

## ISCKMC 2020

**International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»**

### ON THE LEGAL MEANING OF COGNITIVE FUNCTIONS OF PARTICIPANTS IN CRIMINAL PROCEEDINGS

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#### Abstract

The principle of protection of human and civil rights and freedoms in criminal proceedings is one of the fundamental ideas of criminal proceedings. However, it is important to understand that the content of this principle can and should change. Thus, the development of research on the cognitive functions of the human brain allows a new approach to the issue of the content of the legal status of participants in criminal proceedings, and raises the question of the need to ensure equal opportunities for exercise of rights by persons with limited cognitive abilities. Cognitive functions are mental processes through which people can perceive, transmit, analyze and memorize various data. In terms of the theory of law, this implies the categories that characterize the legal status of participants in legal relations, such as legal capacity. These legal categories indicate the scope and content of the possibility and ability of a person to exercise rights and fulfill obligations. These actions require the presence of the mental processes that characterize the level and state of cognitive functions. The imperative method of legal regulation of criminal procedural relations necessitates legislative consolidation of the provisions to ensure the implementation of these possibilities, including through introduction of additional guarantees for exercising the existing rights of participants with limited cognitive abilities, the provision of new rights for these people, and imposition of additional duties on the bodies responsible for criminal proceedings to protect the rights and freedoms of man and citizen in criminal proceedings.

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*Keywords:* Human rights, cognitive functions, criminal proceedings, participants, legal status



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## 1. Introduction

Mankind development goes in parallel with evolution of its biological characteristics; new types of cells appeared, and processes of their interaction and links between them became more complicated to solve more sophisticated problems. As a result, a new type of biological information appeared – cognitive information, i.e. information that is created (based on signals extracted from the environment and internal structures of organisms) and processed by the cognitive system of the human. Cognitive functions started to develop: thinking, memory, speech, attention, gnosis (spatial-temporal orientation, awareness of time and place), praxis (purposeful conscious activity). All this allows people to carry out social interaction. It predetermines the social essence of a person: the possibility to interact with each other means performance of action of at least one person (a group of people) on at least one other person (a group of people). Therefore, this is a type of action that features its direction towards another person (a group of persons) to transfer certain information from one side to the other.

Human interaction is ensured by the presence primarily of such attributes as:

- mind (cognitive activity that expresses the highest level of the thought process from the ability to think in general to the ability to analyze, abstract, generalize, synthesize the cognition results);
- communication (symbols through which the process of transferring information and its understanding is performed, where the most important thing is the word).

Any social interaction:

- is bound to a specific situation in which these parties are involved;
- implies certain subjective intentions of the participants in this interaction;
- has its own subject (purpose; reason) directed at another person (group of persons);
- expression outside with the help of symbols – signs that are perceived, deciphered and understood in an ideal case by the opposite side.

Social interaction should provide as an important component of interaction, that is, the presence of some kind of response, therefore this is interaction, the mutual activity of its participants on both sides.

At the same time, many factors will influence the effectiveness of interaction.

There were and are certain cognitive differences between populations, ethnic groups, social strata and individuals due to genetic mutations, a variety of factors of natural selection at any stage of historical development, geographical conditions, social differentiation, cultural differences, economic conditions, etc. (Merkulov, 2005).

It is individual cognitive properties that become particularly significant in the context of the study of various sciences: psychology, cognitive science, sociology, neurophysiology, etc., including law. In jurisprudence, a person is considered as a bearer of rights and obligations.

However, is this equality actually achieved? Is it achieved not only in practice, but in the legislation as well? Consider the example of criminal proceedings, where interaction of its participants occurs during criminal proceedings in different forms and types determined by the criminal procedure legislation.

## 2. Problem Statement

Participants in criminal procedural relations, like in other types of legal relations, are people (even if we are talking about a civil plaintiff (defendant) who is a legal entity – his interests will still be represented by a person, albeit in the procedural status of a representative). Involvement of these persons in proceedings on a specific criminal case is subordinated to the goals and objectives of criminal proceedings in general and a specific stage of the criminal process, in particular, as well as to the specifics of a certain procedural action. Therefore, the participants are involved in various types of interactions, which require cognitive functions of their brain to function efficiently.

However, this cannot always be carried properly. Cognitive abilities of an individual are also influenced by many factors: in addition to the objective group, examples of which are provided above, also objectively and subjectively individual: age, the presence (consequences) of diseases, physiological conditions, etc. including the specificity of the environmental location.

The criminal process is a special form of social interaction subordinate to the requirements of criminal procedure legislation. Nevertheless, it remains a sphere where people are communicating, and therefore subordinate to its general social characteristics. At the same time, with regard to the specifics of the issues solved by the criminal process, it is possible to state the features of this sphere, in which, voluntarily or not, specific subjects are involved as its participants. For the participants, the situation in which they are involved is stressful, which means that it affects the state of their cognitive functions. We do not mean such subjects of criminal procedural relations as an investigator, interrogator, prosecutor, judge, etc. Criminal procedural activity for these participants is their work, which they perform professionally on an ongoing basis, which means they are adapted to this work (although this does not imply they have stress resistance and are not subject to professional deformation; hence, procedural activity does not affect the state of their cognitive functions).

However, for the majority of participants involved in criminal procedural relations, this participation is not permanent, and hence familiar and understandable. These are often people with a general idea of criminal proceedings who have the most superficial knowledge of the criminal procedure legislation. For example, in Russia, about 10 million people annually participate in the investigation and consideration of criminal cases as victims and witnesses for especially grave crimes, and one in five of them is threatened and told to change or reject the testimony given (Ishuk, 2014). As a result, a triple effect is exerted on the subject: observation of the act related to especially grave crimes, involvement in typically unfamiliar which makes it even more terrible (as a result of the specifics of goals and objectives, the severity of possible consequences, and imperative methods of regulation) sphere of criminal proceedings, and threats of suspects, accused, their relatives, friends, members of criminal groups, etc. The first two factors are sufficient to have a negative impact on the cognitive abilities of this person, and, as a result, on the ability to be aware of their actions and to govern them (Tkachenko et al., 2014), while realizing their status as a participant in criminal proceedings (Potapov, 2019).

The reaction to an event is a consequence of a whole series of stages and operations carried out by the brain: perception, coding of information, reproduction of information from memory, formation of concepts, judgment and formation of statements (Solso, 2006). Each of them is an independent mechanism, and all together is a complex a cognitive system of complex cognitive structures, cognitive programs and

metaprograms working together almost simultaneously. Human consciousness cannot control the process of receipt and processing of information (perception of symbols). This occurs unconsciously (Safronova, 2016) at the genetic level and is the result of the biological evolution of humanity as a type of population, which allows us to consider perception as an independent autonomously acting cognitive ability of a person. Consciousness can influence the completed to some extent work of cognitive mechanisms of perception perceptual images and their sequences, controlling them. At the same time, other cognitive abilities are very important: attention, memory, pattern recognition, etc. (Merkulov, 2005). The importance of self-perception cannot be ignored, since it affects the characteristics of the perception of the world (Gibson, 1988).

The modern concept of the legislator about the participants in criminal proceedings does not take into account the data available in other sciences. In the norms of the Russian Criminal Procedure Code, no provisions reflect understanding of the multilevel state of the cognitive functions of the participants in the regulated legal relations. Thus, a special legal status of juvenile suspects and accused is enshrined in the Code of Criminal Procedure of the Russian Federation (Ch. 50), which is the result of international standards specified in this area (Bertovsky, 2017). The specifics of participation of underage victims and witnesses in some procedures is partially enshrined in the Code (Art. 191), as well as the specifics of criminal proceedings related to the application of compulsory medical measures against persons who have committed a crime in a state of insanity, or persons who, after committing a crime, have a mental disorder that makes it impossible to either impose or execute punishment, but not the features of their legal status (Ch. 51).

However, there is no systematic approach to resolving the following issues: cognitive functions of the elderly (Arpentieva (Minigalieva), 2015; Maleina et al., 2016), people with diseases that affect the level of their cognitive functions, for example, patients with HIV infection (Ulyukin, 2014), hypertension (Parfenov et al., 2018), epilepsy (Usyukina et al., 2016), heart diseases (Petrova et al., 2017), neurodegenerative diseases (Chimagomedova et al., 2017), etc. In addition, it is necessary to employ an integrated method based on interdisciplinary scientific relations that takes into account advances in modern human sciences.

### **3. Research Questions**

The object of the study was:

1. Participants in criminal proceedings as bearers of procedural rights and obligations. In different sciences (philosophy, anthropology, medicine, psychology, biology, etc.), a person is viewed from different sides. A feature of jurisprudence is that the participants in legal relations are both bearers of rights and obligations, and their implementers. However, it is important to understand to what extent a specific person who has rights and obligations is capable of realizing them by his actions. Thus, it becomes necessary to turn to other sciences that can help understand this issue, in particular, to apply a cognitive approach.

2. Cognitive functions of participants in criminal proceedings as representatives of the human race: attention, thinking, memory, speech, gnosis, praxis, etc. Cognitive information is localized in the neural regions of the brain. It is the brain that determines the ability of a person, a participant in criminal procedural relations, to be aware of the nature of his actions and to manage them using cognitive functions.

3. The legal status of participants in criminal proceedings, which includes their rights, obligations and related legal categories. At the same time, in some branches of law, the legislator provides for such institutions as: legal capacity, incapacitation, 'incomplete' (due to age) legal capacity, due to which he can provide the possibility of participation in certain legal relations and various kinds of guarantees to those people who need to 'align' this possibility. These institutions are absent in criminal proceedings, which makes it difficult and often impossible to ensure implementation of such principles of criminal proceedings as equality of rights of participants, protection of human and civil rights and freedoms, legality.

#### **4. Purpose of the Study**

The study aimed to consider the features of the category 'participants in criminal proceedings' in the context of a cognitive approach, to analyze the possibilities and abilities of participants to realize their rights and obligations in relation to the capabilities and abilities of their cognitive functions in terms of equality of participation in criminal proceedings and protection of human rights and freedoms in criminal proceedings.

#### **5. Research Methods**

The study employed such logical methods as: analysis, induction, deduction, abstraction, modeling, statistical and others. The interdisciplinarity of the issues raised in the paper predetermined the use of complex and systemic methods for their consideration, and the proposal to take into account the specifics of human cognitive functions in formation of the legal status of participants in criminal proceedings necessitated the use of a cognitive approach.

#### **6. Findings**

Participants in criminal proceedings are the bearers of procedural rights and obligations, and a person himself is the bearer of the status of a specific participant. Thus, when forming the legal status of participants in criminal proceedings in order to determine the possibility of their participation, it is initially necessary to consider their capabilities and human abilities, and only then reflect the features of the functional status as a participant.

Criminal proceedings is an area of interaction between its participants regulated by the norms of criminal procedure law, in which not only legal but also cognitive possibilities of this interaction should be taken into account by law (Bertovsky, 2015). Thus, when providing guarantees for realization of the rights of participants in criminal proceedings, it is necessary to consider the level of their cognitive abilities. Accordingly, it is necessary to provide legislated guarantees that ensure the possibility of full realization of rights and obligations by those participants in criminal proceedings who have limited cognitive capabilities.

## 7. Conclusion

Trends in the development of modern sciences can be defined by the term ‘globality’. This implies the scale of the raised issues, the interdisciplinary level of research, and its significance for other sciences. This trend, which has matured objectively as a result of industrial knowledge accumulated over a long period of time, is based on the opportunities provided by the current level of development of information and other technologies, especially when it comes to categories of global importance to which the category of a person belongs.

The legislator is to respond to changes taking place in society and the state, with due regard to political, social, cultural and other changes. The task of the science of law, in turn, is to provide support.

At present, the concept of a participant in criminal proceedings used in the theory of Russian criminal procedure needs revision due to the development of cognitive science and cognitive research.

The cognitive approach, which is the basis for formation of the legal status of participants in criminal proceedings, will contribute to reflection of the level of their cognitive functions, and therefore, to implementation of the principles of criminal procedure and the effectiveness of criminal procedure activities.

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