

FUNCTIONS OF CRIMINAL PROCESS AS DIRECTIONS OF PROCEDURAL ACTIVITY

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Abstract

This article is devoted to such a pressing issue in the criminal process as the definition of the concept of functions in the criminal process. Various approaches of national and foreign scientists to the concept of the functions of the criminal process are considered. In addition, the article discusses the problems of increasing the role of criminal procedural functions as the fundamental basis of the criminal process, their interaction (ratio), as well as theoretical and practical implementation. Also, the functions of the criminal process are analyzed in order to ensure the legal, organizational and procedural functions of the criminal process. Based on the analysis, the author suggests the concept of functions in the criminal process.

Keywords: criminal trial, functions, criminal trial participant, prosecution, defense, justice.

Introduction

Reforms carried out in recent years have created a solid foundation of sovereignty, security and law and order, the rule of law, human rights and freedoms, decent living conditions for the population and the realization of the creative potential of citizens.

In the Decree of the President of the Republic of Uzbekistan dated February 7, 2017 No. UP-4947 "On the strategy for the further development of the Republic of Uzbekistan" among the priority areas for the development of the judicial system and defined "... improvement and liberalization of the norms of criminal and criminal procedure legislation further "Strengthening the rule of law and ensuring the rights and freedoms of citizens, a clear distribution of the tasks and functions of law enforcement agencies, eliminating concurrency, etc." [1].

It should be noted that in recent years, Uzbekistan has attached great importance to the reform of the criminal process, a more accurate definition of the functions of each participant

in this process. Despite the fact that the procedural function of each of the participants in the criminal process is important, they nevertheless remain relevant issues in the modern criminal process.

The procedural function is a private concept in relation to the criminal process, since it is one of the areas of activity of the competent authorities and persons in the implementation of the tasks provided for in Art. 2 Code of Criminal Procedure of the Republic of Uzbekistan. At the same time, this concept is common in relation to individual procedural actions and decisions, since a function is the unity and totality of procedural actions and decisions.

The concept of a procedural function should not be extended to any, but only to the main types of procedural activity - "basic functions" (for example, justice, prosecution, defense, etc.). Of course, any kind of procedural activity can be called a function in the literal sense of the word: conducting an expert examination, translating the case file, keeping a record of a court hearing, etc. However, extending the concept of a procedural function to such actions would deprive this concept of an independent procedural and legal content, would make it equivalent to the concept of procedural action.

Main Part

The allocation in criminal procedure law of functions takes place in accordance with the specific tasks of the procedural activity and within the framework of a single plan. In addition, the functions must meet the following requirements:

- a) the functions should be objective in nature;
- b) the functions should be manifested in all institutes of the criminal process, that is, find their expression in relation to all stages of the criminal process;
- c) the level of implementation of functions should be such that excludes the relationship between them as part of the whole (not to enter one into the other).

Professor G. Abdumazhidov states that "... the meaning of using the concept of a procedural function is to highlight and disclose all the main aspects of procedural activity, to know its structure. If during this analytical operation some direction of the process activity is outside the limits of the process functions, then this indicates that the system of functions is defined incorrectly"[2].

The complexity of the analyzed phenomenon in many ways predetermined the need to move the research from general to particular and to analyze the essence of the function in several aspects, general legal, criminal procedure.

Since the doctrine of criminal procedure functions is based not only on the achievements of the science of the criminal process, but also related legal sciences, as well as other humanitarian branches of human cognition, the study of criminal procedure functions as a legal phenomenon should be based on deep intersectoral developments.

At the same time, the need to refer to the meaning of the word “function” is due to the fact that, despite the absence in the current criminal procedure legislation, the term “function” is generally accepted in the criminal procedure literature and none of the processors who advocate “replacing this verbal designation by others”, at the moment, has not proposed a term that could replace it. Thus, the conclusion follows logically that there is no other word that would more accurately than the word “function” denote the content of the concept under study.

Based on the foregoing, it can be determined that the procedural function is an activity directly aimed at achieving the objectives provided for in Art. 2 of the Code of Criminal Procedure of the Republic of Uzbekistan as a whole or in one or another part, and activities to protect their interests in the study of those issues whose resolution is included in these tasks.

Describing a procedural function as an activity, it is not enough to indicate that it serves the implementation of the tasks of the criminal process. It must be emphasized that it is directly aimed at their achievement, bearing in mind the following two points. Firstly, the procedural function is a type of procedural activity aimed at clarifying such issues (to the extent possible for this stage), the resolution of which is included in the task of the criminal process formulated by law.

The analysis of scientific research devoted to the definition of the concept of criminal procedure functions allowed them to be classified into four groups. The main idea of the representatives of the first group of scientists is based on the opinion of M. S. Strogovich “... procedural functions are defined as separate types, separate areas of criminal procedural activity” [3]. Representatives of this approach include S. A. Alpert “... carried out by independent entities to which the law provides broad rights and powers to actively participate in criminal proceedings” [4], A. M. Larin “... types of procedural activities, within the framework of ongoing functions differ in specific immediate goals that are pursued by

participants in the criminal process ”[5], 3.3.Zinatullin“ ... implementing the purpose of criminal proceedings ”[6] and others.

The second group of scientists approaches the definition of the investigated functions of the criminal process not as a direction of procedural activity, but the actual position (appointment, role) of the participant in criminal proceedings, was developed and proposed by P.S. Elkind. Under the procedural functions in the framework of this approach, we mean the special purpose and role of its participants expressed in the areas of criminal procedural activity, the range of activities of participants in the criminal process carried out by virtue of the position that this participant occupies in the process [7], to achieve the goal and the decision tasks of a specific stage of the criminal process and, accordingly, the criminal process as a whole [8].

The third group of scientists are based on scientific developments of the above two groups. So S. I. Girko made an attempt to synthesize concepts and defined the procedural functions as “directly related to the purpose of criminal proceedings, focused on solving the problems of directing the activities of process participants, the content of which is determined by the special powers, rights and obligations (procedural status) of their entities” [9]. A similar point of view was expressed by S.P. Efimichev and P.S.Efimichev, who defined the procedural functions as “directions defined by the rules of law that directly reveal the purpose of criminal proceedings, focused on solving the problems facing the criminal process, determining the areas of activity of the participants in the process, due to their legal status”[10]. ET Rybinskaya proposed the following concept: “Criminal procedural functions are not the same as each other and not absorbed by each other regulated by the criminal procedural law, the main activities of the court and the parties, implemented by the latter in accordance with their role due to the appointment of criminal proceedings ” [eleven].

The fourth group of opinions is fundamentally different from the above three opinions. So in the theory of the criminal process, there are concepts that do not coincide with the above three approaches as a basis, which interconnectedness (totality) of the procedural actions of participants in the criminal process is embedded in the number of basic signs of the concept. So, V. A. Chernyshev considers the procedural functions as a model of procedural actions (procedural activities) of the whole body of bodies and persons involved in the process, the implementation of which during the criminal proceedings is aimed at protecting from criminal liability and convicting an innocent person, or ensuring fair punishment of the guilty [12]. Yu.I.

Velikoselsky believes that the procedural functions should be understood as “a certain set of sequential, interconnected actions of the subjects of the criminal process, which are predetermined by the goals of the criminal procedure and have certain systemic qualities” [13].

The analysis of the given scientific opinions clearly demonstrates that the theory of criminal procedure functions continues to develop and enrich itself with new content. Each definition has its own advantages and disadvantages, which is a consequence of the incompleteness of the theory itself. The results of the study, orient when trying to interpret the criminal procedure functions scientifically, identifying their essence, content, internal structure and social orientation, take into account the following main points:

1) the criminal procedure functions as a legal phenomenon reflect the specifics or nature of activities in the field of criminal proceedings, which is an expression of the essence of the criminal procedure system and is determined by regulatory requirements-tasks that set the standards for this activity;

2) the phrase "criminal procedure function" in the meaning of "function of the process" is not entirely accurate, it is more correct to talk about the "function ... of the criminal procedure system";

3) the philosophical interpretation of the function as “intrinsic behavior” is the most optimal for the science of criminal process. as models of actual behavior;

4) the criminal process as a legal phenomenon takes place not in some abstract system in general, but in a system quite specific, namely, in a society integrated into state legal, economic and other systems. These are systems, all of whose elements, levels and subsystems, including the criminal procedure system itself [7, p. 35] (or rather, the subsystem from these positions) should work for the successful preservation and development of the system, and for removing its internal inconsistencies and contradictions;

5) the ability of the social system, including the criminal procedure, to self-support and self-regulation due to the development and improvement of social functions. Individuals in such a system act only as carriers of social roles, i.e. functions

6) the development and improvement of social functions is possible only thanks to a single value system for the whole society. For specific elements (participants) that are part of the criminal [8] process and functionally interact with each other within its framework [10], it is necessary to identify and analyze the system of values, both common to them and specific to particular groups and individuals;

7) the general theoretical basis in determining criminal procedural functions is the definition of the subject's function as a model of activity that should be carried out by a subject or group of subjects and which is aimed at solving one of the tasks set for him (them) by the law;

8) the functions of something - this is part of the content of the side of the "static" activity, standing on a par with such elements as a method, goal, task, authority;

9) we can talk about the functions performed by the system, and about the functions performed by the elements of this system, i.e. about the functions of the whole and its components. So, in particular, the science of administrative law studies the management functions (functions of the administrative apparatus) and the functions of governing bodies, and the science of criminal process - the two main approaches to the disclosure of the concept of procedural functions discussed above

At the same time, it should be noted that each of the listed concepts contains an established set of basic features from which the basic elements of the concept can be composed. Among these signs include:

- criminal procedural functions - these are the areas of procedural activity of participants in criminal proceedings that determine (disclose) the legal status, purpose and role of each participant in the criminal process that the participants carry out;

- a set of sequential, interconnected procedural actions to solve the tasks assigned to them, in order to achieve the appointment of criminal proceedings.

Thus, it should be noted that the procedural function is carried out by the competent authorities and persons in the procedural forms provided for by law and the procedural methods prescribed by law. The procedural functions are performed alone (by the court, prosecutor, pre-trial proceedings bodies and defense counsel) in the performance of procedural tasks and assigned duties, i.e. in accordance with the procedural purpose; others (accused, injured) - to safeguard their interests and by virtue of the procedural rights granted to them, which they may or may not use at their discretion. In addition, the same procedural function can be performed by several bodies and persons. So, for example, the prosecutor, the public prosecutor, the victim are entitled to carry out the accusation, and the defense is not only the defender.

Conclusion

At the same time, the procedural function of one or another body or person participating in the process is the activity to be performed by this body or person, its main procedural obligation, and procedural purpose. At the same time, the right of the participant in the process to carry out the relevant activity does not mean that the procedural function of this participant in the process is this type of procedural activity.

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