

Unification of Evidence in Cases Involving Persons with Disabilities

Kurbatova S.M.^a, Aisner L.Yu.^b and Rusakov A.G.^c

Krasnoyarsk state agrarian university, Krasnoyarsk, Russia
sveta_kurbatova@mail.ru, larisa-ajsner@yandex.ru, rusalger@mail.ru

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Abstract: The article deals with issues related to ensuring the rights of persons with disabilities when they participate in different types of legal proceedings through the unification of the institute of evidence, as part of a compensatory approach developed by one of the authors and aimed at creating conditions for proper participation in trials of such categories of participants. The role and importance of the procedure for unification of evidence as a guarantee of the legal status of persons with disabilities as participants in legal proceedings are noted. An algorithm for using digital technologies to unify information about participants in procedural legal relations from among persons with disabilities relevant to the case is presented. Conclusions are drawn and proposals of a legislative, organizational, material and other nature are formulated.

1 INTRODUCTION

1.1 Persons with disabilities, or vulnerable persons, as this category of the population is often also called, represent that part of society that, for various reasons, is not able to independently and (or) fully exercise their rights. In this regard, in situations of participation of persons with disabilities in various legal procedures, the risks of violation of their rights and legitimate interests as participants in legal relations increase. This is especially true of the sphere of legal proceedings, given that it is here that justice is administered.


1.2 There is no single well-established list of such persons - in different international documents and in different national legislations of particular states, different categories of citizens belong to them. For example, in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012) as a separate category of participants in criminal proceedings, particularly vulnerable persons are singled out, whose needs should be taken into account when developing their national legal aid programs, and which include children, victims of sexual and other violence, the elderly, the disabled, persons with mental disorders,


HIV-infected persons and persons with other serious infectious diseases, representatives of indigenous peoples and aborigines, foreigners, etc. (the list is open)


1.3 With regard to the issue of ensuring the participation of such persons in various types of legal proceedings, there is a problem of the lack of information from the entities in charge of this proceeding about such people.

This can be caused by various reasons: a person may be healthy by external signs, but have a mental illness that affects his cognitive functions; may have mental problems and cognitive disorders and even show some signs of them, but only slightly; or, even with manifested disorders in individuals, the person in charge of the production of in this case, ignores them, rushing to finish all procedures on time; etc.

1.4 For the Russian Federation, this problem is much larger and is based on the absence of an appropriate Russian ideology regarding the characteristics of socially vulnerable persons as members of civil society, as well as participants in legal relations with a special legal status. The absence of such an ideology corresponding to the norms of international law, as well as the lack of understanding of which categories of the population form this group

^a  <https://orcid.org/0000-0001-8518-9233>

^b  <https://orcid.org/0000-0002-7093-4162>

^c  <https://orcid.org/0000-0003-0453-6657>

of persons, leads to increased risks of violation of the rights and legitimate interests of these persons in practice in general and in the field of judicial proceedings in particular. The dominance of the medical approach to this issue in Russia leads to the fact that only people with disabilities for medical reasons are considered as such a category of the population. Although since 2006 (the date of the adoption of the UN Convention on the Rights of Persons with Disabilities), when referring to the status of persons with disabilities, the international community recommends to be guided also by social and even philosophical meaning. Today, it is the social approach to the identification of persons belonging to the category of "with disabilities" that is dogma, while the medical approach, characteristic of the mid– late twentieth century, is seen as discriminating against millions of people who need help and support from the state and society, but do not receive it because of ignoring them by the legislation.

1.5 One of the serious problems of Russian legislation is the lack of identification of persons with disabilities as a special category of participants in legal relations, who, due to their special legal status, are involved in various types of legal proceedings. In criminal, civil, administrative and arbitration proceedings, there are practically no guarantees ensuring their proper participation.

Each of these types of legal proceedings is based on its own rules. Whereas an unified approach to the consolidation of uniform procedures and uniformity of understanding of the specifics of the participation of these persons with disabilities in legal proceedings would contribute to ensuring the realization of their rights and protection of interests. This is especially relevant for the sphere of criminal proceedings, because for these persons with disabilities, participation in court proceedings as defendants, victims, witnesses, etc. makes them especially vulnerable to the justice system.

And to solve these problems, it is possible and necessary to use modern digital technologies, with the help of which it becomes possible to level the limited opportunities of such participants to exercise their rights.

2 RESEARCH METHODOLOGY

The methodology of the study is based on the authors' long-term study of the characteristics of persons with disabilities and their impact on the scope of the legal status of such persons in criminal proceedings and the problems of obtaining testimony from them

(Kurbatova, S. M., Aisner, L. Yu., 2021; Kurbatova, S. M., 2019; Kurbatova, S. M., 2020), the role of unification of legal regulation of procedures involving such persons to simplify their understanding and facilitate control and supervision by the relevant authorities over their compliance, and also the use of various technologies for these purposes (Kurbatova, S., Rusakov A., 2021; Rusakov A., 2022).

To do this, the authors used various social methods: questionnaires, observation, interviewing, surveys. We studied statistical data at the level of the world community, individual states and the Russian Federation. We analyzed empirical material in the form of materials of criminal cases and related documents.

Working on the material, the authors used general scientific methods of cognition to generalize, analyze and form certain conclusions. All these methods are reflected in the scientific works of the authors, which can be found. The key point of this article is the question: how, using modern digital capabilities, it is possible to unify individual organizational and procedural actions that are important for ensuring the rights of vulnerable persons, based on the data already available to the authors.

3 RESEARCH RESULTS

Among the main results of the conducted research are the following:

3.1 Russia has not implemented the modern concept of understanding the content and essence of vulnerability, reflected in the norms of international law and the legal norms of a number of states of the Anglo-Saxon and Romano-Germanic legal families, which identifies as carriers of a special status not only such generally recognized categories as minors and the disabled, but also others who are in such a life situation, which makes it difficult or impossible to exercise their rights and freedoms;

3.2. Different types of legal proceedings have their own institutions of evidence that do not coincide in their characteristics, which makes it difficult for persons with disabilities to perceive them when they participate in legal procedures of different proceedings and makes it difficult to participate in them (Usyukina M. and et., 2016).

3.3 Insufficient attention paid to the use of digital technologies in court proceedings leads to limited opportunities for full participation of persons with disabilities from among the deaf and hard of hearing, blind and visually impaired, having problems in the

musculoskeletal system, experiencing a sense of fear before appearing in court and (or) meeting with the accused, the defendant, etc.

3.4 These difficulties lead to the fact that the possibilities of digital technologies are not fully used to protect the interests of such vulnerable participants. Thus, in Russia there is no unified information database on persons with disabilities who participated in the proceedings in certain categories of cases. This leads to a situation where, in the case of their repeated participation in another process, the fact of their vulnerability may not be revealed or identified by a person, but not taken into account.

Foreign researchers also pay attention to this fact. For example, M. Beirne-Smith, based on his research, concludes that "often people may want to hide their disability and other vulnerability, or the interrogating police officer is not properly trained and does not cope with the situation. Persons who hide their disability often do not want police officers to find out that they do not understand the questions and, therefore, try to avoid answering them, inadvertently exposing themselves as guilty" (Beirne-Smith M. and et., 2002) or thereby confusing the investigation authorities and the court. P. Green names among the difficulties faced by people with disabilities less frequent appeals, the inability to solve the problem through a competent pre-trial assessment of the situation, less use of their rights (Greene R., 1991). Social adaptation by people with cognitive impairments is often disrupted (Chimagomedova A. and et., 2017).

Thus, the problem of failure to ensure proper participation in criminal proceedings in particular, as well as in other types of legal proceedings, has been noted and raised in foreign literature for a long time. And if some states (such as Great Britain, Ireland, Australia, Canada, Austria, Germany, France, etc.) have actively joined in its resolution (Waddington, L., 2022), then in Russia insufficient attention is still paid to this, especially by the state. As a result of this process, a violation of the rights and legitimate interests of persons with disabilities is revealed when they participate in legal relations with public state-governmental entities, whereas it is the state authorities, personifying the state, that must protect such categories of the population.

4 DISCUSSION OF THE RESULTS

4.1 The problems arising from the lack of concentration in a single source (database) of storing information that is important for the correct resolution

of the case and the observance of the rights and legitimate interests of participants in procedural legal relations from among persons with disabilities must be solved step by step. However, the first priority should be to identify the need for the formation of this information resource itself.

It is necessary to create this kind of base, initially at the level of types of legal proceedings (civil, administrative, arbitration, criminal), and in the future to consider the issue of connecting other subjects to it. However, access to the information contained therein should be restricted, given that it includes personal data of a person, namely:

A) the right to access the information of this database should be possessed by those public authorities that conduct proceedings with the participation of persons whose appearance and (or) behavior give grounds to assume that they have limited opportunities that prevent them from realizing their procedural status of a participant, or there is a petition from a specific person participating in the case that he belongs to socially vulnerable categories of the population and (or) is in this database;

B) persons assisting justice (secretaries and assistants to judges), notaries, lawyers, etc. get access to it with the written consent of such a person or his legal representative.

Over time, access to this database may be granted to other authorities (for example, employees of the Registry Office or heads of correctional colonies or their deputies). However, this proposal is controversial, because it increases the risk of loss of information related to personal data. As an option, access for such persons should be only "introductory", without the possibility of making edits and changes, and the identification of the subject accessing it can be tracked, including through the use of his electronic signature.

4.2 It is necessary to unify information about persons with disabilities that has evidentiary value. Unification in this case means the creation of uniform documents, the requirements for which must be approved by the state and include:

A) personal data of the person;

B) data that characterize the identity of a person:

- about a criminal record;

- about the condition registered with a psychiatrist or narcologist;

- about the presence of diseases affecting cognitive functions;

- about previous cases of involvement in the sphere of justice and what compensatory measures were provided to him;

- about the fact of identifying cognitive features;

- about the form and type of vulnerability;
- on the degree of manifestation of limited opportunities and threats of violation of the procedural rights of the participant in the proceedings;
- compensatory funds that were provided to this person within the framework of the current proceedings;
- which specialists were involved; etc.

4.3 To ensure the uniformity of this information, it is necessary to use the possibilities of modern advances in technology, and in particular, in the field of digitalization of processes. Therefore, the information must be digitized and placed in the appropriate software shell. In this regard, we highlight the properties that this information contained on a certain medium (document) should have:

A) the document must be "readable" by an electronic device, i.e. suitable for the perception of software;

B) the document can be translated into digital form, and the information contained in it can be presented as a set of electronic and mathematical symbols;

C) digital information must have the following properties:

- storage (stored on a medium for an indefinite amount of time);
- transferability (it can be moved with the help of technologies without prejudice to the data contained in it);
- reproduction outside by means of printing, replication, etc. actions, i.e. turning it back into a document.

4.4 It should be understood that the information contained in such a database about persons with disabilities from among the participants in the proceedings is informational in nature. These data are for the information of the person in charge of the proceedings in this case that it is necessary to apply a compensatory mechanism, the essence of which is to neutralize by procedural means the difference in the volume of the exercise of their rights that ordinary participants and participants from among persons with disabilities have.

5 CONCLUSIONS

The main conclusions based on the results of the presented study are as follows.

1. The absence in the Russian judicial system of a unified information database on persons with

disabilities who participated in the proceedings in certain categories of cases leads to a situation where, in case of their repeated participation in the process, the fact of their vulnerability may not be identified or identified by a person, but not taken into account by him.

2. In this regard, we consider it necessary to form such a database and its unified maintenance and filling, where unification is proposed to mean the creation of a digital environment for filling it with documents that are uniform for all authorities, in a uniform form and in order.

3. The use of digital technologies to create a database with uniform information blocks for all judicial bodies is one of the most important areas of unification.

4. In order to place a document in an information database, it must be machine-readable (perceived and read by a single program), machine-translated (encrypted by a program in the form of certain characters), machine-preserved (have the property of preservation) and machine-reproducible (if necessary, be replicated, printed, etc.).

5. Unification of evidence will entail unification of evidence, which further determines the unification of legal proceedings in cases involving persons with limited capabilities. As a remote option – unification of all procedures involving such persons when they fall within the scope of public legal relations.

6. In Russia, it is necessary to form a policy at the state level to ensure the realization of the rights of persons with disabilities, based on the modern concept of understanding the content and essence of vulnerability, reflected in the norms of international law and the legislation of a number of states of the Anglo-Saxon and Romano-Germanic families of law. It is necessary to single out as carriers of a special legal status of participants in legal relations involved in the justice system (and later in the sphere of public authority in general) not only such generally recognized categories as minors and disabled people, but also others who are in such a life situation that makes it difficult or impossible to independently exercise their rights and freedoms.

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