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INTERNATIONAL DIMENSION OF A JUVENILE JUSTICE

MIĘDZYNARODOWY WYMIAR SPRAWIEDLIWOŚCI DLA NIELETNICH

Abstract: The article legally analyses international standards of the interrogation of juveniles who are suspected of having committed a criminal offence. The procedural order and tactical features of the interrogation of a minor, that are outlined in international law, are analysed. The author defines the criteria, specific rules of interrogation, as well as requirements for such procedural action. Further improvement of national legislation in accordance with international standards in the field of criminal procedural support of pre-trial investigation is necessary.

Zarys treści: Artykuł prawnie analizuje międzynarodowe standardy przesłuchiwanie nieletnich podejrzanych o popełnienie przestępstwa. Przeanalizowano porządek proceduralny i cechy taktyczne przesłuchania nieletniego, które są określone w prawie międzynarodowym. Autorka określa kryteria, szczegółowe zasady przesłuchania, a także wymagania dotyczące takiego postępowania procesowego. Niezbędna jest dalsza poprawa ustawodawstwa krajowego zgodnie z międzynarodowymi standardami w dziedzinie postępowania karnego wspierającego postępowanie przygotowawcze.

Key words: international standards, interrogation of a juvenile, criminal offence, European Union, national legislation

Słowa kluczowe: standardy międzynarodowe, przesłuchanie młodocianego, przestępstwo karne, Unia Europejska, ustawodawstwo krajowe

Formulation of the problem

International standards of interrogation, including of juveniles who are suspected of having committed a criminal offence, should be defined as normative requirements, enshrined in the format of generally accepted principles and norms, which provide for the minimum necessary procedural rules of criminal proceedings, which become mandatory for a particular state after ratification. In fact, international standards are

aimed at providing the necessary legal status of a person. Any non-compliance with such standards should be considered a violation, have negative consequences for the perpetrators and provide a set of measures to restore violated rights and freedoms.

The study of the components of the procedure of interrogation of a minor such as age, duration of interrogation and the composition of the participants of the investigative (search) action, etc., allows us to conclude that the problems associated with the involvement of a teacher or psychologist, legal representatives or video recording of the interrogation exist not only in Ukraine.

Analysis of research and publications

The general international legal acts that establish the requirements for a pre-trial investigation include the following:

1. The Charter of the United Nations and the Charter of the International Court of Justice.¹
2. Universal Declaration of Human Rights.²
3. International Covenant on Civil and Political Rights.³
4. International Covenant on Economic, Social and Cultural Rights.⁴
5. Optional Protocols to the International Covenant on Civil and Political Rights.⁵
6. Convention on the Rights of the Child.⁶
7. Guidelines on justice in matters related to the participation of child victims and
8. witnesses of crime.⁷

¹ *The Charter of the United Nations and the Charter of the International Court of Justice*, Database „Legislation of Ukraine”, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/995_010#Text, [access: 23.02.2022] (in ukrainian)

² *Universal Declaration of Human Rights*, Database “Legislation of Ukraine”, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/995_015#Text, [access: 23.02.2022] (in ukrainian).

³ *International Covenant on Civil and Political Rights*, Database „Legislation of Ukraine”, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/995_043#Text, [access: 23.02.2022] (in ukrainian).

⁴ *International Covenant on Economic, Social and Cultural Rights*, Database „Legislation of Ukraine”, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/995_042#Text, [access: 23.02.2022] (in ukrainian).

⁵ *Optional Protocols to the International Covenant on Civil and Political Rights*, Database „Legislation of Ukraine”, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/995_086#Text, [access: 23.02.2022] (in ukrainian).

⁶ *Convention on the Rights of the Child of 20 November 1989 (as amended by UN General Assembly resolution 50/155 of 21 December 1995)*, Database “Legislation of Ukraine”, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/995_021#Text, [access: 23.02.2022] (in ukrainian).

⁷ *Guidelines on justice in matters related to the participation of child victims and witnesses of crime. International document adopted by the United Nations on July 22, 2005*, Database “Legislation of Ukraine”, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/995_e54#Text, [access: 23.02.2022] (in ukrainian).

One of the defining documents detailing the requirements for questioning a child witness or victim of criminal abuse is the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention 2007, CETS № 201), ratified by the Verkhovna Rada of Ukraine on 27 August 2012. In particular, Art. 35 of the Convention directly concerns interviews of children.

Working on the above raised topics, we considered the works of many Ukrainian and foreign researchers in this field. As a rule, scholars in the field of criminal procedural law examine the following criteria for the interrogation of a juvenile: venue, duration and frequency. At the same time, the issue of regulation of juvenile interrogation is considered by criminologists and specialists in the field of child and adolescent psychology in the context of the child's age, requirements for the subject of interrogation and prevention of re-victimization, etc.

The purpose and task of this article is a scientific and theoretical substantiation of the modern significance of international standards of interrogation of a juvenile who is suspected of having committed a criminal offence.

Analysing the legislation of different countries, including Poland, Romania, Russia and Great Britain, etc., we can identify the following components of the procedure for interrogation of a minor:

1. *The age of the minor*, as the duration of the interrogation depends on this. The Ukrainian scientist N.V. Pavliuk provides the following recommendations on the duration of the interrogation of a juvenile: 'in most cases, juveniles of the younger age group can testify productively from 15 to 20 minutes, in particular, it concerns the interrogated children 3–5 years old; 5–7-years old minors – about 20–25 minutes; 7–10-years old – from 25 to 35 minutes'. If the person conducting the interrogation does not have time to discover the issues of interest during this time, it is advisable to take a break. However, it is important to realise that after two periods of interrogation, the productivity of the intellectual activity of minors decreases.⁸

2. *Subjects of interrogation and its participants*. Article 25 of the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse of 25.10.2007, ratified by the Verkhovna Rada of Ukraine on 20 June 2012, provides that 'interviews shall be conducted by a person specially trained for this purpose'.⁹ Thus, in accordance with the provisions of Part 2 of Art. 484 of the CPC of Ukraine, the guarantee of the rights of children and minors is a special procedure for criminal proceedings in this category. Included in this are criminal proceedings instituted against several people together where at least one of whom is a minor. This is carried out by an investigator who is specially authorized by the head of the pre-trial investigation body to conduct pre-trial investigations into minors. At the same time, courts must be shown documents

⁸ N.V. Pavliuk, *Vikovo-psihologichni osoblivosti nepovnoletnih ta mozhlivosti ih zastosuvannia pid chas dopitu*, Problemy zakonnosti, Vup.68, Kharkiv, Nationalna uridichna academia Ukraini im. Yaroslava Mudrogo 2004, p. 197 (in ukrainian).

⁹ *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007*, Database „Legislation of Ukraine”, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/994_927#Text6-200, [access: 23.02.2022] (in ukrainian).

confirming the fact of pre-trial investigation of minors by a specially authorized investigator, as the evidence obtained as a result of pre-trial investigation of a minor by an unauthorized entity, by virtue of paragraph 2 Part 3 of Art. 87 of the CPC of Ukraine, is inadmissible. However, neither the CPC of Ukraine nor any other law clearly specifies the necessary qualifications and requirements for this category of investigators. Similar requirements are contained in the legislation of Romania, Russia, Norway and other countries.

Other participants in the interrogation include the legal representatives of the juvenile suspect or accused. According to Art. 44 of the CPC of Ukraine this may involve parents (adoptive parents) and, in their absence, guardians or trustees of the person, other close adult relatives or family members, as well as representatives of guardianship and trusteeship, institutions and organizations under whose guardianship or care a minor is placed if incapacitated or partially incapacitated.

3. *Videotaping of the interrogation.* In particular, Part 5 of Art. 244 of the CPC of Ukraine stipulates that photography, audio and / or video recording may be used during interrogation. However, Ukrainian investigators do not always use this opportunity, for various reasons: they do not have the technical capacity, specially equipped premises, time, etc., thus often subjecting juvenile victims to re-victimization.

In other countries, such as the United Kingdom, the police use special facilities to conduct investigations involving minors. Such facilities are located outside the police stations and are equipped in such a way that the child can quickly adapt to the new environment. Similar interrogation rooms for children who have been sexually abused or witnessed such crimes are used in various countries: Germany, Poland, the United States, Estonia, Bulgaria, and others. In Germany, Estonia and Poland, these rooms are painted blue, but regardless of the colour, these rooms may still be called child-friendly rooms. For example, in Tartu, Estonia, such a room was set up in 2000 on the premises of the Police Investigation Service. The room was decorated by child psychologists and an artist from the Tartu Child Support Center. There is a favourable atmosphere with equipment, upholstered furniture, toys and books for different ages, and a drawing board, etc. Present are all the things required to interview a child, in particular, anatomical dolls, drawings, tests and questionnaires. Under Estonian law, children under the age of 14 are always interviewed in the presence of assistance service staff for victims of violence or witnesses. In a number of countries, special rooms for interviewing children are operated by non-governmental organizations. For example, in Moldova, a room of the non-governmental organization La Strada-Moldova is used to interview children whilst in Poland facilities of the Nobody's Children Charitable Foundation are used, as well as those of social services and the Child Protection Center. In general, the standards of arrangement of such rooms around the world do not impose restrictions on their affiliation and location, but only recommend their arrangement to institutions that have the right and ability to administer such facilities. The main requirement for these rooms is the presence of a comfortable room that provides the child with a sense of security and confidentiality and meets the needs of children to feel physically and psychologically safe during the interview.

In particular, the key requirement of the room is to allow the child to be interviewed by only one specialist (for example a judge or investigator), while all other participants (the accused's lawyers, prosecutor, etc.) can observe the interview from other rooms and communicate with the interviewer through a remote communication system. Experts also recommend providing for the possibility for a child victim of a crime to wait for the interview in a safe and child-friendly atmosphere, separate from the accused or suspect. Such a room should have proper soundproofing, meet the needs of children of all ages, with an interior in pastel colours. Among the main requirements for the equipment of such rooms / premises are methodical materials and psychodiagnostic tools for obtaining the necessary information from the child. The 'Green Room' helps children to feel a cosy, friendly atmosphere, promotes open, trusting communication and dialogue with adults. Experience shows that children in such rooms are better at communicating.

This practice is gradually being implemented in Ukraine using the 'Green Room' method.¹⁰ 'Green rooms' are a new phenomenon for Ukraine, the term first appearing in official documents only in 2008. In 2008 the Criminal Police Department for Children issued Guidelines for the organization and operation of the 'green room' for children in need of social and psychological protection. According to these Guidelines, preventive work with children aged 5 to 18 in the following categories should be carried out in 'green rooms': neglected and homeless; living in disadvantaged families; persistently run away from families and educational institutions; engaged in vagrancy and begging; have been victims of violence or have committed domestic violence themselves; are registered with the police; have committed administrative offences; have committed socially dangerous acts before reaching the age of criminal responsibility; have been released from punishment with the use of coercive measures of an educational nature; have committed a crime; have been released from prison; have been returned from special institutions of social rehabilitation; are prone to alcohol, drugs and psychotropic drugs. Unfortunately, this list of categories of children does not include children who are victims and witnesses of crimes, especially sexual violence and exploitation. Guidelines for the arrangement of such rooms were also far from international standards and were limited to the requirements for the colour of walls, wallpaper, floors, carpets, furniture (should be green), the appropriate temperature and fresh air, sound insulation, proper lighting, indoor flowers, toys and books, appropriate sound design and the presence of soft chairs. They also recommended the need to organize two rooms, separated by glass for visual surveillance and installation of video equipment. These methodical recommendations were not approved at the level of an order or instruction from the Ministry of Internal Affairs of Ukraine.

¹⁰ *Metodichni rekomendacii shodo opituvannia ditei, sho staly svidkamy ta/abo gertvamy nasilstva, a takog vchinily nasilstvo: Metod.posib./ Avtory-uporyad.: D. Puras, O. Kalashnik, O. Kochemirovska, T. Cjuman, za zag. red. T. Cjuman, Kyiv 2015, p. 114, <http://elibrary.kubg.edu.ua/id/eprint/10717/1/%D0%9F%D0%BE%D1%81%D1%96%D0%B1%D0%BD%D0%B8%D0%BA-%D0%BE%D0%BF%D0%B8%D1%82%D1%83%D0%B2%D0%B0%D0%BD%D0%BD%D1%8F-%D0%A0%D0%84.pdf>, [access: 23.02.2022] (in Ukrainian).*

The basic principles of juvenile criminal law in Germany are the educational idea that the main purpose of criminal law measures applicable to minors should be special individual prevention. The Juvenile Court Act (Jugendgerichtsgesetz (hereinafter – JGG)) provides that the application of juvenile criminal law must prevent, above all, new crimes against young people.¹¹ One of the components of German juvenile law is juvenile justice. This combines prescriptions of both substantive and procedural nature, takes into account the age characteristics of the minor and the special principles of juvenile law. The main provisions of juvenile justice are defined in the Juvenile Court Act of 1953, which, with changes and additions, are still in force today. At the same time, the JGG is not the only source of juvenile criminal proceedings. Minors are also subject to the general provisions of German law, but only those that do not contradict or are not regulated by the JGG.

Experience with the instruction on interrogation by officers in the USA shows the considerable similarity of the majority of organizational and tactical approaches to interrogation. However, there are also many techniques and approaches that differ significantly, for example, in the United States, parents are not allowed to be present during the interrogation of their minor child.¹²

Studying the experience of interrogation of juvenile participants in criminal proceedings in countries where the priority is to protect the rights and legitimate interests of juveniles, namely: Norway, Sweden and the United Kingdom, we noted a significant difference in the tactics of interrogation. While, in Ukraine, the investigator must interrogate a minor suspect in the presence of the above-mentioned persons in the same room, in Norway others are not present in the room where the child is being interviewed, they (parents, legal representatives, lawyer, etc.) observe the interview through viewing glass and do not have the opportunity to influence the testimony in any way. Usually, minors should be questioned by a person of the same sex. However, it is noted that children are more willing to communicate with women. If rapport with the juvenile cannot be established, the police officer must leave the interrogation room and allow the child to be distracted. It is important to discover whether the juvenile wishes to be questioned by another person.

Recently, Ukraine has been actively discussing the introduction of interrogation methods into the activities of pre-trial investigation bodies' procedural interviews. These techniques are actively used in the United States, Canada, Great Britain and the European Union. The SUE (Strategic Use of Evidence) or model of strategic use of evidence was developed by Swedish scientists during a research programme.

¹¹ *Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Jugendgerichtsgesetz 1988, Fassung vom 29.11.2020*, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825>, [access: 23.02.2022] (in German).

¹² *Police Questioning of Juveniles (Minors) in California Criminal Cases*, <https://www.shouselaw.com/ca/juvenile/interrogation-of-minors/>, [data access: 23.02.2022] Nele M. Hingmann «Examining an adaptation of the Strategic Use of Evidence approach when interviewing suspects» 2019. http://essay.utwente.nl/78972/1/Hingmann_BA_BMS.pdf, [access: 23.02.2022] (in English).

The purpose of this model is to improve the investigator's ability to infer the accuracy of information by identifying signs of truth or falsity in the suspect's testimony.¹³

The model of strategic use of evidence consists of strategic and tactical levels. The strategic level is based on four basic principles that apply to each case:

- the suspect's idea of the available evidence;
- strategies to counter the suspect;
- verbal responses of the suspect;
- change of perspective (attempt by the investigator to put themselves in the situation of the suspect).

The tactical level is a set of different tactics for questioning and disclosing evidence during a procedural interview. The use of one or another tactic by investigators depends on whether the suspect is lying or telling the truth.

The effectiveness of the model of strategic use of evidence is evidenced by the results of a study, according to which a group of law enforcement officers who received special training were able to distinguish truths from lies in 85.4% of cases, while in groups of officers who did not receive appropriate training, this accuracy was only 56.1%.

Conclusions

On the basis of the conducted research certain standards of interrogation of minors are defined. The organization of work should be carried out on the basis of an individual approach to each child, taking into account their age and psychological characteristics. It is important to understand the psychological characteristics of communication with minors, depending on the situation of interaction and taking into account age. The basis of effective interaction with a child is compliance with specific rules related to the presence of:

1. a safe adult with knowledge of the psychological, physiological and age characteristics of the child's development, the peculiarities of communication with the child, taking into account age, communication skills and skills necessary for effective communication with the child;
2. a safe environment or so-called 'green room', which is an organized system of measures aimed at ensuring the legality, humanity and effectiveness of any decision regarding a child who is in conflict with the law or is in contact with the law.

To avoid traumatic situations, most countries use the practice of friendly interrogation, where only one specialist speaks to the child (a specially trained police officer

¹³ *Strategic Use of Evidence (SUE) Leading Into The CVSA Interview* . <https://www.cvsal.com/interviewing-and-interrogation/strategic-use-of-evidence-sue-leading-into-the-cvsa-interview/>, [access: 23.02.2022].

/ prosecutor / psychologist / forensic examiner / judge, etc.), and other specialists are in another room watching the interrogation. They have the opportunity to pass one or two questions through special headphones to the specialist who interviews the child, as well as to discuss the necessary questions during breaks.

Thus, our analysis of international law on the standards of interrogation of a juvenile who is suspected of having committed a criminal offence, allows us to conclude that the interrogation procedures in Ukraine, as in most countries of the world, meets international standards. Unfortunately however, in Ukraine, these international standards are not fully applied, which indicates the need to improve the legal regulation of these investigations, expand the scientific, technical and tactical arsenal of the investigation and increase the professional skills of investigators and operative workers.

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Summary

It is common in Ukraine to use the term “interrogation”, as this term is used in the Criminal Procedure Code of Ukraine. At the same time, in accordance with international standards, the term “interrogation” is used when meaning interrogation as a procedural action, as well as any other options for interviewing a child by authorized persons. However, in reality, it is not the term that plays a decisive role, but the approach to it. The organization of either the interrogation or the interview should take into account the age and psychological characteristics of the child of the appropriate age, and the process itself – regardless of the term used – should be child-friendly.