

Functions of Civil Law: Questions of Theory

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Abstract. *The article is devoted to the theoretical study of the functions of civil law. The functions of civil law are the impact of civil law norms in certain directions on property relations, as well as on related or unrelated personal non-property relations. The author considers the main functions of civil law to be: regulatory, protective, human rights, educational, compensatory, restorative, punitive functions. Attention is drawn to the fact that functions can be discussed not only at the general theoretical level, but also at the level of a specific branch of law, legal institution or legal norm.*

Key words: *function; civil law; penalty; invalid transaction; obligation; compensation; restoration; property relations; non-property relations.*

In legal science, interest in the study of the functions, role and goals of law in our society has not decreased for many decades. Such studies were conducted on a large scale in Soviet legal science [1], and should be continued at the present stage of legal reform.

In recent scientific research conducted within the framework of the science of the theory of law and the state, a number of important conclusions have been made about the current state of the functions of law as a whole, as well as the functions of individual branches of law. The function of law is "an intrinsic phenomenon of law, determined by the role of law in society, which represents the main direction of its impact on objective reality and expresses the connection of law with other phenomena of social reality" [2].

In turn, "the civil law function is the impact of civil law norms on property relations and related personal non-property relations in certain directions due to the commodity-monetary form and the tasks of the state" [3].

The structure of any legal function consists of the following elements:

- 1) the content of the function of law – that is, the way in which law, a branch of law, affects public relations in a certain direction, the way in which the essence, signs and basic properties of law manifest themselves. Highlighting the content of the functions of law allows them to be correlated with such legal categories as the goals and objectives of law;
- 2) the function object. The need to take into account this element is justified by highlighting the content of the functions of law, i.e. highlighting the impact of law, a branch of law on public relations in a certain direction. But public relations regulated by law, being the object of the function of law, constitute another category – the subject of legal regulation. These categories do not match. The identification and further study of their differences allows us to isolate the direction of the impact of functions on qualitatively different groups of public relations;
- 3) the subject of the function implementation. In the most general form, the subjects of the implementation of the functions of law are the legislator and law enforcement agencies. State authorities, local self-government bodies, citizens and legal entities, including foreign ones, take part

in the implementation of the civil law function. The activities of citizens and legal entities should not violate existing legal regulations;

4) means of ensuring the implementation of functions. They are determined by the specifics of the content of the latter, in particular, the degree of their economic, political and educational orientation, which may vary depending on which branch of law is taken into account.

The functions of civil law are naturally related to the tasks facing the Russian state, and, consequently, to the functions of the state. The specifics of the functions of civil law should be sought in the specifics of the subject of legal regulation of civil law. As you know, civil law regulates property and closely related non-property relations. This is how it differs, for example, from criminal law. The development of economic relations, including in the international context, has a great influence on the specifics of the content of the functions of civil law.

Thus, the functions of Russian civil law can be defined as the impact of civil law norms on property relations, on related or unrelated personal non-property relations, in certain and different directions, due to the commodity-monetary form and tasks of the Russian state.

It is necessary to distinguish between general legal functions (typical for all branches of law); intersectoral (typical for only two or more branches of law); sectoral (for one branch of law); legal institutions (for individual institutions of law); norms of law (for certain types of norms of law).

The general legal functions of civil law are regulatory, protective and educational functions. All other functions, by and large, are intersectoral. For example, the punitive function is inherent not only in criminal law, but also in administrative (and to a certain extent civil) law; the restorative function is implemented in civil, land, environmental, labor law; compensatory – in financial, civil, land and other branches of law, etc.

What is the content of the individual functions of civil law?

The regulatory function of civil law is manifested in the establishment of special rules of conduct for subjects of civil law relations. Such rules are contained in laws, by-laws, and can also be established by agreement of the parties and fixed in contracts, or follow from a judicial act. For example, according to Article 500 of the Civil Code of the Russian Federation, the buyer is obliged to pay for the goods at the price announced by the seller at the time of conclusion of the retail sale agreement. This is mandatory for performance, unless otherwise provided by law, other legal acts or does not follow from the essence of the obligation. A number of other similar examples can be given.

It is necessary to distinguish between regulatory static and regulatory dynamic functions. The regulatory static function is expressed in the impact of law on public relations by consolidating them in various legal institutions. The regulatory dynamic function is expressed in the impact of law on public relations by formalizing their movement (dynamics). It is embodied, for example, in the institutions of civil law that mediate economic processes in the economy and formalize the process of distributing manufactured products [4].

The protective function of civil law finds its expression in the creation of mechanisms that prevent the violation of the rights of individual subjects of civil law, as well as in the consolidation of individual objects of civil turnover that are subject to protection.

As noted in the scientific literature, the protective civil relationship is an independent legal relationship, independent of the regulatory legal relationship. A protective legal relationship arises in connection with a violation of regulatory law, but in the future its existence and development regardless of the fate of the regulatory legal relationship. There are two models of the relationship between regulatory and protective legal relations. "In the first case, when a regulatory legal relationship is not liquidated as a result of a violation of the law, these legal relations develop simultaneously, but autonomously, independently of each other. In the second variant, the regulatory legal relationship ceases to exist as a result of violation of the right and a protective legal relationship arises. A protective legal relationship in these cases cannot be a part, a special state or a stage of a regulatory legal relationship" [5].

V.F. Yakovlev proposed to distinguish human rights and law-restoring functions, the content of which he included the prevention of offenses and the elimination of the consequences of violations of subjective law [6]. This approach should be accepted. Indeed, the human rights function of civil law does not completely coincide with the protective function. The human rights function directly follows from the content of Articles 11, 12 of the Civil Code of the Russian Federation, as well as a number of other norms that relate to the forms and methods of protecting civil rights. At the same time, protection can be carried out both in a civil and administrative manner. However, the latter may be applied only in cases expressly provided for by law.

Holders of violated rights are free to choose a method of protection. For example, if someone sends a letter containing information discrediting the business reputation of a legal entity, then the refutation of such information can be made by obliging its author to send a new letter to the specified person refuting the information previously stated. This method of protection is quite common in judicial practice.

Thus, the CJSC appealed to the arbitration court with a claim for the obligation to refute information discrediting the plaintiff's business reputation. In support of its claims, the joint-stock company indicated that the defendant, in order to limit the plaintiff's activities in the transport services market, informed the company with which the joint-stock company intended to establish a joint venture, false information that led to the freezing of relations between the parties. In particular, the defendant sent a letter to the company advising it not to maintain business relations with the joint-stock company due to its "catastrophic" financial condition. At the same time, he pointed to the "astronomical" debts of the joint-stock company for taxes, electricity, and debts to third parties under the decisions of the judicial authorities that have entered into force. He informed about the arrest of the bank accounts of the joint-stock company, about the inventory of the property belonging to it by the bailiff, as well as about the commission by the company of a number of actions characterizing it as an unscrupulous partner.

On the basis of the mentioned letter, the company informed the joint-stock company about the suspension of the registration procedure of the joint venture and the postponement of making its share in its authorized capital.

During the trial, it was established that the information contained in the letter of the partnership did not correspond to reality. Guided by Article 152 of the Civil Code of the Russian Federation, the arbitration court recognized that the information contained in the letter discredited the plaintiff's business reputation and ordered its author to send the company a new letter refuting the previously stated information [7].

The most specific function of civil law is the compensation function. According to I.A. Vlasenko, the essence of the compensatory function of law is that, taken in interaction and unity, all elements and properties of law should be aimed at compensating physical, material, moral and other harm caused by both illegal and lawful actions (inactions), events to individuals, collectives and organizations [8].

In the framework of civil law, in our opinion, the essence and main property of the compensation function consists in the complete restoration of the violated property and non-property status of the injured subjects of civil law. The importance of the compensation function is predetermined by the fact that civil law regulation (both positive and negative) is based on compensatory principles. A clearly formulated concept of the compensation function, like any legal concept, serves the cause of its more effective and widespread use.

The compensatory function acts as a specific guideline for the legislator and subjects of civil law, in accordance with which norms should be issued, ways to improve civil legislation should be outlined, and legal implementation processes should be carried out.

A necessary condition for highlighting the compensatory function of civil law from the point of view of the reasons and features of its existence is an indication of the existence of a similar function in other branches of law. This allows us to note the complex impact of many norms of various branches of law on public relations [9]. Thus, Chapter VII of the Labor Code of the Russian Federation is called

"guarantees and compensations"; Article 160 of the Housing Code of the Russian Federation is devoted to compensating expenses for utility bills to certain categories of citizens, etc.

The question of the correlation of compensatory and restorative functions requires a separate study. It seems that you cannot put an equal sign between these functions. Indeed, at first glance, it is quite logical to call the restorative function of civil law compensatory. At the same time, although the latter consists in restoring the original position of the parties that existed before the violation, it cannot be called restorative in the full sense of the word, since "restoration" usually means bringing the property or non-property status of subjects of civil law to the state that existed before the offense. But the concept of "restoration" is not exactly applied here: situations are not excluded when it is objectively impossible to restore the former, for example, property status (in particular, in the case of destruction of a thing). Therefore, in our opinion, it is better to distinguish between "compensatory" and "restorative" functions.

The restorative function is aimed at restoring the violated rights of a person to their original state. Restoration of violated rights is one of the basic principles of civil law (Article 1 of the Civil Code of the Russian Federation). This function is widespread not only in civil law, but also in other branches of law. Thus, in labor law, the restorative function is manifested in making decisions on the reinstatement of an illegally dismissed employee, on the reinstatement of an employee who was illegally transferred to another job (Article 396 of the Labor Code of the Russian Federation.) The Land Code of the Russian Federation provides for measures aimed at restoring the situation that existed before the violation of rights to a land plot, and preventing actions that violate the right to a plot or create a threat of violation (Article 60 of the Land Code of the Russian Federation).

One of the manifestations of the compensation function is compensation for losses. This institution is widely used in judicial practice. Thus, the CJSC appealed to the arbitration court with a claim against the JSC for damages in connection with its failure to fulfill its obligations under the commission agreement. An agreement was concluded between the parties for an indefinite period, according to which the closed joint-stock company (the commission agent) undertook on its behalf to sell to consumers goods belonging to the open joint-stock company (the committee) and transferred to the warehouse of the commission agent. Having warned the commission agent 30 days in advance, the committee refused his services. For transactions made by the commission agent before the termination of the commission agreement, the commission agent withheld the amounts of remuneration and expenses agreed with the committeeman from the proceeds, transferring the remainder to the committeeman. After the expiration of the commission agreement, CJSC refunded to consumers the funds paid by them during the period of the commission agreement for several units of household appliances, in which significant deficiencies were subsequently discovered, and offered JSC to pick up low-quality goods and reimburse the commission agent for the losses incurred in the amount returned to consumers. The company refused to comply with this requirement.

The court of first instance dismissed the claim, referring to paragraph 2 of Article 453 of the Civil Code of the Russian Federation, according to which, upon termination of the contract, the obligations of the parties cease. In addition, the court pointed out that, by virtue of paragraphs 1 and 2 of Article 1003 of the Civil Code of the Russian Federation, compensation to the commission agent is possible only if the commission agreement is concluded for a certain period.

The court of cassation reversed the decision and satisfied the claim, collecting funds from the JSC in the amount in which they were returned to consumers. The court pointed out that according to paragraph 4 of Article 1000 of the Civil Code of the Russian Federation, the committee is obliged to release the commission agent from the obligations assumed by the commission agent to third parties. In this situation, this rule meant that the committee was obliged to transfer household appliances free of defects to the commission agent. Since this duty of the committee has not been fulfilled, and the rule of paragraph 2 of art. 453 The Civil Code of the Russian Federation applies only to the main obligations of the parties under the commission agreement (such as payment of remuneration and transactions at someone else's expense), but not to liability for improper performance by the parties of their obligations, the commission agent has the right to claim damages. The court also pointed out that the rules of paragraph 1 of Article 1003 of the Civil Code of the Russian Federation establish a

special basis for collecting damages if the committee refuses a contract concluded for a certain period, and in conjunction with the rules of paragraph 2 of this article does not exclude the application of liability to the committee for improper performance of obligations [10].

The punitive function of civil law, which is not quite familiar to private law, requires special mention. In its most general form, the punitive function of law is "a relatively isolated direction based on laws and other legal acts of a homogeneous, positive, structurally organized and coercive influence of law on the consciousness, will and conduct of offenders, which, within the framework of regulatory and protective legal relations, is aimed at restoring social justice in the form of retribution for what they have done and the application of to them by courts, law enforcement and other competent authorities of specific penalties" [11].

Within the framework of civil law, the punitive function manifests itself in the form of such punishment as the payment of a penalty in excess of the losses caused, or the application of the consequences of invalid transactions. The latter means that in case of invalidity of the transaction, each of the parties is obliged to return to the other all received under the transaction, and in case of impossibility to return the received in kind (including when the received is expressed in the use of property, work performed or service provided), to reimburse its value in money – unless other consequences of the invalidity of the transaction are provided by law. In the Civil Code of the Russian Federation, this refund procedure is called restitution. Bilateral restitution (restoration of the previous state) assumes that each of the parties transfers to the other everything acquired under the transaction in kind, and if this is not possible – in the form of monetary compensation. Unilateral restitution involves the return of one of the parties received by it under the transaction to the other party; the latter transfers everything that it received or should have received under the transaction to the income of the Russian Federation.

Preventing restitution means collecting into the state's income everything received by the parties to the transaction and, in the case of execution of the transaction by not all parties, due to be received. The latter measure will be a typical manifestation of the punitive function of civil law.

The list of these functions of civil law is not exhaustive. The fact is that civil law as a branch of law is objectively inherent in another type of influence on public relations – educational. In the structure of this type, a number of features of the method of influence and forms of implementation are highlighted. This function of civil law is not carried out purposefully, but rather accompanies other functions. Its correlation with the preventive function is interesting, which in the scientific legal literature is understood as "such a relatively isolated, progressive direction of homogeneous (homogeneous) legal influence on the consciousness, will and behavior of people, which is aimed at preventing violations of existing legal relations, rights and legitimate interests of citizens, their collectives and organizations" [12].

It follows that the preventive function is a sub-function of the educational function of law, implementing measures to prevent offenses. The question of the correlation between the educational and informational functions of law and the validity of the allocation of the informational function of civil law is much more complicated. In the theory of law and the state, the information function of law is understood as "the direction of legal influence that ensures: a) legal informing of subjects of law and the formation of socially useful, positive (from the point of view of official "written" law) orientation of their behavior; b) maintaining the integrity and normal functioning of the legal system; c) regulating relations related to the redistribution and preservation of information resources." The elements of the information function of law are "bringing to the attention of addressees the information necessary for effective legal regulation; familiarizing potential subjects of legal relations with both the positive results of legal and negative consequences of illegal behavior; identifying opportunities and promising ways to improve legal reality [13].

At first glance, it seems that we are talking about a separate function of law, unrelated to others. Indeed, the state informs citizens about the adoption of laws and other regulations by publishing them in the media and on the Internet; information about suppressed offenses is posted on law enforcement agencies' websites; information about procurement for public needs is posted on the websites of any

federal, regional and local authorities, etc. At the same time, despite the attractiveness of such an approach, it should be recognized that most of the actions carried out by public authorities are aimed at fostering a positive attitude of citizens to the law (including civil law) by pointing out the negative consequences of illegal activities (the website of the prosecutor's office), or is quite utilitarian and practical in nature, representing a public offer that is, an invitation to subjects of civil law to enter into civil relations with various public authorities. Thus, information is only a means of realizing the educational function of law.

A striking example of the implementation of the educational function of civil law is Article 169 of the Civil Code of the Russian Federation, which enshrines the prohibition of transactions with goals that are obviously contrary to the foundations of law and order or morality. As a result, such a transaction is considered void. As L. V. Schennikova notes, this norm is good because it performs an educational function and brings social benefits, since civil law cannot but be deeply moral in its essence [14].

This kind of moral and educational function of civil law is well represented in judicial practice. In particular, the Plenum of the Supreme Arbitration Court of the Russian Federation noted that in determining the scope of application of art. 169 of the Civil Code of the Russian Federation, courts must proceed from the fact that transactions made for this purpose may be qualified as transactions that not only do not comply with the requirements of the law or other legal acts (Article 168 of the Code), but violate the fundamental principles of the Russian legal order, the principles of social, political and economic organization of society, its moral foundations. These transactions may include, in particular, transactions aimed at the production and alienation of certain types of objects seized or restricted in civil circulation (relevant types of weapons, ammunition, narcotic drugs, other products with properties dangerous to the life and health of citizens, etc.); transactions aimed at the manufacture, distribution of literature and other products promoting war, national, racial or religious enmity; transactions aimed at the manufacture or sale of forged documents and securities.

Thus, in order to apply Article 169 of the Civil Code of the Russian Federation, it is necessary to establish that the purpose of the transaction, the rights and obligations that the parties sought to establish when making it, or the desired change or termination of existing rights and obligations (Article 153 of the Code) knowingly contradicted the foundations of law and order and morality. At the same time, the purpose of the transaction can be recognized as deliberately contrary to the principles of law and order and morality only if, during the trial, it is established that at least one of the parties has an intention to do so. Courts need to take into account that transactions made for a purpose that is obviously contrary to the foundations of law and order and morality may be covered up by other transactions that do not formally violate the requirements of the law. In these cases, the rules related to the transaction (paragraph 2 of Article 170 of the Civil Code of the Russian Federation) apply to the transaction that the parties really had in mind, taking into account the substance of the transaction, which is why the pretended transaction is qualified as void solely under Article 170 of the Civil Code of the Russian Federation, and the covered transaction, if there are grounds for it, can be qualified according to Article 169 of the Code [15].

It seems that the functions of civil law can be discussed not only at the sectoral level, but also at the institutional level – within the framework of individual legal institutions. A typical example here is the institution of civil liability. Even in the Soviet legal literature, stimulating, restorative (compensatory), punitive (punitive) and educational functions of civil liability were distinguished [16]. This approach is justified today.

In the implementation of most functions of civil liability, voluntariness and compulsion are combined. Thus, punitive functions of responsibility are implemented in a compulsory form, and to a lesser extent, compensatory, human rights and restorative functions. Educational, human rights, restorative and compensatory functions can be implemented in a voluntary form.

Thus, the main functions of civil law should include: regulatory, protective, human rights, educational, compensatory, restorative, punitive functions. At the same time, functions can be

discussed not only at the general theoretical level, but also at the level of a specific branch of law, legal institution or legal norm.

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