priority areas is the development of the theoretical foundations of customary law.

Classical Roman law, the formation of which stretched for many centuries, quite often turned to the customs of the state, which were partially reworked in the process of lawmaking, and partially included in the first collections of legal norms without significant changes. This is evidenced by the Laws of the XII Tables. Later Guy Institutions in a number of articles also point to customs. A similar situation was observed in other societies. In ancient Greece, for example, the Laws of Dragon were based on customary law.

G. F. Shershenevich pointed out the prevailing importance of legal norms established by the power of domestic relations in the formation of customary law (Shershenevich, 1995).

M. M. Kovalevsky, in a number of his publications on the customary law of the highlanders of the North Caucasus, also noted the archaic nature of the tribal and community relations, which were subsequently replaced by relations of an early state type with subsequent changes in the legal system (Kovalevsky, 1886).

Thus, the first researchers of customary law clearly pointed out the importance of custom in the formation of the regulatory system of early societies (Kovalenko, 2019; Komarov et al., 2014; Faryma et al., 2014).

At the very beginning, the legal practice did not have material fixation, which complicated its application by the need to first prove in court that this legal custom exists (Lukasheva, 2007; Kozlova et al., 2008). At a certain stage of development, the legal custom began to be sanctioned in writing or to be fixed in writing, being modernized into a regulatory legal act.

For legal custom, the following conditions are required:

- ✚ Recognition of custom as a legal society in which it has developed.
- ✚ The presence of a certain age of custom, that is, the period of existence.
- ✚ Custom should not be contrary to public policy or should be reasonable.

In addition, it is natural that the state will protect (sanction) only that custom that meets the goals and objectives of state power.

Custom is conservative in nature. It consolidates what has developed as a result of prolonged social practice. The state treats different customs differently: some forbids, others approves and develops.

In the history of Russian law there were normative legal acts containing a direct reference to custom, such references referred, for example, to the land use order in the 20s of the 20th century.

The state authorizes only those customs that do not contradict, are consistent with its policy, with the moral foundations of the existing way of life. Customs that are contrary to public policy, universal morality, as a rule, are prohibited by law.

## **CONCLUSIONS.**

Legal custom is a custom, the application of which is ensured by state sanction. It should be distinguished from custom, which is a moral norm, religious rule, mores. Validation of a custom can be carried out by the perception of its judicial, arbitration or administrative practice. The decision of the state body in which the custom is applied is recognized by the relevant state and can be enforced.

There are several components of a legal custom as a source of law:

- ✚ A legal practice as a source of law is a repeatedly and not widely applied rule of conduct that reflects the content of public relations, which has been given the form of positive law, that is, it is a custom authorized by the state.
- ✚ The inextricable relationship of content and legal form allows us to formulate the meaning of the term “customary law”. This gives reason to believe that the origin of customary law begins with the customary norm, which at a certain stage in the development of society acts as an indicator of the most important, vital social situations, applies to all who fall under its content and that in the future it will become positive law.

### **BIBLIOGRAPHIC REFERENCES.**

1. Constitution of the Russian Federation (1993) Retrieved from:  
<http://www.consultant.ru/cons/cgi/online.cgi?req>
2. Faryma, V.I., Ladygina, A. I. (2014) The concept and classification of fundamental rights and freedoms of the individual. Law and order: history, theory, practice, 1 (2).
3. Komarov, S.A., Laptev, I.V., Titenkov, D.I. (2014) Human rights and legal infiltration of the ideas of the European Court of Human Rights in the legal system of the Russian Federation. SPb.: Publishing house Jurid. Institute.
4. Kovalenko, K.E. (2019) The concept of preventive measures in law. Revista Dilemas contemporáneos: Educación, Política y Valores. Año: VII, Número: 1, Artículo no.:115, Período: 1 de septiembre al 31 de diciembre, 2019.  
[https://dilemascontemporaneoseduccionpoliticayvalores.com/\\_files/200005791-9520695208/19.09.115%20El%20concepto%20de%20medidas%20preventivas%20en%20Derecho.pdf](https://dilemascontemporaneoseduccionpoliticayvalores.com/_files/200005791-9520695208/19.09.115%20El%20concepto%20de%20medidas%20preventivas%20en%20Derecho.pdf)

5. Kovalenko, K.E. (2019) The concept of administrative responsibility for violations in the field of road traffic. *Revista Dilemas contemporáneos: Educación, Política y Valores*. Año: VI, Número: Edición Especial, Artículo no.:54 Período: Agosto 2019.  
<https://dilemascontemporaneoseduccionpoliticayvalores.com/files/200005619-ab157ac0ed/EE%2019.08.54%20El%20concepto%20de%20responsabilidad%20administrativa%20por%20violaciones%20en...pdf>
6. Kovalevsky, M.M. (1886) *Modern custom and ancient law*. Moscow.
7. Kozlova, E., Kutafina, O.M. (2008) *Constitutional law of Russia: Textbook for universities*.
8. Lukasheva, E.A. (2007) *Human rights and principles of globalization of the modern world*. Moscow.
9. Shershenevich, G.F. (1995) *Textbook of Russian civil law*. Moscow.
10. Utyashev, M.M. (2008) *Human Rights in Russia: Status and Prospects: Textbook*. Moscow.
11. Voevodin, L.D. (1997) *Legal status of an individual in Russia*. Tutorial. M.: Moscow State University Publishing House, INFRA Publishing Group.
12. Zaitseva, Yu. P. (2015) *Private life of a citizen: concept and content*. Historical, philosophical, political and legal sciences, cultural studies and art history. *Questions of theory and practice*, 4–1 (54).

#### **DATA OF THE AUTHORS.**

**1. Kseniya Kovalenko.** PhD, Associate Professor of the Department of Labor, Environmental Rights and Civil Procedure, Altai State University, Barnaul, Russian Federation. She got her Candidate (PhD) Degree in Law in Ural State Law University. Email: kovalenko1288@mail.ru

**RECIBIDO:** 1 de septiembre del 2019.

**APROBADO:** 10 de septiembre del 2019.

