

# МЕМЛЕКЕТ ЖӘНЕ ҚҰҚЫҚ ТЕОРИЯСЫ / ТЕОРИЯ ГОСУДАРСТВА И ПРАВА / THEORY OF STATE AND LAW

УДК 342.22

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## ҚАЗІРГІ КЕЗЕҢДЕ МЕМЛЕКЕТТІҢ ФУНКЦИЯЛАРЫ: ӨЗЕКТІ ТЕОРИЯЛЫҚ МӘСЕЛЕЛЕРІ

**Аннотация.** Мақалада мемлекеттің қазіргі заманғы функцияларының өзекті мәселелері қарастырылады. Сондай-ақ, жұмыста мемлекеттің функциясын түсіну призмасы арқылы мемлекеттің қазіргі тұжырымдамасы жан-жақты зерттеледі. Мемлекет функциясы мен мемлекеттік органдар функциясының арақатынасы мен өзгешелігіне ерекше назар аударылады. Мақалада, сонымен қатар, мемлекеттің құқық шығармашылық, құқық қолданушылық және құқық қорғау функцияларының жалпы аспектілері қарастырылады.

**Түйінді сөздер:** мемлекет, мемлекет функциясы, мемлекеттік органдардың қызметі, мемлекеттің мәні, құқық.

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## ФУНКЦИЙ ГОСУДАРСТВА НА СОВРЕМЕННОМ ЭТАПЕ: АКТУАЛЬНЫЕ ТЕОРЕТИЧЕСКИЕ ПРОБЛЕМЫ

**Аннотация.** В статье рассматриваются актуальные вопросы современных функций государства. Также в работе всесторонне исследуется современное понятие государства через призму понимания функции государства. Особое внимание уделяется соотношению и специфике функций государства и функций государственных органов. Кроме того, в статье раскрываются общие аспекты правотворческой, правоприменительной и правоохранительной функций государства.

**Ключевые слова:** государство, функция государства, функция государственных органов, сущность государства, право.

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## THE FUNCTIONS OF THE STATE IN MODERN TIMES: CURRENT THEORETICAL ISSUES

**Abstract.** The article deals with topical issues of modern functions of the state. The work

*also comprehensively explores the modern concept of the state through the prism of understanding the function of the state. Furthermore, pays special attention to the correlation and specifics of the function of the state and state bodies. Therefore, the article reveals the general aspects of the law-making, law enforcement and law enforcement functions of the state.*

**Keywords:** *the state, the function of the state, the function of state bodies, the essence of the state, law.*

## Introduction

This article provides another definition of the concept of the state, which allows you to clearly and complement it, creating conditions for discovering a new side of it as an objective phenomenon. This definition should be taken as the result and reflection of the study and consideration of the state from the point of view of its functions. This approach allows us to define that the state is a formally organized, regulated and fixed system and mechanism of implementation of state functions in legal forms and at the level. This definition should be considered as a continuation of other definitions of the state and as an additional version aimed at supplementing them. According to this definition, which originates from the «functional» nature of the state and is guided by it as the main research platform for portraying the true picture of the state, the main essence and purpose of the state is to ensure the peaceful life, legal unity, stability and development of organized society.

The functions of the state are the main areas of its functioning. These directions determine the goals and objectives, social appointment and essence of the state. The division of the functions of the state into internal and external is formal, since they are closely interconnected, and in some cases are inextricably linked and United, and there is a high susceptibility of the internal functions of the state to the influence of external factors. In the era of globalization, it is becoming more and more common for several states to agree and jointly perform state functions, forming temporary or permanent unions. The activity and share of civil society institutions in the implementation of state functions is increasing.

## Aim and research objectives

The main aim of the study is to understand the function of the state in modern stage, to determine the ratio of the function of the state and the function of state bodies, to study general theoretical problems of the function of the state.

To achieve this aim, it is envisaged to solve the following tasks:

- an attempt to consider and determine the essence of the state in the period of globalization from the point of view of today's achievements of theoretical research on its functions;
- study of actual problems of the theory of state function;
- consider and reflect on the fact that the system of functions of the state has become a special industry, as a whole process, dividing it into stages.

## Methodology and Findings

In the process of writing the work, methods common to the general Social Sciences were used: analysis, synthesis, dialectical, historical, structural and functional, sociological, statistical, etc. In the work, specific scientific methods were given a place for legal differentiation, comparative analysis. In the course of writing the work, articles related to the topic in periodicals were also used and taken as a basis.

The state undergoes various changes at each stage of its development. As a result, its functions are also developing and changing. When one function of the state comes to life, the essence of the other disappears. Therefore, in the theory of the state, the functional method is one of the primary methods. One of the most relevant and important questions in the general theory of the state is its functions. As a result of the essence and social appointment of the state, the function of the state is determined.

The term '*function*' is widely used in the

theory of state and law, and it explains and predicts what and how the state should do. The term 'function' is also called a service in dictionaries. This term is not just a legal or political concept, like other social science concepts, it has its origins in the physical and mathematical sciences. Its meaning defines the dependence of one variable volume on another variable volume [1, 344 p.].

Translated from latin, the function - means to perform, to create. In the dictionaries of philosophy, a function is a concept that determines the appearance of an object in a certain system of relations, when one moves through the relationship of two groups or objects, causing the other to move [2, 556 p.].

There are several points of view in the legal science of Kazakhstan on the concept of the function of the state. They are reflected in the works of: Salyk Zimanov, Sultan Sartayev, Murat Baimakhanov, Salahiddin Sabikenov, Alua Ibraeva, Saken Uzbekuly and etc. In addition, the problems of the function of the state are revealed in the works of Russian scientists M. Baitin, V. Nersesyants, M. Marchenko, V. Lazarev, L. Zagainov, L. Morozova, A. Denisov, S. Rajabov, A. Vengerov, V. Komarov.

One of the scientists defines the functions of the state as the forms of state activity. For example, V. Nersesyants considers the state as a living organism, and its functions as forms of existence of the state [3, 256-257 p.], and the latter argue that the functions of the state are a special mechanism of state influence on public relations and trends, determining the main directions and content of the state's management of society. Third, consider the functions of the state as a subject-political characteristic of the state. The fourth ones indicate the functions of the state as the main areas of activity of the state.

In support of this definition, the Kazakh scientist, academician Murat Baimakhanov argues that the functions of the state are the main directions of the state's activity in various spheres of society's life. In his opinion, he says that if the concept of state functions

is considered as forms of state activity, then it includes only legislative, managerial, fair judicial and supervisory functions [4, 83 p.].

Therefore, academician Murat Baimakhanov, looking for an answer to the question of whether the functions of the state are a form of state activity or not the activity itself, gives the following definition of the concept of the functions of the state: the functions of the state are the directions of the activity of the state in various spheres of the life of society. And it is argued that the form of activity of the state is part of the question of the functions of the state [4, 84 p.].

Russian scientist M. Baytin, expressing his opinion, proposes not to allow the functions of the state to be connected with the forms, methods of its implementation and terminologically mixed with the types of state activity [5, 12 p.].

It was widely used to determine the functioning of the socialist state, to determine its role as the main tool in the direction of building socialism, to oppress the exploiting class, to organize the national economy, to support the National Liberation Movement. Currently, in the course of the development of the theory of state and law, the functional direction of the state's activities has been preserved, but its essence has been replenished and deepened, class views have disappeared, and the class essence, social assignment and function of the state have also changed. The functional direction allows us to study the development, substitution of the historical process of the emergence of different types of states. Historical experience shows that the functions of the state do not stand in one place, they are always mobile, and they are constantly changing in motion. The function of the state, despite its formation in different historical types, develops with characteristic features, patterns.

The concept of the function of the state is considered by modern scientists from different points of view. For example, according to the thought of A. Cherdantsev, 'the function of the state is of an objective nature arising from soci-

ety'. And the legislative, executive and judicial functions cannot be attributed to the functions of the state, on the contrary, they are forms of activity of private bodies of the state [6, 111 p.].

According to professor M. Marchenko, 'the function of the state is the main directions of the state's activity, which led to the need to solve the tasks set by the state' [7, 112 p.].

For example, the protection of human rights is not a function, it is the main goal, the duty of self-respecting citizens.

According to V. Nersesyants, 'the function of the state is to solve the tasks set by the state in the appropriate state – legal order. It denies the existence of economic, environmental, cultural, educational functions in the state'. He emphasizes the following functions of the state: title, exercise of law, human rights protection [8, 129 p.].

It can be assumed that this point of view does not reflect the specifics of the functions of the state. The basis for this is that, firstly, there is an exchange of functions of the state with the principle of separation of powers. The division of power into three branches - legislative, executive and judicial - is the principle of organizing the activities of the state; secondly, each state, regardless of its substantive nature, functions in the main spheres of life of society (economy, defense, education, etc.). The point of view that the distribution of the functions of the state by spheres of life of society (economy, defense, education, etc.) will be characteristic of the old formation can be wrong; thirdly, the issuance of normative acts is not a function of the state, but the presence of law in the theory of the state, the issuance of normative.

According to Murat Baimakhanov, not every activity of the state is a function of the state, only the most important areas of activity of the state can be a function of the state, from the function of the state comes the essence of the state [9, 252 p.].

The opinion of Murat Baimakhanov, the point of view on the function of the state as a special mechanism of state influence on public

relations and trends, which determines the main directions and content of the state's activities to manage society, is repeated [10, 68 p.].

The same is the opinion of L. Morozova. In her opinion, the function of the state is the main socially significant areas of state activity in a specific historical period [11, 33 p.].

The question of the function of the state is increasingly faced with the question of the functioning of the state. The functioning of the state includes the types of activities of the state, and the function of the state – it covers only some of the activities of the state. In order to consider any activity as a function of the state, it is necessary to take into account some criteria. According to Murat Baimakhanov, these criteria are two: 'first, for the formation of individual functions of the state, initially the following types of its activities are taken:

- on the main directions of state policy;
- permanent, performed in accordance with the state structure;
- formed as a separate direction or separated from other directions, with which there is no unity;

secondly, not the main, but additional, policy issues of the functioning of the state are included in the understanding of the state by combining the directions of the state's activities. The totality of all the functions of the state in its content is one of the few of the functioning of the state' [12, 3 p.].

In the opinion of scientists Gairat Sapargaliyev and Alua Ibraeva the functions of the state are the tasks and goals set by the state in managing society, actions that are carried out through their own forms, methods that are unique to them, and their main directions. The functions of the state are not a rigid and unchanging phenomenon, they are changeable, often subjected to oppression. The main goal of a democratic state is to function for society, for groups of people in society, for the development and prosperity of society. Society is a very complex phenomenon. The main pillar of society is production. For the organization and

development of production, both the state, associations of people and individuals take the necessary actions [13 42 p.]. The activities of the state in this area are diverse. The state directly manages the enterprises under its control and regulates their work. The state may also have natural resources. Therefore, the state directly controls and regulates objects belonging to its property, and indirectly regulates non-state types of property. In this regard, the state has the function of organizing, managing, regulating the economy. In any case, society consists of different classes and social groups.

In some countries, for example, Kazakhstan, many nationalities live. Regulation of their distance is, in principle, the task of the state. It should be noted that in all modern states, the most important services are environmental activities. The reason for this attention is due to the fact that the modern life activity of the human race has a negative impact on nature on a social scale. [13, 43-44 p.].

All these mentioned are the result of human existence. In other words, such actions threaten the lives of all living things on earth [13, 44 p.].

In the theory of the state, there is a question of the separation of the functions of the state. For the first time, L.Zagainov wrote a PhD. thesis about it in 1968. According to him, the specific function of the state reflects the totality of the content, forms and methods of its implementation of communication with a specific object of state influence. The functions of a separable state include the following components: the subjectivity of the functions of the state; the content of the functions of the state; aim and objectives; the volume of powers that are separated from the state and to ensure their implementation [14, 5 p.].

The content of the functions of the state actively and purposefully contributes to a certain area of the life of society. Influence can be different: firstly, influence, approval, development and improvement of public relations that are in the interests of the people; second-

ly, prevention and elimination of relations that hinder the development of society; thirdly, the state exerts influence for new and progressive assertions [15, 15 p.].

On the subjectivity of the functions of the state, according to Murat Baimakhanov, there is a decision at two levels: first, the general subject – the subject of each function will be entirely the state; secondly, the specific subject - the subject of the function is state structures. Everyone is involved in the implementation of the function of the state, or at least many state bodies. The implementation of private functions by state bodies is not the same. By assigning duties to the relevant bodies to perform the functions of the state, they are empowered.

The aim and objectives of the function of the state is a component of the function of the state. These aim and objectives meet the general state requirements. The disclosure of the features of the implementation of the functions of the state should be carried out by analyzing the forms and approaches to the implementation of the functions of the state. The latter are considered in different positions – legal, sociological, political science, real managerial. According to the legal position, legal and non-legal forms and ways of exercising the functions of the state can be distinguished. Legal approaches include: *legislative, public administration, justice and state control*. This does not mean that provisions of unconstitutional non-legal laws, acts of government, or unfair court decisions cannot be passed. In almost all countries of the world, there are cases of adoption of normative legal acts that directly contradict the current legislation. The use of the term ‘legal approaches’ means that these approaches are legal, since their use is regulated by law to the fullest extent and depends on the specifics of various branches of state power [15, 5 p.].

The release of laws is caused by objective reasons-an increase in the activity of the state, namely the legislative body.

Public administration is the executive and

administrative activity of the state, its bodies, officials. It includes, first of all, the implementation of the Constitution and laws, however, for the implementation of management, it is also necessary to issue normative acts (by-laws) that have a general and individual nature. Today, this form of exercising the functions of the state is of priority importance, because in modern states the executive power is of crucial importance. The executive apparatus itself is dominated by professional technocrats. According to V. Chirkin, 'most of the working population works in the state apparatus' [16, 206 p.].

A fair court is a kind of form of exercising the function of the state in the form of considering *criminal, civil, economic and other cases and disputes*, that is, resolving conflicts in society. The main goal of the courts is to carry out the protection of the rights and freedoms of human and citizens. Other legal institutions and persons (prosecutor's office, advocacy, notaries, forensic experts, etc.) can only be assistants to the court.

There are various forms of state control or supervisory activities of the state. In essence, such activities are carried out by all higher state bodies in relation to lower bodies. For example, in the country there is a Prosecutor's office of the Republic of Kazakhstan, which monitors the implementation of the law, and the Constitutional Court of the Republic of Kazakhstan, which monitors the implementation of the Constitution norms.

The peculiarity of control in the implementation of the function of the state lies in the fact that, as a rule, regulatory authorities cannot give direct instructions and orders to the objects under control. In addition, some regulatory authorities may impose penalties on officials, temporarily suspend the activities of controlled objects [16, 207 p.].

Non-legal forms of exercising the functions of the state are quite diverse, they should not be illegal.

### **Discussion and Results**

We support the definition that the func-

tions of the state are the main directions of state activity in various spheres of society's life. Indeed, the state, performing its functions, exerts influence on the main spheres of the life of society, adheres to a certain direction for it, thereby realizing certain aim and objectives. During the period of globalization, it is becoming increasingly common for several states to coordinate and jointly perform state functions, form temporary or permanent unions.

The condition for the stability of the state, its sustainable functioning is representation and development on behalf of the entire society as a whole. Without realizing the function of the supreme representation of the whole society and ensuring its unification, the essence of the state is denied, the mechanism of the state ceases to function as a single system. With the help of its functions, the state must meet the mature needs of society, fulfill many tasks and aim objectively formed on a long – term basis.

The existence of a large number of types of grouping of functions of the state, which has taken place in legal science, is explained by the presence of a variety of criteria and paths to this complex phenomenon.

In the works of Russian scientists, the functions are grouped as follows.

For example, L. Morozova, who, due to the achievements of globalization, wants to declare the division of the functions of the state into internal and external as outdated. Because globalization erases the boundaries between domestic and foreign policy. In this regard, five general functions are proposed: economic, environmental, social, political, ideological. Thus, it is assumed that the content of economic functions lies in ensuring the normal functioning and development of the economy, organizing internal political ties, etc. The political function or security function is aimed at ensuring the security of the state and public, social and national harmony, and protecting sovereignty. The environmental function is related to environmental protection. The ideological function aims to support a certain ideology, including religious

ideology, etc. The content of the social function is the protection of the rights and freedoms of the living population, the creation of the necessary conditions for satisfying the social needs of people [17, 106 p.].

L.Spiridonov highlights the ‘main’ function of the state – the function of implementing general affairs that ensure the objective prerequisites for the existence of mankind [18, 89 p.]. Among them, this scientist includes the following: natural conditions that ensure the survival, health of a person and a normal environment for his existence; socio-cultural conditions; economic conditions; political conditions.

According to the time of action, the function of the state is divided into permanent and temporary. *Sustainable* - these are the functions that are implemented by the state at all stages of development. *Temporary* - functions that arise in the presence of certain tasks and cease to act with their solution [19, 12-13 p.].

The Russian scientist M.Baitin points out several common symbols inherent in the main functions of the state. *First* of all, the class and universal meaning of the state, its social designation are most noticeable in them. *Secondly*, the main functions are included in the activities of the state as a whole, performed by all or many links of the state apparatus, albeit of different magnitude, in contrast to many state functions, which are usually carried out by special bodies intended for this purpose (for example, health, social security, etc.). *Thirdly*, in terms of its content and structure, the main function is complex, cumulative in nature, requires systematic analysis. It shows the accumulation of the power of the state in one of the key areas of internal or external activity of the state. Its object is a wide range of social relations in some particular large sphere of social life, which have similarities [20, 133 p.].

N.Chernogolovkin divides the functions of the state into basic and non-basic. This division of the function of the state was carried out by him in his scientific work ‘Theory of

the function of the socialist state’. He writes: ‘within the framework of the cultural and educational function, the activities of the socialist state in the fields of popular education, higher education, culture, sports, etc., can be distinguished’. The latter, according to N. Chernogolovkin, are a non-fundamental function of the state.

It is caused by the fact that in real conditions the functions of the state as the main areas of its activity are equal and unequal to each other. The division of functions into basic and non-basic, depending on the degree of social significance, is objectively necessary for their deeper recognition, and this is important not only in theoretical, but also for practical use. According to N.Chernogolovkin point of view, the main functions of the state are understood as ‘the most important areas of its activity, which include some of the homogeneous areas of the state’s work, and the relatively narrower areas of its activity, which are part of its main functions, are understood as non-core functions’ [21, 116-117 p.].

If the functions of the state are considered a special mechanism of state influence on public relations and trends, which determines the main directions and content of the state’s management of society, then it is equivalent to the definition that we support. Each function of the state has unity and uniformity characterized by its individual subjectivity, subject-substantive, structural, organizational and legal formalization.

The existence of a large number of types of grouping of functions of the state, which has taken place in legal science, is explained by the presence of a variety of criteria and paths to this complex phenomenon.

In science as a whole, many scientists divide the functions of the state into internal and external, depending on various spheres of society’s life, the function of the state by the time of action into permanent and temporary.

Today one of the main functions of the state is to ensure the protection of the rights and free-

doms of human and citizens. This is the main feature of a developed democratic state.

Currently according to many legal scholars, the features of internal activity for modern states are as follows: economic and social activities; activities for the development of science and education; activities for taxation and tax collection; activities for the protection of citizens rights and freedoms; environmental activities; activities for ensuring law and order; activities for the protection of property forms.

In foreign relations, there are the following types of activities: world economic cooperation; protection of the country; adherence to the world law and order; in solving the problems of our time, interaction with other states (demographic, environmental, energy, combating terrorism, etc.) is an activity.

According to Gairat Sapargaliyev and Alua Ibraeva 'the main direction of the development of the state's activities in modern times is their mutual transformation'. In the course of the development of the functions of the state, the scope and volume of each activity increases and decreases. At the same time, its nature, structure, form and method of implementation, and specific orientation are also changing. No matter what society is, it cannot prosper and develop without science, education, culture. The state should also perform a great function in this area. They are financed by the state, regulate, manage and direct their work. Therefore, the state will have the function of managing and developing science, education, and culture. The mentioned refers to the internal function of the state. The state enters into various, diverse relations with other states. At first, the state tries to protect and preserve its independence, sovereignty, and territorial integrity from encroachment by other countries. He fixes his borders, guards. To do this, it creates the necessary armed forces, concludes treaties with other states in this regard. The fulfillment of these tasks is called the self-defense function of the state. States strive to have various economic, trade, cultural, scientific, political,

legal, etc. relations with each other [13, 44 p.].

If such relations are formed on an equal basis, they create favorable conditions for the development of each country. In this area, the function of the state's relations with other countries is implemented. In order to live in peace and tranquility, States enter into mutual agreements, form military alliances, and so on. In modern historical conditions, war, military tensions endlessly threaten the existence of mankind. Therefore, states that want to develop in a humane way try to take actions to prevent war. Therefore, the fulfillment of the peaceful function of the state should also be a characteristic manifestation. These things belong to the external function of the state. The internal and external functions of this state are carried out in various ways.

They are divided into two groups:

- 1) legal;
- 2) organizational.

The legal approach includes: drawing up law, other normative legal acts, operational execution, search activities, law enforcement activities, law application activities.

The organizational approach includes: organizational and regulatory activities, economic organization activities, science, education organization activities, military organization activities [13, 45 p.].

The group of division of the function into class and general social can also be represented. Such a collection, classification was characteristic of the jurisprudence of the Soviet period. Class functions are aimed at protecting the interests of a particular class, for example the function of protecting socialist property.

Furthermore, class is calculated functions that contribute to the resolution of antagonistic contradictions. And functions that have the purpose of resolving non-antagonistic contradictions are generally considered social functions. However, the condition for this grouping is that it is difficult, if not impossible, to establish clear boundaries between the types of public activity associated with an antagonis-

tic and non-antagonistic nature, to distinguish them. Internal functions represent the activities of the state within the country, determine its significance in the life of the relevant society, and external functions are the activities of the state to fulfill the external tasks set for it. In the field of foreign relations, such functions as integration into the world economy, foreign economic partnership and foreign investment, defense of the country, support of the world law and order, cooperation with other states in solving current problems (environmental, raw materials, energy, demographic, etc.) are highlighted [22, 356 p.].

We believe that the division of the functions of the state into internal and external is formal, because they are closely interconnected, and sometimes inextricably linked and united. Many internal functions of the state can have an external character, just as external functions can have an internal character. One clear manifestation of this is global demographic problems. Its transition to the global level requires the unity of states. Speaking about the main wealth of the state, the population, its number and composition, there is a need to introduce

a new function of the state in the field of demography in order to regulate and solve the demographics that currently cover the internal and external functions of the state.

### **Conclusion.**

In the new millennium, new problems arose before humanity, which only one individual state could not solve. These include problematic issues arising from globalization. Globalization has become an important and true aspect of the modern world system, one of the influencing forces that determine the development of our planet. It covers all aspects of the life of society, including the economy, politics, the social sphere, culture, ecology, security, etc.

As a result of the historical development of the state, its functions undergo various changes: some functions gradually disappear, some types change, some appear anew, but in all cases it is natural that these processes are based on a certain historical period of the essence of the state and the social appointment of the state, the economic and socio-class structure of society. The functions of the state are a variable category. They begin to change during the transition from one type of state to another.

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