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The manifestation of elements of argumentation and justification in criminal proceedings

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Abstract

The article attempts to establish the purpose of the theory of argumentation for the criminal process and evidentiary law, at the same time to identify the boundaries of argumentation, validity and evidence. The leading approach to the study of this problem was applied comparatively right, as well as formally logical methods. As a result, only common sense is of real importance, since fictions, in any case, should be inferior to evaluating evidence according to internal conviction. In conclusion, it is the logical connections that underlie beliefs that form the basis of the arguments justifying the position itself.

Keywords: Argumentation, Justification, Cognition, Criminal, Procedural.

La manifestación de elementos de argumentación y justificación en el proceso penal

Resumen

El artículo intenta establecer el propósito de la teoría de la argumentación para el proceso penal y el derecho probatorio, al mismo

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tiempo para identificar los límites de la argumentación, la validez y la evidencia. El enfoque principal para el estudio de este problema se aplicó comparativamente correcto, así como métodos formalmente lógicos. Como resultado, solo el sentido común es realmente importante, ya que las ficciones, en cualquier caso, deberían ser inferiores a la evaluación de la evidencia de acuerdo con la convicción interna. En conclusión, son las conexiones lógicas que subyacen a las creencias las que forman la base de los argumentos que justifican la posición misma.

Palabras clave: argumentación, justificación, cognición, penal, procesal.

1. INTRODUCTION

In modern conditions of social development, the study of argumentation as a phenomenon and means of external expression of human behavior is important, both for theory and for the practice of verbal communication. As a rule, a person resorts to arguments, proving the correctness of his judgments and views and, at the same time, hopes to convince the opponent of his innocence, giving the appropriate arguments. The speaker's persuasiveness, which arose on the basis of a successfully constructed system of arguments, can work out the effect of accepting the presented arguments and approving the author's position.

It should be borne in mind that argumentation is a complex entity consisting of simple speech acts. Today, the provisions of the modern theory of argumentation are at the stage of their development, meanwhile, its content can be called sufficient to use the provisions of

special areas of argumentation to characterize the corresponding social sector.

As noted by a number of researchers, legal argumentation, as a kind of legal phenomenon, consists of the relationship with such legal phenomena as the realization of law, legal facts, legal relations, legal activity and its types. Moreover, the knowledge obtained by the theory of legal argumentation forms a methodological framework for the branch of legal sciences (KARGIN, 2014), to which criminal procedure law can also be safely attributed.

The importance of studying this phenomenon can be understood only by understanding the basic concepts that make up the content of the theory of argumentation.

2. METHODOLOGY

To understand the essence of the studied phenomena, general scientific research methods were used: logical, systemic and functional. Using these methods, the main premises and conclusions are formulated based on the study of various scientific and legal sources. Formal legal and comparative legal methods were also used, which made it possible to compare legal phenomena and identify general and distinctive signs and properties, as well as identify positive and negative trends in the mechanism of legal regulation.

Particular attention should be paid to the content of the theory of argumentation. Structurally, the provisions of the theory of

argumentation include a number of elements, the first of which is the convincingness of the foundation, which includes the concept of argumentation, the essence of the principle of sufficiency of the foundation, the absoluteness, and comparativeness of justification AZAROV & BOYARSKAYA (2018), the main functions of the language in terms of justification.

Describing the first element, it should be noted that traditionally, argumentation is the presentation of arguments in order to change the position or beliefs of the other side. An argument, or argument, is one or more related statements. The argument is intended to support the thesis of argumentation - the statement that the augmenting side finds it necessary to inspire the audience, to make an integral part of its beliefs.

The word argumentation is often called not only the procedure for bringing arguments in support of a certain position but also the totality of such arguments.

Argumentation theory explores the diverse ways of convincing an audience by describing and explaining hidden speech-impact algorithms. In particular, it studies various manipulations performed on people within the framework of different polar communication systems - from scientific proof to political influence, linguistics, and advertising.

In scientific literature, the following features are distinguished that are characteristic of the definition of argumentation as a phenomenon:

- Argumentation is always expressed in language, in the form of pronouncing or writing statements, and not in the thoughts, motives, ideas behind them;

- Argumentation, being a purposeful activity, has as its task the strengthening or weakening of one's positions, beliefs;

- Argumentation - social activity aimed at another subject or their group, involving communication and an active reaction of the opposite side to the arguments presented;

- Argumentation implies the reasonableness of those to whom it is addressed, and their ability to rationally evaluate arguments, accept them or not accept them (EEMEREN & GROOTENDORSI, 1984).

Fully agreeing with the given characteristic, it should be noted that it expresses the purpose of the theory of argumentation and at the same time defines the boundaries of argumentation and validity. Such boundaries are indicated both in the wording of the features of the argument and in the understanding of argument as a process aimed at changing the position of the opponent. This approach is also important because, in the opinion of many authors, validity is associated with the establishment of a relationship between two objects - the base and the justifiable, communicating any characteristics of the first (YASEVICH ET AL., 2019).

Argumentation presupposes the obligatory presence of an opponent, in this regard, the justification can be considered only the part that forms the basis of the argumentation, is its premise and no more. The rationale is not based on activities aimed at strengthening or weakening one's position or belief. Since it is immanent, in fact, and

does not imply the obligatory presence of any opposing party. Rather, it is a matter of expressing one's own position convincing due to validity, this position may not cause a supposed objection and simply state the fact of personal perception of the event, on the fact of which there is no conviction expressed by the opponent. Moreover, the opponent may not be at all. At least at the stage of expressing the validity of a position.

3. RESULTS

We will try to resolve the issue of the relationship between knowledge and proof through the refinement of these terms. Moreover, if by evidence in criminal procedure science it is customary to understand any evidence on the basis of which the subjects of evidence make conclusions about the presence or absence of circumstances clearly established by law, this formulation is quite stable (MARKELOV, TEREHIN & NAMETKIN, 2018), then cognition is understood to be a socio-historical process people's creative activity shaping their knowledge, on the basis of which goals and motives of human actions arise (DOMBROVSKIY, 1975).

As a result of comparing these concepts, it can be argued that the difference between these concepts, at the level of general criteria, is determined by:

- A list of circumstances to be proved, which formally differs significantly from the facts available for cognition;

- Subjects of proof and knowledge;
- Fictitious legislative interpretation of the facts.

As a consequence, each of these elements has independent value in relation to the difference in knowledge and proof.

For example, the circumstances to be proved are clearly defined by the criminal procedure legislation (Article 113 of the Code of Criminal Procedure of the Republic of Kazakhstan). Attempts to expand this list by proclaiming evidence of the grounds RATINOV (2016) cannot be called reasonable even, in this case, the list of circumstances to be proved actually goes beyond the limits defined by law. The nonsense lies in the fact that the list of these circumstances is often supplemented by the wording, as well as other circumstances relevant to the proper resolution of the case, which can be found both in normative acts (Article 111 of the Code of Criminal Procedure of the Republic of Kazakhstan) and scientific works (ALEXANDROV, KONDRAT & RETUNSKAYA, 2012), which completely blurs the line between circumstances to be proven and knowable circumstances. The de facto practice of norm-setting here contradicts the theory of proof and dominates it, making any theoretical and scientific reasoning meaningless.

There is also a significant difference between the subjects of cognition and proof since absolutely any subject can be hypothetically cognizing and cognition itself is limited only by subjective perceptual capabilities. Unlike cognition, proving has its limitations, and those who know it are clearly established by law. The legislative list of such entities very clearly expresses the established scientific position and is

limited in criminal procedure law to such figures as the body of inquiry, the inquiry officer, investigator, prosecutor, court.

However, here it is impossible to establish a common consistent position since the assessment of evidence at a subjective level can be carried out by any representative of the defense. By merely stating that the defense is not subject to evidence since the burden of proof lies with the prosecution, we run the risk of manifesting unprofessionalism. The fact that the subjects of the evidence are precisely the parties to the criminal process has long been established by the criminal procedure science (KOSTENKO, 2006).

Meanwhile, the question arises, how is this reflected in cognition itself? In fact, such a reflection has the obvious expression that the parties to the criminal process are not connected by truth, but carry out their activities purely from functional principles. In particular, this is confirmed by individual publications, which address the organization of procedural activities REZNIK (2012) or problems associated with the registration and registration of criminal offenses (YATSISHINA, 2004). Despite the fact that this activity is not directly related to the establishment of truth, but without the fulfillment of these functional powers, achieving the desired result is difficult.

This approach is a logical result of rethinking the dialectical understanding of truth, in the context of the reference concept of truth in which truth is an information projection of law enforcement, which is an intellectual solution based on a comparison of the available information about specific circumstances and legal norms.

At the same time, this fact again changes the list of subjects of evidence, reducing their participants to the parties to the criminal process. This conclusion is due to a clear differentiation of objective knowledge and evidence, which is associated with the search order of pre-trial proceedings. In fact, this leads to the fact that all participants in the criminal process conducting pre-trial proceedings in the case cannot belong to the parties to the criminal process since they perform the functions of objective knowledge that is not related to the prosecution or the defense. As a result, the proof turns into a process of convincing the court in one or another projection of the event under investigation. At the same time, it (evidence) can no longer include activities carried out by the person conducting the proceedings, since, in the case of the investigator, the inquiry body and the interrogator, we are talking about independent knowledge at the stage of pre-trial proceedings. In the case of the judge, we are talking about evaluating evidence as to facts that may be relevant to the proper resolution of the case.

We note that this perspective does not allow us to consider the subject of evidence the court, which only evaluates the information as evidence. This argument is due to the fact that the court does not prove anything to anyone, but only evaluates the facts and makes a decision on the case. As NAHOVA (2014) successfully noted in this case, the court does not prove - it decides. In general terms, based on the same logic, KOSTENKO (2004) adheres to this point of view.

As a result of the analysis of this approach, we can conclude that any information on the subjects of knowledge transmitted for

evaluation by the parties and subsequently by the court does not fall under the requirements for evidence at the level of assessment by knowledge. Here, the basis of her assessment is her general credibility. This is dictated by the chronological sequence of knowledge.

That is why the analysis of the third element of the correlation of proof and cognition - fictitious legislative interpretation of facts plays a crucial role in the general characterization of this differentiation. In this regard, the basis of any judicial argumentation is logic, which is based on common sense and criminal procedural fiction. At the same time, only common sense is of real importance, since fictions, in any case, should be inferior to evaluating evidence according to internal conviction, which means that all kinds of references to them at the previous stages of the formation of any projections are simply not reasonable. Therefore, the rationale is actually based on the inner conviction of the knower.

4. CONCLUSION

Based on the foregoing, we consider it necessary to propose the following structure of the relationship between cognition, proof, and justification, as well as a number of other elements correlated with the indicated ones. The structure is shown in Figure 1.

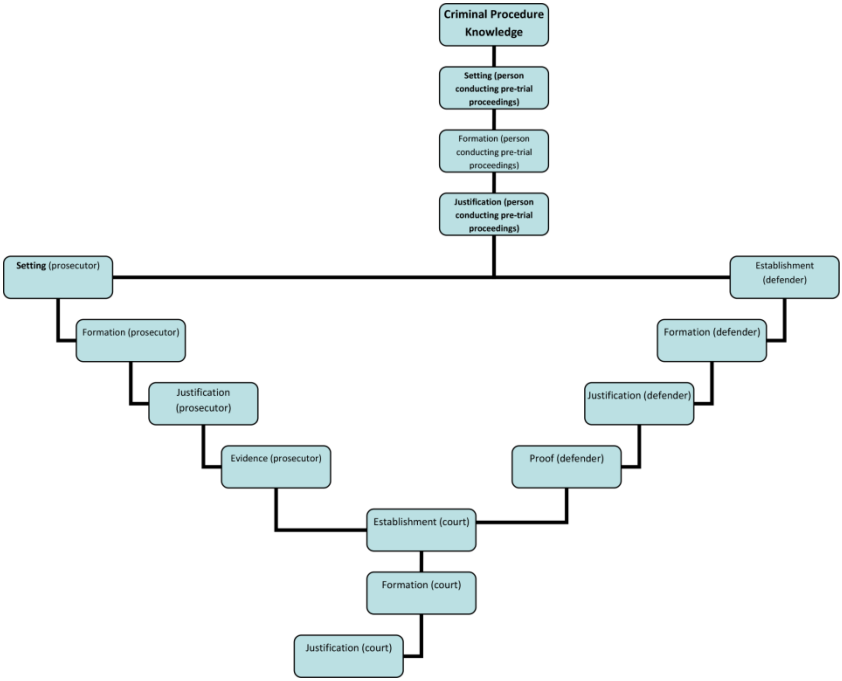

Figure 1: The structure of the relationship between knowledge, evidence, and justification.

Let us briefly comment on the indicated structure, in which there are elements of establishment and formation that were not previously included in the subject of coverage of the essence of differentiation of knowledge, proof, and justification.

The essence of this structure is to determine all chronologically consistent stages of cognition in criminal proceedings. Its beginning occurs at the pre-trial stage and ends with a court decision. The structure itself presupposes the emergence of additional elements in the form of establishment, formation, and justification in cassation,

appeal and other types of post-trial consideration of a case, both taking place in the criminal procedure legislation and not taking place there.

At the same time, it is based on a simple scheme in which the establishment of certain facts alternates with the formation of a position on the merits of these facts, and the justification of the point of view follows the formation of an opinion about what has happened or is necessary, as an argument given in favor of the author's understanding of the situation and its adoption. Note that the evidence is characteristic of a trial, where the party's debate, oppose and strongly challenge the opponent's position, which follows from the information collected during the pre-trial proceedings. Here, the proof is the quintessential activity of the parties; however, it is precisely this attitude towards the parties that does not make it the highest form of presentation of the projection of the event, since the final decision is made by the court. It is his position that is the final projection of the event in the structure of knowledge. It is she who demands her substantiation as a hypothetically capable solution to be further studied.

What is the establishment of the projection of the investigated event? The establishment is understood by us as the definition of the totality of information which is the initial basis for the implementation of certain conclusions about the nature of the projection. This information itself should correspond to the sign of maximum completeness, as a state of certainty. This does not mean that this statement is exhaustive since the informational absolute is hardly achievable here at all due to the fact that over time the reflective

components of the tracks tend to disappear. At the same time, it (the establishment) reflects the axiomatic conditions on the basis of which the hypothesis of the event under study is built and therefore is the most important component of knowledge.

In contrast to the establishment, the formation of the point of view is a formed belief about the essence of the event under investigation, based on the analysis of established facts, established information. In essence, the formation is a process of synthesis of logic and phenomenal processes in the consciousness of the knower on the basis of which knowledge turns into conviction. Given that a large part of this process is the phenomenal component, the process of forming a belief about the essence of the projection cannot be called subject to absolute calculation. Meanwhile, the formation as a process is the most open for study from the point of view of logic, since it allows us to trace the relationship of premises and conclusions and is the basis of justification. It is the logical connections that underlie beliefs that form the basis of the arguments justifying the position itself.

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