



CRIMINAL PROCEDURE FUNCTIONS

Gulnoza Iloxomovna Yusupdjanova

teacher of the department of the Specialized branch of TSUL "Crime Prevention and ensuring public safety".

E.mail: gyusupdjanova@mail.ru

Тел.: 90 985 87 32

99 998 44 56

Article history:	Abstract:
Received: 10 th January 2022 Accepted: 10 th February 2022 Published: 19 th March 2022	The term "function" refers many meanings, and if this concept is defined in terms of human activity, then the function refers to the specific nature of the activity, which reflects the essence of a system and lays the foundation for this activity, defined by goals or instructions. The concept of function in law is used in the sense that it reveals the nature of the social role and significance of law.
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The term "function" has many meanings, and if this concept is defined in terms of human activity, then the function refers to the specific nature of the activity, which reflects the essence of a system and lays the foundation for this activity, defined by goals or instructions [1].

In biology, the word function refers to a specific activity performed by an organ or organism, while in cybernetics it refers to the direction of movement of a system.

In law, the concept of function is used in the sense that it reveals the nature of the social role and significance of law.

The function of law must simultaneously summarize both the purpose of law and the features associated with its place in society, as well as the direction in which law affects social relations [2]. The function of law, or the social significance of law, or the direction of legal influence on the social relations of society, or the combination of these two concepts is understood [3].

The functions of law in the theory of state and law are characterized by the following features:

1. The functions of law arise from the essence of law and are determined by its function in society. Function is the expression of the essence of law in the context of social relations;
2. Functions of law - areas of influence on social relations, the need for their implementation arises from the need for the existence of law as a social phenomenon;
3. Functions reflect the most important serious qualities of law and are aimed at the development of the fundamental tasks facing law at the current stage of development of society;
4. The functions of law reflect the direction of its active action, regulating a particular type of social relations. Therefore, one of the important features of the functions of law is its dynamism, movement, influence;

5. The functions of law have the property of permanence, which means that they are continuous, long-term action [4].

In the theory of criminal procedure law for a long time there was a debate about the concept of criminal procedural functions, its legal nature, types and subjects who apply them.

Based on these discussions, two schools of theory of criminal procedure emerged with different approaches to the types of criminal procedural functions, the direction of criminal procedural activities and the functions of participants in criminal proceedings.

Representatives of the first school (L.D.Kokorev, Ya.O.Motovilovker, V.P.Najimov, V.M.Savitsiy, M.S.Strogovich, M.L.Yakub) linking it to the tasks at hand and opposing the replacement of the concept of function with the concept of procedural obligation, which leads to the loss of its independent procedural legal system.

On the basis of this approach, a concept is formed that is important for the criminal process to be based on dispute, that is, the concept of dividing procedural functions into three types (prosecution, defense and case resolution).

Many scholars understand that the basis of criminal procedural functions differs depending on the task set by the subjects of procedural activity in criminal proceedings, and the direction of activity that occurs as a result of criminal procedural activity.

Based on the concepts of general legal theory, F.M.Mukhitdinov shows the importance of the content of "function" in relation to the criminal process in two ways. The first is related to the concept of the function of criminal procedural law - derived from the general concept of law, the second - the concept of the functions performed by the subjects in criminal proceedings. He argues that criminal procedural activity begins with a specific action performed by a particular



participant in the scope of his rights and obligations, and includes his holistic activities aimed at the main goal in criminal proceedings.

In particular, substantiation of a civil claim; substantiation of evidence; identification of evidence; examination of evidence; prosecution and other activities are carried out by the inquiry officer, investigator, prosecutor, judge, accused, victim and other participants. These activities consist of a clear set of procedural actions [5].

Activity is related to the participation of the subject in the criminal process and is aimed at the general, systematic and holistic procedural purpose of the process; while the action is carried out within a narrow range and is directed only to a specific goal within the scope of that action [6].

There are different views in the science of criminal procedural law on the concept of criminal procedural function. In particular, according to P.S. Elkind, criminal-procedural functions should be understood as procedural activities that determine the special role and status of participants in the proceedings. [7] V.P. Najimov says that when we say function, we mean an important area of criminal procedure, a type of it. [8] However, in almost all concepts of criminal procedural functions, the function is recognized as the direction of the participants of the process.

In particular, L.B. Alekseev believes that the functions of the criminal process are the direction, types of activities of the subjects involved in the case, their role, place and purpose [9].

According to P.A. Lupinskaya, the types of activities related to the role of the subjects in the work, the defined purpose or task constitute the concept of the functions of the criminal process.

According to Z.F. Inogomjanova, these definitions do not sufficiently reveal the content and essence of the function, because even if the word "function" is not used in the law, the procedure for performing this activity and the powers of its subjects are strictly regulated by law [10]. Criminal procedural activity is not a set of scattered actions, but a single system of actions, which is based on the unity of tasks set out in the law of criminal procedure [11].

According to F.A. Abasheeva, criminal procedural functions can be understood as a relatively independent direction of criminal procedural activity aimed at solving the tasks of the participants in criminal proceedings in the manner and forms established by the legislation of criminal procedure.

From the above, it can be seen that the concept of criminal procedural functions in the theory of criminal procedure has been discussed by many scholars. In our

opinion, in order to understand the views of scientists on the concept of function, it is not enough to cite the definitions given by them, but to analyze the important features that are an integral part of them. These characters include:

- direction of the process participant;
- the role and special task of the process participant;
- Procedural obligations of the process participant.

The role, purpose or task of the participants in criminal proceedings in criminal proceedings is reflected in the functions available in criminal proceedings.

In our opinion, the function is the main direction of criminal procedural activity, the role and position of the subjects involved in the criminal process in the process is closely related to the nature and character of the activities they perform. In the theory of criminal procedural law, criminal procedural functions are studied in two types: basic functions and additional or auxiliary functions.

Regarding the main functions in criminal proceedings, many procedural scholars acknowledge the existence of three functions, namely: prosecution, defense, and case-solving functions. Some procedural scholars, such as V.M. Savitsky, also distinguish between auxiliary, additional, and secondary functions [12].

P.S. Elkind's main functions are: the activities carried out by the bodies of inquiry and investigation, ie the examination and prosecution of evidence of a crime; the function of acquittal performed by the suspect, accused, defendant or defense counsel; the activity carried out by the prosecutor and the victim in court proceedings - the prosecution function; the function of prosecutorial oversight performed by the procurator supervising the legality of the criminal case; includes the functions of litigation and adjudication performed by the court. Additional functions include activities performed by this teacher by the civil defendant, witnesses, experts and interpreters [13]. Another group of scholars argues that there is also a function of substantiating and denying a civil claim in a criminal case.

R.D. Rakhunov criticizes the opinion of the proponents of the three main functions, arguing that the functions of criminal investigation, substantiation or denial of a civil claim should also be included in the main functions [14]. The idea that these functions are basic, independent functions has also been expressed by V.V. Shimanovsky [15] and M.M. Vydryalar [16].

F.M. Mukhitdinov also believes that the activities of the civil plaintiff and the civil defendant in criminal proceedings should be directly included in the main procedural functions. This is because these entities operate within the framework of the main issue of the criminal process - the "guilt of the accused." Also, their



activities are aimed at a clear procedural goal, which is based on their procedural interests, i.e. the notion of whether a civil claim is upheld by a court or rejected. However, in criminal cases, as a civil plaintiff, only persons who have suffered from the crime (physical or legal) can file a lawsuit (Article 56 of the CPC). In most cases, civil liability in the case is imposed on the defendants (except for minors and incapacitated persons). The fact that the activity of substantiating and denying a civil claim is carried out by the main participants in the criminal process, i.e. the victim (a legal entity participates in the case as a civil plaintiff) and the defendant, places both the civil plaintiff and the civil defendant in the main function.

The activity of a witness, expert, interpreter, court clerk in criminal proceedings cannot be called a secondary activity or an additional activity, which, as V.M. Savitsky noted, is an auxiliary activity that facilitates the implementation of the main functions. This is because the entities carrying out these activities are involved in the scope of criminal procedural relations only when they are necessary or needed by the entities performing the main function.

Kazakh scientist B.H. Toleubekova also divides procedural functions into basic and auxiliary functions. The main functions include: investigation of the criminal case, prosecution, prosecutorial control over the legality of the case, defense and consideration and resolution of the case by the court, and auxiliary functions include rehabilitation, substantiation or denial of a civil suit, security of participants suggests that it is necessary [18].

According to Z. Inogomjanova, there are seven types of activities in criminal proceedings: 1) investigation of crimes; 2) indictment; 3) protection; 4) consideration and resolution of a criminal case in court (justice); 5) public participation; 6) additional and 7) auxiliary functions. There are entities that carry out each of these activities, which act in the manner and within the framework established by law. Each participant in criminal proceedings belongs to only one area of activity and performs the duties specified in it. For example, the trial and resolution of a criminal case in court (justice) is carried out only by the court [19].

In our view, too, criminal procedural functions can be divided into two types: primary and auxiliary functions. Of course, in agreement with many scholars and the Republic of Uzbekistan based on Article 25 of the Code of Criminal Procedure, it is reasonable to assume that the main functions are: prosecution, defense and resolution of the case. In criminal proceedings, only the competent state bodies shall: initiate criminal proceedings; criminal prosecution of a person; to

present the case to the court with an indictment; have the right to demand from the court about the type and nature of the sentence against the defendant, while performing the task of proving the indictment in court. The provisions of the Code of Criminal Procedure of the Republic of Uzbekistan provide a basis for recognizing the function of the investigator as a function of prosecution. From the moment a criminal case is initiated, the direction of the investigator's activities is based on the procedural norms that the person considers "guilty." In particular, according to Article 15 of the Criminal Procedure Code, in each case where signs of a crime are found, the authorities authorized to initiate criminal proceedings must, within the scope of their authority, initiate criminal proceedings.

At the initial stage of the investigation, the law provided the defendant and the accused with a "right of defense." Accordingly, these individuals perform the function of protecting their rights.

From the above points of view, the procedural function of the subject of criminal procedural activity is understood as a model of activity of this subject aimed at the implementation of the tasks provided for in the criminal procedure legislation.

In conclusion, the concept of criminal procedure functions is a controversial concept in the science of criminal procedure. While one group of scholars understands the tasks of the criminal process as a separate direction and type of criminal procedural activity, the second group of scholars does not consider it as a separate direction and type of criminal procedural activity, but as an expression of the role and goals of participants.

In our view, the approach proposed in this issue by P.S. Elkind to understand the essence of the functions of criminal procedure reveals more clearly the essence of the functions of criminal procedure than other views. Because it systematically and purposefully describes the activities of the subjects established by law in the form of legal relations, arising in order to determine the scope of the state's right to punish the defendant.

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