



*Aseorías 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. 7223898475*

RFC: ATI120618V12

Revista Dilemas Contemporáneos: Educación, Política y Valores.

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

Año: VI

Número: Edición Especial

Artículo no.:17

Período: Diciembre 2018.

TÍTULO: Sobre los elementos estructurales de una doctrina legal de presunción de inocencia.

AUTORES:

1. Ainur Gilmullin.
2. Alexander Pogodin.
3. Vagip Abdrashitov.

RESUMEN: El artículo presenta un análisis teórico y legal de una doctrina legal de presunción de inocencia en términos de su importancia para la vida legal moderna de la sociedad y el estado. Los elementos modernos de la doctrina legal de la presunción de inocencia están formulados y fundamentados, cuya estructura se presenta a partir de: ideas legales, conocimiento legal, valores legales, dogmas legales, tradiciones legales, práctica legal; por lo tanto, el artículo señala que son las ideas legales las que contienen valores morales y éticos altos que sirven como el núcleo del significado, el comienzo de la doctrina legal de la presunción de inocencia, así como para todo el sistema legal del estado ruso y sociedad.

PALABRAS CLAVES: doctrina legal, presunción de inocencia, elemento estructural, ideas legales, dogmas legales.

TITLE: On the structural elements of a legal doctrine of presumption of innocence.

AUTHORS:

1. Ainur Gilmullin.
2. Alexander Pogodin,.
3. Vagip Abdrashitov.

ABSTRACT: The article presents a theoretical and legal analysis of a legal doctrine of presumption of innocence in terms of its importance for the modern legal life of society and the state. The modern elements of the legal doctrine of the presumption of innocence are formulated and grounded, whose structure is presented from: legal ideas, legal knowledge, legal values, legal dogmas, legal traditions, legal practice; therefore, the article points out that it is legal ideas that contain high moral and ethical values that serve as the core of meaning, the beginning of the legal doctrine of the presumption of innocence, as well as for the entire legal system of the Russian state and society.

KEY WORDS: legal doctrine, presumption of innocence, structural element, legal ideas, legal dogmas.

INTRODUCTION.

The Constitution of the Russian Federation - as the main political-legal document, - consists in its essence and content of the universally recognized legal doctrines, both in domestic and international practice, such as: the doctrine of natural law, the doctrine of separation of powers, the doctrine of separation of state (federal, regional) and local (municipal) authorities, the doctrine of private property, the doctrine of state's welfare, the doctrine of sovereignty, the doctrine of presumption of innocence, etc.

All the above-mentioned legal doctrines are the scientifically grounded theories, objectified and tested practices, and after the time has expired, modified in the form of law principles, representing the basis for the protection of the rights and freedoms of human and citizen, as well as for the formation and development of a democratic, legal structure. Thus, in Latin, the word “principle” means “basis”, “primordial principle”; therefore, it follows that the legal principles are the inspiring principles of law expressing the most important and decisive in its content [Alekseev S.S., 2016].

DEVELOPMENT.

It is the legal doctrine, as a set of ideas and provisions, that is behind the development of the content and format of the validity of legal principles, since it is possible to come to an understanding of their essence and purpose through the systemic and doctrinal judgment. Thus, the principles developed precisely within the framework of legal doctrine are the basis for the functioning of the entire state's legal system [Gilmullin A.R., 2017].

At the same time, the legal doctrine of presumption of innocence, as a system of scientific knowledge and ideas about the innocence of an individual, is the basis of the principle of ensuring human rights and freedoms, enshrined in Art. 49 of the Constitution of the Russian Federation [Maitland F. W., 1994].

Methods.

The legal doctrine of presumption of innocence is a system of views, ideas and provisions regarding the presumption of innocence, developed by legal science, confirmed by legal practice, expressed in universal values, and the generally accepted principle of presumption of innocence, supported by the opinion of authoritative theoretical scholars [Jones A. H. M. 1997] and industry apologists, a certain approach to legal consciousness and legal thinking in the society and the

state; due to which the legal system of modern Russia is developed and functions, the system elements of the legal doctrine of presumption of innocence may be represented as follows:

- legal ideas.
- legal knowledge.
- legal values.
- legal dogmas.
- legal traditions.
- legal experience or legal practice forms the specifically defined models of legal regulation in each state.

Let us consider the above structural elements of a legal doctrine of presumption of innocence.

Results and Discussion.

Legal ideas seem to be the most important constituent element of legal doctrine [Baranov V.M., 2003]. Legal idea (meaning, notion, concept, etc.) is the main part and the main component, in accordance with and according to the rules of which the entire legal doctrine, its meaning, content are built, and consequently, the very direction of the legal doctrine's development is determined.

It can be concluded that legal ideas are the main fundamental beginnings, the vectors of development of the whole of legal doctrine, which can be described as the essential semantic core, the framework of the whole structure of legal doctrine. This category includes ideas, notions and concepts of such important priority dominants of a democratic secular state as the ideas of humanism and justice, law and order, openness and liberalism, ideas of human rights and freedoms of human and continuity, integrity of the theoretical legal process of knowledge inspired by high moral and ethical values that have reached us [Campbell P., 1993].

Legal knowledge, as an element of legal doctrine, seems to represent the objective legal reality formed in the minds of citizens as a collective result of reflecting certain legal processes, phenomena and patterns in the modern state regarding the presumption of innocence [Tarasov N.N., 2001].

Legal knowledge includes the following elements:

- 1) Informational data that is able to determine an individual's behavior in making (or not making) a certain decision (as a motivation for choosing) that has legal significance and assessment.
- 2) Skills and abilities to independently perform legally significant actions, which can be right-conferring, right-altering, law-terminating.
- 3) The nature of an individual's reaction (as a form of attitude) to the legal reality, focused on the disclosure and receipt of new information arrays and data related to the improvement and acquisition of new knowledge, skills, methods and abilities of their discovery.

Thus, the above elements of legal knowledge about the presumption of innocence, based on the modern methods of obtaining new knowledge and skills, are indirectly related and repeatedly confirmed by legal practice as a means of cognizing the whole legal reality, reflected in the legal consciousness of an individual and the society.

Legal values are an important element of legal doctrine, since they are associated with everything that carries a positive, progressive potential. In this regard, legal values are everything that is good for people and society and has a healthy content and meaning. That is why the values act as top priorities, undeniable principles, the inviolability of which is well known and proven by the previous historical experience.

Each historical epoch had its own legal values; over the long development period of the society and the state, their set, properties and nature underwent significant changes. They can be described as the legal values that change their content, which has been determined depending on

the features of a particular historical period (Ancient World, Middle Ages, New Time, etc.). At the same time, during all this time, a system of higher legal values was formed, which almost did not undergo significant changes, i.e. legal values with the same content in time (the highest or universal values). They unambiguously include such values as: equality before the law, rule of law, justice, democracy, order and security, world peace, freedom and equality, fraternity and solidarity, well-being and security, human rights and freedoms, pursuit of happiness and confidence in the future, and others.

Legal dogmas or dogmas of law are the most permanent and stable part of law, exploring this phenomenon from the standpoint of general concepts, ideas, categories, and from the standpoint of special legal means, definitions and terms.

The concept of “dogma of law” in the general theory of law means stability, immutability, inviolability, constancy; therefore, the only thing that needs to be done with the dogmas of the law is to accept their reality and use them in an unchanged form. In this regard, it can be argued that dogma forms legal thinking, traditions of law, ensuring its reproduction [Pozharsky D.V., 2008]. Legal dogmas play a huge role and perform a number of important functions, which include:

- The presence and active functioning of legal dogmas in modern legal systems serves as an indicator of the readiness of law as a regulator of social relations to manage social processes.
- The legal dogma contributes to the completion and preservation of the inviolability of legal system, successfully fulfilling the role of the foundation and epy supporting framework of the whole structure of positive law.
- The legal dogma easily performs the legitimizing function in relation to the system of positive law.

- The legal dogma creates and predetermines the content and features of the professional legal consciousness of lawyers, forming and constantly developing it
- The legal dogma in the process of law enforcement, in addition to these, performs a regulatory function in the context of the interaction of professional legal consciousness of lawyers and promising goals and objectives of the development of the society and the state [Mikhailov A.M., 2012], serving as a guide in the field of professional activity. Thus, a legal dogma, performing its functions within the legal system, connects the uniformly interpreted legal categories, concepts, principles, etc., and at the same time is a tool constituting (recreating) a specific legal idea (theory, concept) [Morozova L.A., 1995], bearing in its basis a certain scheme and method of legal regulation in the society and the state. Legal traditions act in the law as the value indicators of legal doctrine.

The term "tradition" is of Latin origin. The concept of "tradition" goes back to the Latin word *traditio*, derived from the verb *tradere*, meaning "to transmit," thus, "tradition" means "transfer" in the broadest sense. In this regard, the meaning of this concept reflects the ideas, beliefs, customs, orders and rules of conduct historically formed and transmitted from generation to generation.

Legal traditions as an element of the legal doctrine of presumption of innocence can be represented as legal experience containing legal values, passed from one generation to the next, by expressing them in the constant forms of expression, with an indirect influence on the state-legal regulation of society. It should also be pointed out that legal traditions provide translation and continuity of previous legal experience, as well as the vector of legal activities to strengthen the existing and to compensate for the lost legal heritage.

It seems that the Russian legal doctrine has partly lost its potential due to the long period of repressions that change one another, the prohibitions and persecutions of the state against religions, periods of stagnation and judicial arbitrariness. Recently, the situation has been smoothly changing [Kudryavtsev V.N., Nikitinsky V.I., Samoshchenko I.S., Glazyrin V.V., 1980]. In this regard, it is worth pointing out that legal traditions can be divided into secular (purely (proper) legal traditions) and religious ones. They differ in the relationship nature between legal system and religion. Secular legal traditions are founded and developed by legal science together with philosophy, while religious ones are based on religion, and law is not considered as an independent element in them.

The legal tradition appears as a generally established stereotype of behavior, positively influences the state-legal activity, legal awareness of the population and the professional legal community directly, forms the social and legal practice, develops the legal culture, develops the concept of legal culture, and indicates the vector of society's development. At the same time, in an unusual form, in the difficult and turning stages of history, legal traditions and high traditional moral and ethical values take on special significance: moral core and the basic principles of moral and ethical framework for finding the vectors of progressive development and modernization of the society and the state.

An important feature of legal traditions is their form of existence (the norm of traditions) [Oborotov Yu.N., 2001], which can be modified depending on the conditions and circumstances, challenges of the time, and political upheavals.

Over the long period of transformations, legal traditions have demonstrated unique opportunities to use special influence mechanisms on the mass consciousness of the state's population. It should be mentioned that traditions in law as synonymous with the absolute, eternal, existing at different times are identical with universals, since they manifest themselves in such sources of law as

constitutions, codes, precedents, treaties, etc., in legal principles, axioms and presumptions (including presumptions of innocence), in legal terminology, and of course, legal procedure [Kartashov V.N., 1995].

Legal practice (or legal experience) is also an integral part of legal doctrine. Legal experience contains the legal knowledge, skills, abilities acquired as a result of repeated actions in the legal life, a series of phenomena and events peculiar to the legal reality of a certain society. In this regard, legal experience can be defined as a systematized and classified expression of legal practice that combines everything that has been discovered, researched and accumulated in the process of functioning of a particular legal system.

It should be immediately pointed out, that legal practice should be understood as the law-enforcement and law-explanatory practice, since the law-making activity is focused on the creation of new sources of law. This refers to the initial process of formation of primary legal knowledge, and the main and associated phenomena and processes in the development of legal science in general, the execution of law enforcement actions, the development of law and legislation, and as the crown of the aggregate of all these activities - the integrated development of legal ideology.

It is legal experience, as an aggregate work of joint activities [Philosophy: Study Guide, 2013], that is a qualitative, “mirror reflection” of all elements of legal doctrine, uniting them into a single system for regulating social relations, which has a positive impact on the formation and functioning of the modern Russian model of the legal system.

In summary, it seems that the above problems can be resolved by the modern legal doctrine, having unique capabilities, due to the complex effect of all its elements. In this regard, it should be noted that the elements constituting the legal doctrine are so interconnected with each other and legal doctrine, that they are at the same time the elements, “bricks” of other legal phenomena,

“buildings”, such as: legal culture, legal consciousness, legal worldview, legal policy, legal mentality and others; for example, legal values and legal knowledge are the elements of legal consciousness, legal mentality, legal outlook, and legal science in general; legal traditions can be viewed as a social regulator of social relations; legal dogmas also relate to the regulatory and legal regulators of social relations in the state; legal practice, which manifests itself in the actions [Baitin M.I., 2005], is one of the sources of law [Voplenko N.N., 2009], at the same time acting as one of the basic elements of the legal system of modern Russian society.

CONCLUSIONS.

The legal doctrine, consisting of the elements considered earlier in the form of legal ideas, legal knowledge, legal values, legal dogmas, legal traditions and legal experience (legal practice), in its ideal totality, demonstrates a true parallel reflection of that real situation, context, state of legal culture in which the formation and finalization of legal doctrine has been carried out.

Acknowledgements.

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

BIBLIOGRAPHIC REFERENCES.

1. Alekseev S.S. (2016). Structure of Soviet Law. – p. 90.
2. Baranov V.M. (2003). Concept of the Draft Law. N. Novgorod, – p. 5.
3. Baitin M.I. (2005). The Essence of Law. – P. 28.
4. Campbell P. (1993). Presumptions and Justice. – N.Y. p. 292.
5. Emerson Tiller Frank, B. Cross / What is legal doctrine // Northwestern University School of Law, Public Law and Legal Theory Papers, 2005.

6. Gilmullin A.R. (2017). On the Impact of Legal Doctrine on the Principles of Organization and Activity of the Mechanism of the Russian State / World of Jurisprudence. — No. 3. — p.18-25.
7. Jones A. H. M. (1997). The Decline of the Ancient World. — L.: Addison Wesley Longman Limited,— p. 15.
8. Kudryavtsev V.N., Nikitinsky V.I., Samoshchenko I.S., Glazyrin V.V. (1980). The Effectiveness of Legal Norms. - p. 49.
9. Kartashov V.N. (1995). Introduction to the General Theory of the Legal System of Society. Text of the Lectures. - Yaroslavl: Yaroslavl State University, - p. 122.
10. Maitland F. W. (1926). The Constitutional history of England. — Cambridge,. — p. 387; Idem. History of English Law. — N.Y., 1973. — Vol. 1. — P. 118; Stubbs P. Constitutional History. — N. ., L., 1978. — Vol. 1. — § 52. — P. 291; Davidson J. B. The Constitutional History of the USA. — N.Y., 1994. — § 2. — Ch. 3. 1994. — P. 81.
11. Mikhailov A.M. (2012). Genesis of the Continental Legal Dogma: Monograph.
12. Morozova L.A. (1995). The State and the Church, Relationship Features // State and Law. No. 3. — p. 68.
13. Oborotov Yu.N. (2001). Traditions and Innovations in Legal Development. Odessa: Yuridicheskaya Literatura (Legal Literature), - p. 62.
14. Pozharsky D.V. (2008). Issues of Goal-Setting and Goal-Making in the Russian State at the Present Stage // “Black Holes” in the Russian Legislation. No. 5. p. 52-53.
15. A.M. Rudenko (2013). Philosophy: Study Guide. — p. 102.
16. Tarasov N.N. (2001). Methodological Problems of Legal Science. Yekaterinburg, — p. 83.

17. Voplenko N.N. (2009). Essays on the General Theory of Law [Text]: [Monograph] / N.N. Voplenko; State Educational Institution of Higher Vocational Education "Volgograd State University". - Volgograd: Publishing House of the VolSU, – p. 247, 261, 264.

DATA OF THE AUTHORS.

1. Ainur Gilmullin. Kazan Federal University, Assistant of the Department of Theory and History of State and Law. Email: global@prescopus.com

2. Alexander Pogodin. Kazan Federal University. Doctor of Law, Associate professor of the Department of Theory and History of State and Law. Email: info@prescopus.com

3. Vagip Abdrashitov. Volgograd State University. Doctor of Law, Associate professor of the Department of Theory and History of State and Law. Email: Gilmullin_ainur@mail.ru

RECIBIDO: 4 de noviembre del 2018.

APROBADO: 16 de noviembre del 2018.