

Private Procedural Classification in the Mechanism for Exercise of the Rights of Participants of a Criminal Proceeding of Persons with Disabilities

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Abstract: This article, for the first time, taking into account the compensatory approach, reveals the sequence of using the classification of persons with disabilities as an element of legal technology, proposed to identify these persons among the participants of criminal proceedings and resolve issues on the possibility of using a compensatory mechanism in order to provide these participants of the criminal proceedings with equal opportunities to exercise their procedural rights and obligations. The main elements of such a compensatory mechanism have been created and exist in the framework of international criminal law and in the national legislation of some states. The authors base their conclusions on social practices, indicating, that a certain amount of the world's population (including Russia) has varying degrees of severity of cognitive disorders and believe, that this is due to various reasons (age, medical, psychological, physiological, social, etc.). Since these persons are periodically involved in the sphere of criminal proceedings as suspects, accused, victims, witnesses, the article provides an analysis of the use of legal technology to resolve the issue of how to provide them with the opportunity to participate in criminal proceedings on an equal basis with others, to defend their interests, to receive equal access to justice, to exercise the right for defense and acquittance in case of innocence, the right for a fair punishment for offense, etc. The authors note the absence of guarantees, secured in legislation, that ensure the opportunity of full exercise of their rights and procedural technologies for leveling the legal status of participants of criminal proceedings of persons with disabilities, which leads to a violation of a number of rights and legal principles, secured in both Russian legislation and at international legal level. In this article, the authors justify the thesis, that the legal technology under study is based on a complex of definitions, classifications and the sequence of their practical implementation.


1 INTRODUCTION

Human rights issues are relevant because of their importance. Of particular relevance are the problems of securing the rights of persons with disabilities, who need for creation of additional conditions for the opportunity to exercise their rights as a participant of legal relations (Vasilieva, 2010). However, in addition to the rights themselves, the mechanism for the exercise of these rights is also important through the provision of special guarantees. This highlights legal technology in the context of enforcing the legal status of persons with disabilities. The executor of

law, when implementing a number of regulations of the branches of Russian law, runs into certain difficulties, associated with the legal confirmation of such legal technologies. This is especially evident in the sphere of the criminal procedural legislation.

1. Social practices indicate, that a certain amount of the world's population (including Russia) has varying degrees of severity of cognitive disorders. This is due to various reasons (age, medical, psychological, physiological, social, etc.). Since these persons are periodically involved in the sphere of criminal proceedings as suspects, accused, victims, witnesses, the article provides an analysis of the use

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of legal technology to resolve the issue of how to provide them with the opportunity to participate in criminal proceedings on an equal basis with others, to defend their interests, to receive equal access to justice, to their defence, exercise the right for acquittance in case of innocence, the right for a fair punishment for offense, etc. The absence of guarantees, secured in legislation, should be noted, that ensure the opportunity of full exercise of their rights and procedural technologies for leveling the legal status of participants of criminal proceedings of persons with disabilities, which leads to a violation of a number of rights and legal principles, secured in both Russian legislation and at international legal level.

2. At present, the current Russian criminal procedural legislation does not distinguish this group of participants of criminal proceedings as a special category of persons. It lacks the institution of criminal procedural capacity (Tkachenko, A.A., Morozova, M.V., Savina, 2014). Also, the concept of limited legal capacity is not secured in legislation, as a result, the legislator does not provide cognitively vulnerable persons with additional procedural guarantees, aimed at leveling their procedural status in comparison with other participants. In view of the fact, that Russia is in the process of building a legal social state, this situation is intolerable, since the constitutional rights and freedoms of all participants of criminal proceedings must be exercised equally and in full.

3. It should be noted, that the procedural status of this group of persons (vulnerable) in the Russian criminal procedure legislation is not fully reflected, and in science it is not fully studied (Potapov, 2019). Also, there are no guarantees, secured in legislation, that ensure the opportunity of the full exercise of their rights and the leveling of the legal status of participants of criminal proceedings of persons with disabilities, which leads to a violation of a number of rights and legal principles, secured in both Russian legislation and at international legal level (Bertovsky, 2017).

4. In the Russian criminal procedure, there are a number of problems, related to the determination of the legal status of participants of criminal proceedings of persons with disabilities. First of all, this refers to the categories of citizens who can be classified as "cognitively vulnerable" according to medical or social criteria due to the fact, that the level of work of the cognitive functions of brain activity is insufficient, as a result of which, their cognitive abilities are more limited in comparison with individuals, whose cognitive functions are fully implement independently (Merkulov, 2005). Or if

some participant of criminal proceedings has physical limitations, that do not allow him to take full personal participation in criminal proceedings. At the same time, persons of such a category as "vulnerable" or "with disabilities" regularly take part in criminal proceedings as suspects, accused, witnesses and victims.

Therefore, the purpose of this research is to study the algorithm of legal technologies to secure the rights of participants of criminal proceedings of persons with disabilities, to find ways to resolve them and to formulate practical proposals for improving the mechanism for their exercise. At the same time, the authors initially deny the thesis, that this category of persons of the suspects, accused in criminal cases should receive priority opportunities to escape criminal liability or be exempted from criminal liability for the crimes committed. We believe that physical, mental, psychological, physiological, and other disabilities can only affect the mitigation of the imposed criminal punishment or the possibility of applying, in some cases, other measures of criminal law enforcement provided for by the current Russian legislation. The authors base their position on the compensatory approach, which allows ensuring the maximum equal opportunities for participation of the specified group of persons, without diminishing rights of other participants of criminal proceedings.

2 METHODOLOGY

The research was carried out using general scientific and private methods. Theoretical methods were such as: analysis, synthesis, deduction, induction, classification, etc. As empirical methods, the authors used the study of information sources, questionnaires, interviews and polls.

3 RESULTS

As a result of studying literature sources, practice materials, and taking polls, the authors form four aspects of the problem they raise:

1. Russian criminal procedure legislation currently lacks a detailed algorithm for identifying participants of criminal proceedings of persons with disabilities and providing persons of this category with appropriate compensatory guarantees. There is no detailed procedural mechanism, that allows equalizing their abilities with those of other participants and ensuring the ability to independently

exercise their rights and obligations in criminal proceedings.

And although this mechanism is anyhow implemented in practice in the case of involvement of such participants in the criminal procedural sphere, the executor of law takes actions in any case, makes decisions, aimed at protecting their rights. However, this is often carried out *de facto* (executors of law use certain details of this technology), since *de jure*, legally, there is no legal confirmation of procedural technologies for identifying such persons, determining the level of their disabilities, making decisions about the possibility or impossibility of their direct participation, etc.

2. There are shortcomings in the existing legal terminology - often the terms that should contain the definitions necessary for the executor of law are absent. Or they exist, but their definitions are not complete enough. Also, not always the same concepts, used in different branches of law, are defined in the same way (for example, "legal representative", "dwelling", etc.).

There is a general understanding, that a number of categories of citizens, due to their disabilities, in the event of falling into competence of criminal procedural regulations, need to be provided with procedural remedies of a compensatory nature. However, there are no corresponding definitions in the Criminal procedure code. In procedural and other legal literature, different terms are used in relation to the research topic: "vulnerable", "socially vulnerable", "persons with disabilities", "persons with cognitive disabilities", "socially unprotected", "socially significant" etc. (Solso, 2006, Merkulov, 2005, Shestakov, Svintsov and Rocheva, 2015, Trashkova, 2015). The lack of legislative confirmation of terminology, firstly, disorients the executor of law, secondly, causes difficulties in practice, and thirdly, creates a threat of violation of the rights of such persons in view of their incorrect attribution/non-attribution to this category of parties to the criminal proceedings.

3. There is no scientifically developed and practically tested classification of such participants, which makes it difficult to use existing legal technologies to identify such participants of criminal proceedings and, as a consequence, provide them with further procedural remedies of a compensatory nature.

The authors believe, that for the successful operation of the mechanism for the enforcement of the legal status of participants of criminal proceedings of persons with disabilities, it is necessary:

- to develop a classification of such persons, taking into account the special features of their criminal procedural status;
- to form the appropriate scientific and practical terminology and legislatively confirm it;
- to procedurally confirm a number of procedural technologies of a compensatory nature, aimed at exercising the rights of participants of criminal proceedings of persons with disabilities;
- to teach executors of law to use these technologies in order to ensure maximum protection of the procedural rights of participants of criminal proceedings of persons with disabilities.

4 DISCUSSIONS

First of all, we believe it is necessary to detail the subjects according to the severity of their limitations, to study the characteristics of each group, to establish a compensatory mechanism in order to develop the appropriate technology and develop the necessary legal terms.

The technology of legal work with these persons, according to the authors, consists of three interrelated stages:

- 1) identifying the subject's signs of limiting his ability to exercise his rights as a participant of criminal proceedings in full, determining the form, type and severity of these limitations;
- 2) search, establishment and development of a compensatory mechanism in relation to a specific subject, taking into account the circumstances of the case, including answers to questions:
 - is a compensatory mechanism possible in this case;
 - if so, what procedural remedies of a compensatory nature can "level" the limited abilities in the exercise of their rights;
 - if not, then decide, whether to replace this person with another (legal representative) or to terminate the criminal proceedings or to make another final decision on the case.
- 3) the implementation of a compensatory mechanism at each stage of the criminal process, taking into account its characteristics (pre-trial, judicial stages, special proceedings) to achieve the goals of criminal proceedings.

The authors propose the technology in the form of a consistent application of the following classification criteria:

- 1) procedural, related to the determination of the procedural status of a person with disabilities as a participant of criminal proceedings (the authors draw

attention to the need to take into account the differences in the legal status of different participants - suspect, accused, victim, witness, etc.);

2) time - when this limitation arose and is it possible, that in the future the person will come out of this condition (if so, how soon and whether it will be during this proceedings) or is it permanent.

3) comprehensive - determining the type of disabilities, for example:

- physical limitations (completely deprives of the opportunity to personally participate in legal proceedings or only limits):

- * affecting the cognitive abilities of the person;

- * not affecting the cognitive abilities of the person;

- mental:

- * affecting the cognitive abilities of the person;

- * not affecting the cognitive abilities of the person;

- physiological:

- * affecting the cognitive abilities of the person;

- * not affecting the cognitive abilities of the person;

- mixed (to what extent it affects the possibility of participation of the subject in criminal proceedings):

- * affecting the cognitive abilities of the person;

- * not affecting the cognitive capabilities of the person.

4) by the severity (expression) and the possibility of compensation: is it possible to "level" the limited abilities of a given participant in the exercise of his rights and, if so, with what procedural remedies of a compensatory nature this can be done.

5) by possibility of the use of technical means of a compensatory nature. It should be considered, what technical means in the framework of criminal proceedings should be used to level the abilities for such persons to exercise their rights.

All these stages of the algorithm for the application of legal technology in securing the rights of participants of criminal proceedings of persons with disabilities should be applied in this sequence.

In this regard, we draw attention to the need for an executor of law to acquire the appropriate knowledge and skills for its use, since this is a prerequisite for the possibility of using this technology with the achievement of the maximum effect from it.

So, the identification at the first stage of the signs of cognitive limitation in a participant of criminal proceedings, his ability to exercise his rights entails the emergence of different options for using the compensatory mechanism, for the optimal choice of which it is necessary to rely on special knowledge.

This will allow selecting the most optimal compensatory mechanism, for example:

- appoint a legal representative;

- provide technical means (magnifier or other magnifying device, deaf aid, video conferencing, etc.);

- engage a competent specialist: sign language interpreter, gerontologist, psychologist, etc. (Kurbatova, 2020).

Therefore, it is necessary to conduct special training of executors of law exercising state and authoritative powers in the field of criminal proceedings (as well as other persons, involved in it on a professional basis, in particular, lawyers, translators, etc.), in order to acquire the necessary knowledge for the initial identification of such persons among the participants of criminal proceedings, determining the form, type and degree of cognitive limitations. In the future, this will make it possible to decide, whether these persons should be sent to specialized medical and other institutions for examination. That is why inspectors, interrogators, procurators, judges are subject to special retraining to acquire skills to identify signs of cognitive limitations for the use of compensatory mechanisms. Other participants of criminal proceedings, experts, specialists, defense lawyers, translators, legal representatives should have a set of necessary knowledge to secure the rights of participants of criminal proceedings of the category under consideration.

5 CONCLUSIONS

Based on the research, the following can be noted.

1. The studied legal technology is based on a complex of definitions, classifications and the sequence of their practical implementation.

2. The sequence of using the classification of persons with disabilities, proposed by the authors, is an element of the legal technology, proposed to identify these persons among the participants of criminal proceedings and resolve issues on the possibility of using a compensatory mechanism in order to provide these participants of the criminal proceedings with equal opportunities to exercise their procedural rights and obligations.

3. The sequence of using the criteria for the classification of persons with disabilities, proposed by the authors, is an element of legal technology to identify these persons among the participants of criminal proceedings to resolve issues on the use of a compensatory mechanism in order to secure their rights.

To implement this technology, the authors propose the use of the following sequential chain of classification criteria for the category of persons under consideration: procedural, time, comprehensive, by the severity (expression) of limitations and possibility of compensation, possibility of use of technical means of a compensatory nature.

4. The authors believe, that it is necessary to expand the possibilities for the procedural participation of specialists of various fields (psychologists, gerontologists, teachers, etc.). At the same time, these persons should have knowledge for identifying signs of cognitive limitations of the abilities of participants in criminal proceedings and establishing interaction with certain categories of cognitively vulnerable persons.

6. The research and practice study of this topic is important for the purpose of doctrinal filling of the content of the special criminal procedural status of persons with disabilities, its approbation in practice and legislative consolidation in order to ensure equal opportunities for them to exercise and protect their rights and legitimate interests in criminal proceedings (compensatory approach). It should be noted, that issues, related to the imposition of punishment to cognitively vulnerable persons, who have committed crimes, are of practical interest; which persons from this category are entitled to rely to a greater extent, in comparison with fully capable persons, on mitigation of their punishment or to impose other criminal law penalties (educational, medical, restrictive, etc.) to them (Safronova, 2016).

7. It is necessary to differentiate the terms: "criminal procedural capacity", "incapacity" and "cognitive vulnerability" ("limited cognitive abilities") as entailing different consequences in terms of legal evaluation of these conditions.

8. The status of cognitively vulnerable participants should correlate with the responsibilities of persons, exercising state and power functions in this sphere. This requires the latter to have special additional knowledge.

Therefore, according to the authors, an additional guarantee for such a category of participants of criminal proceedings should be the introduction of special professional training (and retraining) of the following subjects: inspectors, interrogators, procurators, judges.

This approach, according to the authors, should be diffused to the side of professional defense and legal representation: the involvement of victims as defense lawyers and representatives should also be considered from the point of view of most-favored treatment for their clients of persons with disabilities.

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