

Theoretical and Functional Analysis of the Legal Doctrine of the Presumption of Innocence

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Abstract

The article covers the functional potential of the legal doctrine of the presumption of innocence in the context of its manifestation in the legal system of the Russian state. It is noted that the legal doctrine as the teaching of authoritative experts, apologists, highly qualified specialists in the field of law, contains in its structure the scientific-theoretical and practical-applied constructions and the knowledge concerning the remaining elements of the legal system of the Russian state. It is specially emphasized that the legal doctrine of the presumption of innocence represents a crown of guarantees for the rights and freedoms of man and citizen as one of the achievements of legal theoretical science and practice based on the achievements of well-known scientific theories and practical developments in which it exerts a special influence on the lawmaker and the executor of law, forms representations about the proper image of law, its guarantees, prospects for its development. It is separately noted that the legal doctrine of the presumption of innocence effectively and actively influences the formation of basic and essential features, both separate elements and their groups, has a significant influence on the internal structuring, the concerted actions and functioning of the entire legal system of modern Russia through the implementation in its separate elements (normative legal acts, decisions of the Constitutional Court of the Russian Federation, decisions and guidance clarifications of the Supreme Court of the Russian Federation, reviews of law enforcement practice).

Keywords: Legal doctrine; The presumption of innocence; The constitution; The Legal system; The rights and freedoms of man and citizen.



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1. Introduction

Speaking about the place and role of the legal doctrine in the legal system of Russia, it will be justified to begin with the fact that the modern legal doctrine of the presumption of innocence, as the quintessence of the doctrine of human and citizen rights and freedoms through its functional potential affects the legal system Russia, is a guarantor and the right to natural and inalienable human rights, is (should) be the goal and setting for the legislator and enforcer. Legal doctrine, as a special system of rational knowledge, theories and concepts, implements a multi-level impact on the conceptual provisions of jurisprudence, because it embraces ideological, political and scientific ideas about the proper behavior of the subjects of law (Anisimov, 2009). Doctrine as a source of law exerts an effective influence on a number of aspects of the activity and activities of society and the state, both inside and outside, directly affecting law-making and law-realizing practice. It is worth noting that in the modern scientific literature, academic theorists unfairly pay little attention to the doctrine, since it is mentioned only in the context of a secondary, derived source of law, and, more often, historically. The above mentioned is unjust, since such doctrines, when entering into contact and effectively interacting with the legal doctrine, are an active factor in influencing the formation of the legal system of a modern state.

2. Methods

The presented is confirmed by the fact that the religious family of law is dominated by religious doctrine, the family of legislative and case law - the political and legal doctrines of human and civil rights and freedoms, as well as the doctrine of the rule of law, the division of powers, and only traditionally ethical law-patriarchal is strongly influenced by the doctrines of moral, legal, spiritual, moral, philosophical and legal nature. The very doctrine, directly as a source of law, performs the following functions: 1) the doctrine affects the consciousness and legal awareness of lawmakers; 2) the doctrine develops definitions, terms (dictionaries, glossaries), forms, formulas, constructions, ideas, concepts, etc., which are later applied in legal life and legal reality; 3) the doctrine, by determining, directs all spheres of the state's activity to positive-progressive development; 4) the doctrine contains a tradition and a general orientation on the development of the institutions of state and law; 5) the doctrine fills in the gaps in the law; 6) contradictions are eliminated conceptually and scientifically (Boiko, 2008).

3. Results and Discussion

In the terminological sense, “doctrine” means a number of basic meanings, namely:

- Doctrine as a science of studying law,
- Doctrine as a source of law,
- Doctrine as the name of a special legal document (Balayan, 2015).

Proceeding from this given, we will have to focus on this or that meaning, but in the general mass we will understand legal doctrine provisions, constructions, ideas, principles and judgments about the law developed and conceptually grounded by legal scholars. The problem of the functions of the legal doctrine, including the doctrine of the presumption of innocence, seems to be a topical and especially controversial issue, since it is a matter of social purpose, essential characteristics, the vectors of impact and directions for the development of legal doctrine within the functioning of the legal system of the Russian state. In the course of this approach, the legal doctrine of the presumption of innocence within the Russian legal system can reveal a number of the following functions: regulative, stabilizing, determinative, integrative, and educational, informational, translational, epistemological, didactic, and the function of internationalization. Consider the above functions of the legal doctrine (Gracheva, 2014). The regulatory function of the legal doctrine of the presumption of innocence is manifested through its integrated impact and progressive influence on the processes of state and legal development and modern Russia. It is here where is clearly distinguished the main content of the legal doctrine as a system of theories, ideas and provisions, which is a prerequisite for its proper functioning, giving the model the qualities of stability, strength, stability, which is ensured by the formation of an appropriate standard of living, the degree of public consciousness, self-moral and spiritual and religious-cultural development, material prosperity and well-being, socio-legal and material security protection and security. These are the characteristics of legal doctrine that allow us to say that the regulatory function of the legal doctrine acts as the leading one and is an indispensable element for both the legal system and the whole of modern Russian society (Bayev, 2008; Delyagin, 2008).

The stabilizing function of the legal doctrine of the presumption of innocence of modern Russian society serves as a system-forming, “cementing”, strengthening factor in the general process of organizing state and legal development of the commonwealth. The presence of such function and its consistent implementation indicate the invariability of ties and relations within the society and the state, demonstrates its stability for challenges, manageability and “stress tolerance” to the global crisis and sanctions, solving problems and conflicts, the increasing of the overall status of the Russian state’s resistance, where law as the main regulator of social relations plays a crucial role. In turn, there is also an inverse link that the ever-increasing role of law in the management of public and state processes in respecting and safeguarding national sovereignty on the basis of doctrines, theories and concepts is manifested in the modernization and improvement of the process of legal regulation and the development of new models of state and legal development of the Russian jurisprudence and modern Russia (Gaidamakin, 2013). The determinative function of the legal doctrine of the presumption of innocence is manifested in the fact that the presence of a certain normatively fixed idea at the state level, the concept, the model is perceived by the subjects of social relations through the prism of legal culture. These constructions are mediated by the participants of social relations at different social levels: individual, family, group, class, professional, public, state, etc., and for this reason, the previously mentioned model that is defined as a fundamental conceptual idea determines the model (the legal dominant - the determinant) of the state and society. In this regard, the legal doctrine, as an expression of the basic concept, the fundamental idea, the doctrinal position (in the form of: the priority of the individual in the state, the inalienability of the rights and freedoms of man and citizen, the rule of law in the state, etc.) legal culture, legal system, level of economic, political, moral, moral and spiritual development of the state, society, its institutions, through which the main features, peculiarities, distinctive character and uniqueness appear, by determining all spheres of relations inherent in a particular society and the state. In other words, the determinative function of the legal doctrine of the presumption of innocence manifests itself in the fact that it expresses the specifics and peculiarity of the legal regulation of the state aimed at resolving important state tasks and achieving certain socially significant goals (for example, protecting the rights and freedoms of the individual in the state, through the use of a wide arsenal of opportunities and a holistic system of legal means available to the state. Thus, the determinative role of legal doctrine lies in the fact that it acts as a determinant, as an indicator of maturity, civilization, development of the given state and society (Vel’yaminov, 2014).

The integrative function of the legal doctrine of the presumption of innocence is manifested in the following. Considering the fact that the legal doctrine is a global moral, ethical, socio-cultural, social and legal phenomenon that unites all aspects of person’s life in society and the spheres of life of the state itself, the essence, content and functional purpose of legal doctrine can be represented through two phenomena, without which the functioning of the state and society is impossible: the rights and legal culture. The legal doctrine of the presumption of innocence as an element of legal culture being systematically included in the legal space of the state, reflecting the qualitative state, maturity, the level of achievements and civilized legal life of the state determines the vector of development of state legal regulation as the determinant of the legal system, actively and organically conceiving the nature and characteristics of social and political, financial and monetary micro- and macroeconomic, socio-economic, socio-legal, moral and ethical, religious, cultural and spiritual and moral systems of modern Russian society (Balayan, 2015; Gilmullin, 2017).

Thus, the integrative function of the legal doctrine of the presumption of innocence, ensuring active interaction and interference with other social and legal phenomena, determines the progressive development and effective functioning of state and legal processes. The educational function of the legal doctrine of the presumption of innocence manifests itself in the nature of introducing of the Russian state high ideals, moral and ethical views of

ideas, the views and provisions constituting the basis of the Russian legal doctrine into the legal practice, thereby forming an optimal model of legal regulation that has an educative, creative impact on the functioning institutions of the state and society. The educational function of the legal doctrine of the presumption of innocence determines the formation of a Russian citizen in the spirit of: respecting the human person, realizing his or her potentialities and talents, recognizing the individuality and value of each person, originality and uniqueness, patriotism, respecting for national, European, world and universal values (first of all: human rights and freedoms). This function is performed through the education and each person's conviction of that the state and law are a benefit, a means of protecting the interests of the individual, through the formation and development of the individual in the spirit of observing the principles of humanism, justice, democracy, respect for human and citizen rights and freedoms, taking into account universal human values. In this connection, legal doctrine, as an element of the legal system, is in close contact with other social systems, actively interacting with them, streamlining the social processes at the level of the legal system, using all types of legal means to achieve their educational goals facing the state and society, actively exerting a positive influence on the processes of education of citizens in the spirit of the Constitution of the Russian Federation and the legal doctrine of modern Russia.

The information function of the legal doctrine of the presumption of innocence is manifested in the following. The legal doctrine of the presumption of innocence comprehensively determines the policy, strategy, practice, tactics of the legislative process, its development, as well as information processes that describe all the changes in the legal system and legal policy of modern Russia. Any period of development of the state and law is characterized by certain specific problems and defects in the implementation of its functions, including in the information environment. The information function of the legal doctrine of the presumption of innocence, having a substantial arsenal of funds for the development of the legal system and legal policy of the state, cannot be fully realized, due to the lack of positive developments in the field of formation and development, as well as the lack of appreciation of the positive potential and the role of legal doctrine in the implementation of the state legal policy in the field of information and the state's direct realization of the information function. These problems are dangerous due to their unpredictable negative consequences in the areas of lawmaking, law enforcement and the very legal doctrine of modern Russia. As a result, the extrapolation and implementation of foreign ideological clichés and standards into the consciousness of the Russian people, the change in the system of assessments and coordinates result in the devaluation of national value orientations, as well as the disintegration of cultural-mass consciousness (Madayev, 2012).

The translational function of the legal doctrine of the presumption of innocence is manifested through the mechanisms of the influence of legal doctrine on the legal conscience of society, the professional community, the legal culture of particular groups and the whole society, legal practices existing in the state and beyond, through the translation of socioeconomic and social and legal experience, novels of legal practice, experience in the development and subsequent interpretation of legal positions of the judiciary, which in their totality, are to be passed from one generation to the next. In this semantic context, legal ideas, legal concepts, theories and legal traditions that constitute the basic, "core" part of legal doctrine, are one of the main parts of the sociocultural heritage of the state and society, passed from generation to generation, as the main property, "conquest", achievement in the process of building a secular, democratic, law-based state in a certain society.

The gnoseological function of the legal doctrine of the presumption of innocence consists in active assisting in the process of developing new scientific concepts, doctrines, theories, legal concepts, categories to clarify, improve and further develop the legal doctrine of the presumption of innocence, as well as the newest methods and ways to ensure and protect human rights and freedoms, helping to develop law-enforcement and human rights mechanisms and guarantees in the modern law of Russia. The legal doctrine, of course, is characterized by the epistemological (gnoseological) function, which consists in expanded research elaboration, the actual theoretical study. On the basis of the realization of this function, within the very legal doctrine of the presumption of innocence, there takes place the process of development and systematization of knowledge as if "to our benefit", for the future, for our own needs for further development and improvement, our own modernization and renewal, filling with new content and meaning. In this connection, the implementation of the theoretical and cognitive (epistemological) function of the presumption of innocence is an essential condition for the existence and development of modern science of the theory of state and law in the context of the development of the concept of legal doctrine of the presumption of innocence (Bystrova, 2009; Larionov and Filisyuk, 2018).

The didactic function of the legal doctrine of the presumption of innocence is manifested in the character and ways of its elements' influencing on the individual, with the goal of teaching, instructing, educating and ultimately demonstrating the importance and usefulness of the process of education and popularization of such activities in the state and society where, unfortunately, habitual foundations and moral bearings, moral and ethical standards of communication destroy. The absence of such workmanship in the implementation of the didactic function adversely affects the formation of moral, value orientations of the new generations of Russians entering into life. In this regard, the implementation of this function will help to form Russian citizens' high morality and culture, citizenship and patriotism, the education of new generations in the spirit of respect for human rights and freedoms, the doctrine of the rule of law, humanist ideas, morality and spirituality. The function of internationalization of the legal doctrine of the presumption of innocence determines the processes of improving domestic, European and international law, including the character of their interaction. The Russian Constitution in Part 4 of Article 15 has consolidated the status of universally recognized principles and norms of international law, international treaties of Russia, as the constituent parts of the Russian legal system (Villalobos-Antúnez, 2016).

4. Summary

Moreover, the legal doctrine of modern Russia furthers the process of consistent harmonization of Russian legislation with the laws of European countries and CIS countries. It should be emphasized that according to Article 14 of the Code of Arbitration Procedure of the Russian Federation, 1191 of the Civil Code of the Russian Federation, 116 of the Family Code of the Russian Federation, the content of the norms of foreign law regulating the relations with a foreign element is established in accordance with their official interpretation, practice of application and doctrine in the corresponding foreign state. In addition, Article 38 of the Statute of the International Court of Justice refers the doctrines of the most qualified specialists in the field of public law to the sources of law that the International Court of Justice applies. In other words, Russian law recognizes legal doctrine as a source of international private, procedural and international public law, which, in turn, shows one more tendency in the development of the Russian legal doctrine, which is expressed in the internationalization of the internal law of modern Russia (Dmitriyev, 2013; Melyakina, 2013).

5. Conclusions

This role of the legal doctrine of the presumption of innocence is manifested in the gradual convergence of peremptory norms of international law and individual principles of law (for example: responsibility for guilt or presumption of innocence) and national legislations of individual states, European, international law, processes of deepening mutual influence and mutual exchange of known legal systems. Thus, summing up the consideration of the problem of space and the functional role of the legal doctrine of the presumption of innocence, we can draw the following conclusions: First, the legal doctrine of the presumption of innocence of modern Russia determines the processes of changing national, European and international law, covering the aspects of their mutual influence and interaction and consistent harmonization with the legislation of a number of the European countries and the CIS countries; Secondly, the legal doctrine of the presumption of innocence is a moral, ethical, socio-cultural and cultural-legal phenomenon that symbolizes the nature, characteristics and specifics of Russian legal life and legal culture; Thirdly, the legal doctrine of the presumption of innocence as an element of the Russian legal system is inextricably integrated with the political course of modern Russia, which follows the path of creating an open democratic and deeply effective type of policy controlled by democratic means while preserving the dominant role of the regulatory function of law in political relations (Lapina, 2013).

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