

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp
197402ZU34



CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.39

Nº 70

2021



Obtaining the testimony of a minor during the pre-trial investigation under the laws of Ukraine

DOI: <https://doi.org/10.46398/cuestpol.3970.23>

Viktoriia Zarubei *

Yuliia Komarynska **

Andrii Babenko ***

Yuliia Sukhomlyn ****

Nataliia Kononenko *****

Abstract

The scientific article, based on the provisions of the theory of criminal procedure, criminology, psychology, reveals the problems of obtaining the testimony of a minor during the pre-trial investigation according to the laws of Ukraine. It is noted that the method of obtaining testimony should be based on the age and procedural status of the minor, which requires a special approach considering the vulnerable state, social immaturity, and the risk of violation of the rights and freedoms of such persons. The study used general scientific methods to determine certain legal categories that characterize the interrogation procedure of a minor, as well as special methods. The practice of introducing «green rooms» in the field of criminal justice is recognized as promising, as the child's environment during relevant procedural actions is extremely important for establishing contact with the child. It is concluded that the lack of desirability of classifying a minor suspect as a subject for questioning in court during a pre-trial investigation is justified, as it would be contrary to the requirements of the law on the immediacy of the examination of evidence in court.

* Candidate of legal sciences, Professor, Professor of the Department of Criminal Procedure, National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-6690-967X>. Email: zarybey@bigmir.net

** Candidate of legal sciences, Associate Professor, Deputy Director of the Educational and Scientific Institute № 3 for educational and methodological and scientific work, National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-1747-1816>. Email: ubk2006@ukr.net

*** Doctor of Law, Professor, Professor of the Department of criminal law and criminology, Odesa State University of Internal Affairs, Odesa, Ukraine. ORCID ID: <https://orcid.org/0000-0002-9498-2484>. Email: an.babenko@ukr.net

**** Candidate of legal sciences, Associate Professor, Associate Professor of Criminal Procedure, National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-5699-6914>. Email: sjulia25@ukr.net

***** Candidate of legal sciences, senior lecturer at the Department of Criminology and Forensic Medicine, National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-0298-3958>. Email: natashakononenko26@ukr.net

Keywords: test; youthful testimony; interrogation of a minor; pre-trial investigation; juvenile legislation in Ukraine.

Obtención del testimonio de un menor durante la investigación previa al juicio bajo las leyes de Ucrania

Resumen

El artículo científico, basado en las disposiciones de la teoría del procedimiento penal, criminología, psicología, revela los problemas de obtener el testimonio de un menor durante la investigación previa al juicio según las leyes de Ucrania. En particular, se observa que el método de obtención del testimonio debe basarse en la edad y situación procesal del menor, lo que requiere un enfoque especial teniendo en cuenta el estado vulnerable, la inmadurez social y el riesgo de vulneración de los derechos y libertades de tales personas. El estudio utilizó métodos científicos generales para determinar ciertas categorías legales que caracterizan el procedimiento de interrogatorio de un menor, como también métodos especiales. La práctica de introducir «salas verdes» en el campo de la justicia penal se reconoce como prometedora, ya que el entorno del niño durante las acciones procesales pertinentes es extremadamente importante para establecer contacto con el niño. Se concluye que, la falta de conveniencia de clasificar a un menor sospechoso como sujeto para ser interrogado en el tribunal durante una instrucción previa al juicio está justificada, ya que sería contrario a los requisitos de la ley sobre la inmediatez del examen de las pruebas en el tribunal.

Palabras clave: prueba; testimonio juvenil; interrogatorio de un menor; averiguación previa al juicio; legislación de menores en Ucrania.

Introduction

In order to quickly and fully disclose a crime, expose the perpetrators and ensure the correct application of the law, the person conducting the pre-trial investigation must have indicative and evidentiary information, which is «collected by means of criminal procedure law and from sources of evidence, material evidence. documents, expert opinions» (Part 2 of Article 84 of the Criminal Procedural Code of Ukraine) (Criminal Procedural Code of Ukraine, 2012).

Investigative (search) actions, which are enshrined in a logical sequence in Section III of the Criminal Procedural Code of Ukraine, are one of the main ways to gather factual information for further evidence. They are the measures consisting of a set of search cognitive and certifying techniques, conducted by a subject authorized by the criminal procedure law in the manner prescribed for each of them in order to identify and consolidate factual data and information about their sources to obtain evidence in criminal proceedings and their verification.

In Part 1 of Art. 223 of the Criminal Procedural Code of Ukraine stipulates that investigative (search) actions are actions aimed at obtaining (collecting) evidence or verification of already obtained evidence in a particular criminal proceeding. The content of the Criminal Procedural Code of Ukraine shows the existence of such types of investigative (search) actions as interrogation (Articles 224-226, 232 of the Criminal Procedural Code of Ukraine); presentation for identification (Articles 228-232 of the Criminal Procedural Code of Ukraine); search (Articles 234-236 of the Criminal Procedure Code of Ukraine); review (Articles 237-239 of the Criminal Procedural Code of Ukraine); investigative experiment (Article 241 of the Criminal Procedure Code of Ukraine); examination (Articles 242-245 of the Criminal Procedural Code of Ukraine) (Criminal Procedural Code of Ukraine, 2012).

1. Methodology of the study

A comprehensive study of the method of obtaining the testimony of a minor during the pre-trial investigation is possible only through a combination of different methodological studies. The methodological basis of the scientific article is a system of general scientific and special methods of cognition. General scientific methods used in the scientific article include the dialectical method, deductive and system method, methods of analysis and synthesis.

With the help of the dialectical method it became possible to learn the content of such categories as «interrogation», «testimony», «evidence», «minor» and others. Methods of analysis and synthesis allowed to select and analyze information on the research topic, provided the formulation of intermediate conclusions in the article.

The essence of the systemic method is that the process of investigating war crimes is seen as a certain system that is included in a broader system, performs certain functions and is associated with various connections. The systematic approach made it possible to analyze the investigative and judicial practice of investigating juvenile delinquency.

Special scientific methods used in writing a scientific article include hermeneutic, formal-legal method, sociological and statistical methods.

The application of the hermeneutic method allowed to qualitatively analyze and clarify the content of legal documents, including the provisions of the Criminal Procedure Code of Ukraine, which regulate the legal relationship between the investigator and the juvenile who testifies. The formal-legal method was used to interpret certain legal concepts and categories. Sociological and statistical methods were used in the study of materials of law enforcement practice and generalization of scientific results.

2. Analysis of recent research

The study of scientific literature shows that the study of issues related to the peculiarities of the investigative (search) actions with the participation of a minor or a juvenile in criminal proceedings, actively engaged in such scientists as O.G. Babenko (Babenko, 2020), E.V. Vasque (2010), S.W. Kuznetsova, T.C. Kobtsova (2004), D.B. Sergeeva (2018), S.I. Smyk (2018), O.S. Starenkyy (2018), G.O. Chorniy (1998), O.B. Yakovina (2020) and others. However, in the conditions of constant amendments to the current the Criminal Procedural Code of Ukraine, development of investigative and judicial practice, the need to fulfill Ukraine's international legal obligations, some theoretical issues need to be revised and brought into line with the new conditions of criminal proceedings.

Carrying out investigative (search) actions against minors requires a special approach, taking into account the vulnerable state, social immaturity and the risk of violation of the rights and freedoms of such persons (Babenko, 2020). Thus, there is a need to cover these issues, provide scientifically sound proposals for their solution and, on this basis, the specifics of the evidentiary activities during the pre-trial investigation by conducting investigative (search) actions based on standards of rights and legitimate interests of minors as participant in criminal proceedings.

3. Results and discussion

The complex and multifaceted nature of the interrogation of minors (regardless of their procedural status) is that it covers procedural, tactical, organizational, psychological, pedagogical, and ethical aspects (Kuznetsova and Kobtsova, 2004).

Article 226 of the Criminal Procedural Code of Ukraine, which regulates the specifics of interrogation of minors during pre-trial investigation

(including suspects), provides that the interrogation of a minor or a juvenile is conducted in the presence of a legal representative, teacher or psychologist, and if necessary - a doctor. Prior to the interrogation, they are explained the obligation to be present during the interrogation, as well as the right to object to questions and ask questions. Also, when conducting investigative (search) actions with the participation of a minor or a juvenile, the participation of a legal representative, teacher or psychologist is provided, and if necessary - a doctor. Prior to the beginning of the investigative (search) action, the legal representative, teacher, psychologist or doctor is explained their right to ask clarifying questions to an underage or a minor. In exceptional cases, when the participation of a legal representative may harm the interests of a minor or juvenile witness, victim, investigator, prosecutor at the request of a minor or juvenile or on its own initiative has the right to limit the participation of a legal representative in certain investigative (search) actions. in criminal proceedings and involve another legal representative instead (Article 227 of the Criminal Procedural Code of Ukraine) (Criminal Procedural Code of Ukraine, 2012).

The interrogation of a juvenile in criminal proceedings in accordance with the current Criminal Procedural Code of Ukraine is carried out in the general order under the rules of Art. 224 of the Criminal Procedural Code of Ukraine, but with certain features. In particular, a doctor is involved in the interrogation of a juvenile (minor) witness or victim, if as a result of a criminal offense, a witness (victim) of which he was, the latter developed temporary mental disorders or physical health disorders.

The interrogation as an investigative (search) action is conducted by a specially authorized investigator. This conclusion, according to the fair statement of D.B. Sergeeva and O.S. Starenkogo man, follows from Part 2 of Art. 484 of the Criminal Procedural Code of Ukraine, in particular criminal proceedings against a minor, including if criminal proceedings against several persons, at least one of whom is a minor, are carried out by an investigator specially authorized by the head of the pre-trial investigation body to conduct pre-trial investigations against minors (Starenkyy and Sergeeva, 2018).

The Joint Order of the Ministry of Internal Affairs and the Prosecutor General's Office of Ukraine «On Improving Cooperation on the Rights and Interests of Minors in Criminal Proceedings» of August 9, 2013 № 79/867 provides that criminal proceedings against minors are carried out by a specially authorized investigator with no investigative experience. less than three years (On The Peculiarities Of The Performance Of The Functions Of The Prosecutor's Office On The Protection Of The Interests Of Children And Combating Violence, 2020).

Despite the fact that the current the Criminal Procedural Code of Ukraine does not establish appropriate requirements for the specialization

of prosecutors as procedural leaders in criminal proceedings against minors. However, paragraph 5 of the Order of the Office of the Prosecutor General «On the peculiarities of the functions of the prosecutor's office on the protection of the interests of children and combating violence» from 04.11.2020. N° 509 defines the duty of the juvenile prosecutor to ensure the performance of the functions of the prosecutor in criminal proceedings provided by the Criminal Procedural Code of Ukraine: in the field of child protection; in which a minor is involved in the proceedings as a victim or is a person whose rights and interests have been violated or may be violated as a result of a criminal offense; in respect of a minor, including if criminal proceedings are instituted against several persons, at least one of whom is a minor, in respect of a person who has not reached the age of criminal responsibility (On The Peculiarities Of The Performance Of The Functions Of The Prosecutor's Office On The Protection Of The Interests Of Children And Combating Violence, 2020).

Given that the principle of legality requires that laws and other regulations of Ukraine, the provisions of which relate to criminal proceedings, comply with the Criminal Procedural Code of Ukraine (Part 3 of Article 9 of the Criminal Procedural Code of Ukraine), D.B. Sergeeva and O.S. Starenkyy The old man gives convincing arguments to supplement Art. 484 of the Criminal Procedural Code of Ukraine provisions on the conduct of pre-trial investigation of minors not only the relevant investigator, but also the prosecutor, who is specially authorized to provide procedural guidance in criminal proceedings against minors (Starenkyy and Sergeeva, 2018).

Evidence obtained during the proceedings in criminal proceedings against a minor by an official who by virtue of Part 2 of Art. 484 of the Criminal Procedural Code of Ukraine is not authorized to conduct investigations into minors. Thus, the decision of the appellate court changed the verdict of the court of first instance against A. and B., whose actions were reclassified by the appellate court under Part 2 of Art. 187 of the Criminal code of Ukraine on h. 2 Art. 186 of the Criminal code of Ukraine. The cassation appeal, among other things, raised the question that the forensic examination to determine the severity of injuries to the victim is inadmissible evidence, as this examination is based on the decision of an official who by virtue of Part 2 of Art. 484 of the Criminal Procedural Code of Ukraine is not authorized to investigate minors. The Supreme Court upheld the impugned decision, inter alia, stating that the prosecution had not proved on appeal that Investigator V. had been authorized to conduct the said criminal proceedings against the minors A. and B. On the basis of the above, the Court of Appeal found that that the forensic medical examination to determine the severity of injuries to the victim is inadmissible evidence, as it is appointed on the basis of the decision of the official, which by virtue of Part 2 of Art. 484 of the Criminal Procedural Code of Ukraine is not authorized to conduct investigations into minors. The prosecutor's arguments that the investigator, who was not

authorized to investigate minors, had an investigator who had such powers as to ensure the legality of investigative (search) actions, were declared incompetent by the Supreme Court and the decision of the appellate court was lawful, substantiated. and motivated (Resolution Of The Supreme Court, 2018 in case № 158/2313/15-k).

Interrogation is the most common investigative (search) action, which is repeatedly conducted in each criminal proceeding, and the results of his testimony contain numerous references in both indictments and verdicts. The specified investigative (search) action is «a universal action by means of which the investigator can obtain evidentiary information in almost all circumstances of the subject of evidence» (Solov`ev, 2002). The main purpose pursued by the investigator during interrogation is to obtain from the juvenile interrogated by giving him the testimony of reliable, comprehensive factual data (evidence) on the circumstances known to the interrogated, which are relevant to criminal proceedings.

The interrogation of a juvenile suspect is an important means not only of verifying the legality and validity of criminal prosecution and protection against the reported suspicion, but also a means of establishing those circumstances of the crime that were unknown to the investigator or of which he had only reasonable assumptions. adult accomplices, other criminal episodes, etc.).

The interrogation of a juvenile suspect is a process of communication (interaction) involving the investigator, the prosecutor and the interrogated (juvenile suspect), during which the authorized person influences the juvenile, prompting him to provide information about the circumstances that are or may be relevant to the proper criminal investigation. offense. From the forensic point of view, it is important that the specified investigative (search) action is a means of collecting and verifying not only evidence but also indicative information that the authorized person receives from the interrogated through verbal and non-verbal communications.

The criminal procedural aspect of the significance of the interrogation of a juvenile suspect is determined by the fact that the testimony obtained is a source of evidence. It should be emphasized that they should not be the main evidence or the «queen of evidence», as was the case until recently, when investigations in individual cases had to be completed within ten days and, accordingly, only the testimony of the accused was sufficient for an indictment.

Manifestation of increased legal protection of minors in criminal proceedings is their double representation because the law allows the simultaneous representation of the interests of a minor by a lawyer and legal representative, given the incomplete legal capacity of the juvenile and the fact that the legal representative is responsible for the upbringing and

conduct of a minor (Larin *et al.*, 1997). If a lawyer provides qualified legal assistance to a juvenile in criminal proceedings, the legal representative is called upon to provide the juvenile primarily with moral and psychological support.

The legal representative is involved in criminal proceedings on the part of the defense if the suspect, accused is a minor or a person recognized incapacitated or partially incompetent in the manner prescribed by law (Part 1 of Article 44 of the Criminal Procedural Code of Ukraine). The Criminal Procedural Code of Ukraine establishes the range of persons involved as a legal representative: parents (adoptive parents), and in their absence - guardians or trustees of the person, other adult close relatives or family members, as well as representatives of guardianship authorities, institutions and organizations, under the guardianship or custody of a minor, incapacitated or partially incapacitated (Part 2 of Article 44 of the Criminal Procedural Code of Ukraine) (Criminal Procedural Code of Ukraine, 2012).

The legal representative of the juvenile suspect, as well as the defense counsel, not only has the right, but also the obligation to be one-sided, to prove only the circumstances that justify the juvenile, mitigate his punishment, as he performs the procedural function of protection. As the literature rightly points out, the suspect's legal counsel and legal representative are obliged to protect the interests of minors, who appear to them to be legitimate from the standpoint of a unilateral acquittal approach to the assessment of circumstances and evidence in criminal proceedings. (Nikandrov, 1993). The legal representative must also be explained his / her rights during the interrogation, other investigative (search) action: to object to the questions and ask questions; with the permission of the investigator before the beginning of the investigative (search) action to ask clarifying questions to a minor or juvenile witness (Panchuk, 2013).

Here is an example from case law, which shows the inadmissibility of evidence obtained during the investigative (search) action with the participation of a minor in the absence of a lawyer and a legal representative. In particular, the verdict of the court of first instance found A. not guilty of committing a crime under Part 1 of Article. 309 of the Criminal Code. The decision of the appellate court upheld the sentence. In his cassation appeal, the prosecutor relied on an inadequate assessment of the evidence, which led to A.'s unfounded acquittal of the charges. Assessing as evidence the scene inspection report, the trial court took into account that during the investigation with the participation of a minor A. were absent as a legal representative and defense counsel, whose participation in this criminal proceeding is mandatory from the moment of establishing a minor or occurrence any doubt that the person is an adult, as established by the requirements of paragraph 1 of Part 2 of Art. 52 of the Criminal Procedural

Code of Ukraine. In view of this violation of A.'s right to defense, the court concluded that the evidence had been obtained as a result of a violation of his rights and freedoms, and therefore the use of the facts obtained during such an investigative action was reasonably inadmissible. The Court of Appeal, having considered the criminal proceedings on the prosecutor's appeal, reasonably concluded that there were no grounds for its satisfaction. The Supreme Court also agreed with this decision (Resolution Of The Supreme Court. 2018 IN CASE № 760/13866/15-k).

We consider the proposal of OV to be reasonable. Panchuk on supplementing the Criminal Procedural Code of Ukraine with the provision on the provision of free legal aid to: a witness who does not have sufficient funds to pay for the services of a lawyer; a minor witness deprived of parental care; a witness to whom security measures are applied. (Panchuk, 2013). Providing such legal assistance is one of the types of legal activity, which consists in providing the witness with legal information, consultations and explanations on legal issues, participation in the interrogation of the witness and other procedural actions, preparation of statements, complaints aimed at interests of the witness, prevention of their violations, as well as to facilitate their recovery in case of violation (Panchuk, 2013).

The presence of outsiders during interrogation contradicts moral norms and requirements. Investigative practice is aware of cases when the investigator invites an interrogator for questioning so that during the interrogation, when receiving data in criminal proceedings, they could be immediately verified. You cannot invite a stranger because his presence at the interrogation violates the atmosphere of trust, which is necessary during the interrogation of a minor, prevents the minor from gathering his thoughts, keeps him in constant mental stress, limits him.

The evidentiary value of the testimony of a juvenile suspect is determined by two factors. First, the suspect is usually better than anyone else aware of all the circumstances of the criminal offense. Therefore, he has the most complete evidence. However, on the other hand, the suspect is often more than anyone interested in concealing this information or distorting it, because the fate of the case depends on the outcome of the case (Orlov, 2000). Therefore, the investigator has a difficult task to obtain from the suspect complete and reliable information about how everything was.

Indications may correspond to real events, partially correspond and not correspond to them. Depending on whether the juvenile suspect gives true testimony, their informational nature depends. The testimony of a juvenile suspect includes information that not only relates to the criminal offense. Among other evidence, they help to understand the etiology of criminal encroachment, in particular, to find out how the idea of committing a criminal offense was formed, whether it was prepared in advance, considered, and what circumstances contributed to its commission.

It is necessary to distinguish several variants of conflict situations: 1) when the juvenile does not admit his guilt, and there are gaps in the system of evidence; 2) when a juvenile pleads guilty, there is some evidence of his involvement in the criminal offense, but the investigator has reason to believe that the teenager is stipulating himself; 3) when the juvenile does not plead guilty, but the investigator has all the evidence of his guilt.

To resolve conflict situations, it is important to identify a number of procedural actions, the conduct of which in court will allow to establish the maximum amount of information, to refute false testimony. The analysis of typological groups of juvenile defendants significantly influences the determination of tactics of proof aimed at refuting false testimony. In particular, depending on the nature of anti-social orientation, based on motivation, there are: a) violent type, which is characterized by a pronounced negative attitude towards the human person and its vital benefits: life, health, physical and sexual integrity; b) selfish, whose behavior is characterized by a selfish tendency, disrespect for all forms of ownership, ignoring the rules of distribution of funds established in the state; c) malicious socially disorganized, which is characterized by a negative attitude to various socially established requirements, as well as any prohibitions; d) careless, characterized by careless irresponsibility, careless attitude to their responsibilities and possible consequences of behavior (Turkot and Shcherbakova, 2015).

In our opinion, the resolution of the conflict depends on how well the investigator was prepared for interrogation, how much he studied the materials of the criminal proceedings, how much he knows the psychological characteristics of the juvenile suspect, the investigator's ability to penetrate the teenager's inner world, plans and intentions.

Testimony obtained in a conflict-free situation should be clarified and detailed as carefully as evidence obtained in a conflict situation. The main tactics for this, in our opinion, are: asking additional questions; use methods to activate memory and obtain explanations about the evidence available in criminal proceedings.

It is indisputable that the fact of the defense counsel's participation disciplines the investigator, forcing him to be stricter in the formation of evidence, to take a more critical approach to the evaluation of evidence (Grishchenko, 2021). Defendant who participates in the interrogation of a juvenile suspect is obliged to respond to any violations of the law and the rights of the interrogated that are allowed by the investigator (for example, asking investigators leading questions). The literature rightly states that a lawyer must stop any interrogations that are inadmissible in relation to a minor: harsh tone, threats to bring parents to justice, etc. (Kuznetsova and Kobtsova, 2004). To this should be added the right of a lawyer to warn a minor that he should not answer questions posed with procedural violations or with the use of unauthorized tactics (Enikeev, 2002).

In accordance with Part 1 of Art. 107 of the Criminal Procedural Code of Ukraine the decision on fixing of procedural action by means of technical means during pre-judicial investigation, including during consideration of questions by the investigating judge, is accepted by the person who carries out the corresponding procedural action. At the request of the participants in the procedural action, the use of technical means of fixation is mandatory.

The peculiarity of recording the course and results of the interrogation of juvenile suspects is that the protocol of this investigative (search) action should be drawn up after the oral part of the interrogation, and not during it. It is impractical to draw up a report at the same time as the juvenile's testimony: first, the investigator thinks more about how to record the testimony, instead of listening carefully to the adolescent and critically evaluating what he said; secondly, such interrogation technique leads to the weakening or loss of psychological contact with the adolescent, distracts him, adds tension to the interrogation, creates the impression of superficial interest in the information transmitted to minors. Parallel drawing up of the report by the formality can frighten the teenager, influence the maintenance of his testimony. Therefore, you must first listen to the teenager, making the necessary notes, and then draw up a report. In this regard, we consider the correct recommendation of L.L. Kanevsky, who noted that during the interrogation of the suspect it is impractical to enter his testimony in the record, as it distracts the interrogated and prevents the investigator to focus on the implementation of the tactical plan of interrogation (Kanevsky, 1978).

Video and audio recordings of adolescents' testimonies provide greater opportunities for verification and evaluation of evidence, including investigations of the facts reported by the juvenile respondent, as he said, in response to which the content and form of the question was a statement. Thus, video and sound recording make it possible to control the correctness of the investigator's interpretation of the statements of a minor suspect.

Noting the usefulness of sound recording during the interrogation of minors, A.A. Levy rightly points out that the need for sound recording "... is due to the fact that the vocabulary and language features of children and adults are different. The child is often inclined to tell what he or she thinks the investigator would like to hear. It is possible to understand all this only as a result of the detailed analysis of indications (Levi *et al.*, 1987).

The best option for recording the testimony of juvenile suspects is video, as an additional means of recording the interrogation report. The video enhances the persuasiveness of the investigative (search) action, allows the investigator and the court to directly perceive the process of testifying to juvenile suspects, contribute to the so-called «presence effect». At the same time, it should be emphasized that video and audio recording do not replace traditional logging, they should be considered as an additional tool that facilitates logging, making it more complete.

It should be noted once again that the interrogation of a minor should be preceded by careful, based on knowledge of the age and psychological characteristics of a particular child, preparation. The core of this training is the study of the adolescent's personality, the motives of his criminal behavior, deciding who will be present at the interrogation, determining the place of interrogation, drawing up an interrogation plan.

It is also important to determine the range of investigative (search) actions that, in the circumstances of criminal proceedings, it is advisable to conduct before the interrogation of a minor or immediately after it. According to investigative and judicial practice, the results of some of them immediately before the interrogation of the adolescent may affect the formation of specific conditions in the juvenile, which contribute to the decision to give truthful testimony. Such investigative actions should include the presentation of a suspected juvenile for identification to victims and witnesses, a search of the place of residence or place of study (if the juvenile lives and studies in a special institution).

To ensure the rule of «immediacy of the examination of testimony, things and documents» during the interrogation of a juvenile who is «de jure» suspected of committing a criminal offense (after notification of suspicion), OG Babenko proposes to take testimony from him in accordance with the requirements of Art. 225 of the Criminal Procedural Code of Ukraine, by interrogation during the pre-trial investigation in court. According to the researcher, the proposed judicial procedural form of taking evidence in the pre-trial investigation will avoid re-interrogation of the juvenile during further trial (Babenko, 2020). We consider the position of the scientist questionable, given that this provision would contradict the requirements of Art. 23 of the Criminal Procedural Code of Ukraine on the immediacy of the examination of evidence in court. Therefore, it is impractical to classify a juvenile suspect as a subject to be questioned in court during a pre-trial investigation.

It is necessary to indicate the value of the testimony of the suspect and from the standpoint of their evaluation when choosing a measure of restraint. Thus, in one of the criminal proceedings, based on the assessment of the available evidence and testimony of the suspect, the prosecutor concluded that there were insufficient grounds for detention. Denying the request for detention, the prosecutor pointed to the inconsistency of evidence, insufficient verification in a number of cases of the suspect's arguments, the need to obtain additional evidence (Palyukh, 2016).

Interrogations of juvenile witnesses and victims are, for the most part, conflict-free. Therefore, during their implementation a set of tactics is used, based on the psychology of the investigator's relations with the participants of investigative (search) actions in conflict-free situations: stress relief; creation and constant maintenance of psychological contact with the

interrogated; formation of a mental task; settings; expectation; analysis of indications, etc. (Chorniy, 1998.).

Unlike a witness, the victim is interested in the relevant results of the pre-trial investigation because he was harmed. As V.V. Pyaskovsky noted, such interest has two sides: on the one hand - the desire of the victim to solve the crime, and on the other - the reason for its possible bias (Pyaskovsky, 2004).

The tactics of interrogating a juvenile victim and the range of issues to be clarified are determined by the personal qualities of the child, adolescent, psychological state and position (in particular, the willingness to actively assist the investigation). Therefore, during the preparation for this investigative (search) action it is necessary to collect information about the identity of the victim, his behavior before and after the crime, the relationship with the suspect and others, using knowledge of forensic characteristics of the crime (Yakovina, 2020). Thus the investigator needs to show special delicacy and respect to the victim. It is inadmissible to exert any pressure on the victim during the interrogation.

False testimonies of juvenile victims may be the result of a good faith mistake caused by strong emotional anxiety, fear, confusion as a result of criminal encroachment. In this regard, the investigator must take into account the psychological state of the victim during the interrogation and carefully check the information provided by him. During the interrogation of a minor victim in a conflict situation, it is advisable to use techniques aimed at exposing lies. E.V. Vaske includes: waiting, consistency, suddenness, use of «weak spots» of the interrogated person, forced pace of interrogation, distraction, inertia, creating the impression of awareness of the investigator, creating «emptiness», etc. (Vasque, 2010).

Due to the increased attention to juvenile delinquency and the search for ways to solve them, the state and the international community are trying to find humane ways to solve the problem of juvenile delinquency. This includes the creation of so-called «green rooms» - a system of measures to ensure the rights and freedoms of the child in investigative and procedural actions through the creation of modern conditions and the introduction of European standards in communication between police officers and a child who has witnessed or suffered a crime or is in conflict with the law (Kovalenko *et al.*, 2013). This approach has long been used in countries such as Estonia, Georgia, Germany and Poland.

In general, the practice of introducing «green rooms» in the field of criminal justice should be considered promising, as the child's environment during the relevant procedural actions is extremely important for establishing contact with the child.

When deciding on a simultaneous interrogation with the participation of minors, the investigator, the investigating judge, first of all, must take into account the peculiarities of their psyche and the impact of these features on the course and results of this investigative (search) action. Peculiarities of the psyche of minors are associated with a lack of their life experience, knowledge, ideas, the formation of adaptive behavioral skills. They are also characterized by fantasy, emotional hyperbole of the event they saw, and this often leads to their incorrect assessment of the event under investigation, or its individual elements (Kovalenko *et al.*, 2013).

In our opinion, simultaneous interrogation with the participation of minors should be conducted only in the case when other methods of establishing the disputable circumstances of a criminal offense have been used and have not yielded results. In case of impossibility to eliminate contradictions in another way before the investigating judge there is a necessity of carrying out simultaneous interrogation with participation of the minor in the presence of the bases defined in h. 1 Art. 225 of the Criminal Procedure Code of Ukraine.

Peculiarities of the tactical component of simultaneous interrogation of two or more interrogated persons is that taking into account the peculiarities of the psyche of minors in preparation for this investigative (search) action of great importance are the choice of venue (Shabalin, 1975.). We share the position of SV According to Smyk, these recommendations do not apply to the procedure of simultaneous interrogation of two or more already interrogated persons at the stage of pre-trial investigation in court (not in the office, but in the usual places for minors (children's institutions, etc.)). In this case, the investigating judge is somewhat limited in the possibility of choosing the place of simultaneous interrogation of two or more already interrogated persons at the stage of pre-trial investigation in court. This is either the location of the court or the stay of a sick witness (Part 1 of Article 225 of the Criminal Procedural Code of Ukraine), or the place of the out-of-court hearing (Part 2 of Article 225 of the Criminal Procedural Code of Ukraine) (Smyk, 2018).

Conclusions

The study of the methods of obtaining the testimony of a minor during the pre-trial investigation under the legislation of Ukraine allowed to reach the following conclusions.

1. Among the methods of gathering evidence, such an investigative (search) action as interrogation has the largest share. During the investigation of criminal offenses against minors, or with their participation, the need to consolidate existing and obtain new evidence by interrogating

victims, witnesses, suspects, simultaneous interrogation of these persons and other investigative (investigative) actions. Their peculiarity is that the taking of testimony should take into account the age and procedural status of the minor, requires a special approach, taking into account the vulnerable state, social immaturity and the risk of violation of the rights and freedoms of such persons. The interrogation must be preceded by careful preparation based on knowledge of the age psychological characteristics of a particular child, the core of which is the study of the adolescent's personality, motives for his behavior, decision-making about the place and participants of the investigative (search) action. Their peculiarity is that the taking of testimony should take into account the age and procedural status of the minor, requires a special approach, taking into account the vulnerable state, social immaturity and the risk of violation of the rights and freedoms of such persons. The interrogation must be preceded by careful preparation based on knowledge of the age psychological characteristics of a particular child, the core of which is the study of the adolescent's personality, motives for his behavior, decision-making about the place and participants of the investigative (search) action.

2. We consider the practice of introducing «green rooms» in the field of criminal justice to be promising, as the child's environment during the relevant procedural actions is extremely important for establishing contact with the child. The inexpediency of classifying a minor suspect as a subject to be interrogated in court during the pre-trial investigation is substantiated, as it would contradict the requirements of Art. 23 of the Criminal Procedural Code of Ukraine on the immediacy of the examination of evidence in court.

3. The investigator should remember that in addition to obtaining the testimony of a minor through interrogation, at the stage of pre-trial investigation may be necessary and extensive application of a set of other investigative (search) actions, such as investigative examination, search, examination, presentation for identification, investigative experiment, forensic examination.

Bibliographic References

- BABENKO, Olga. 2020. Pre-trial investigation of a minor suspect: dissertation of the doctor of philosophy. Donetsk Law Institute of the Ministry of Internal Affairs. Mariupol, Ukraine.
- CHORNIY, Gennadiy. 1998. Methods of investigation of robberies with penetration into housing: abstract of the dissertation of the candidate of legal sciences. Kharkiv, Ukraine.

- CRIMINAL PROCEDURE CODE OF UKRAINE: LAW OF UKRAINE. 2012. № 4651-VI. Available online. In: <https://zakon.rada.gov.ua/laws/show/4651-17>. Consultation date: 07/03/2021.
- ENIKEEV, Ziniviy. 2002. The mechanism of criminal prosecution: a textbook. Bashkir University. Ufa, Russia.
- GRISHCHENKO, Olecsandr. 2021. The use of ballistic accounting of the Expert Service of the Ministry of Internal Affairs of Ukraine in the investigation of criminal offenses: dissertation of the doctor of philosophy. National Academi of Internal Affairs. Kyiv, Ukraine.
- KANEVSKY, Lev. 1978. Organization of investigation and tactics of investigative actions in cases of minors. Bashkir State University. Ufa, Russia.
- KOVALENKO, Valentyn; UDALOVA, Larysa; PYSMENNY, Dmytro. 2013. Criminal proceedings: a textbook. Center for Educational Literature. Kyiv, Ukraine.
- KUZNETSOVA, Svetlana; KOBTSOVA, Tatiana. 2004. Tactics of interrogation of minors. Ekzamen. Moscow, Russia.
- LEVI, Aleksandr; PICHKALEVA, Galina; SELIVANOV, Nikolay. 1987. Receipt and verification of testimony by the investigator. Legal literature. Moscow, Russia.
- NIKANDROV, Viacheslav. 1993. "Involvement of parents of juvenile suspects and accused in criminal proceedings" In: State and law. № 8. P. 105.
- ON THE PECULIARITIES OF THE PERFORMANCE OF THE FUNCTIONS OF THE PROSECUTOR'S OFFICE ON THE PROTECTION OF THE INTERESTS OF CHILDREN AND COMBATING VIOLENCE: Order of the Prosecutor General. 2020. № 509. Available online. In: <https://zakon.rada.gov.ua/laws/show/v0509905-20>. Consultation date: 07/03/2021.
- ORLOV, Yuriy. 2000. Fundamentals of the theory of evidence in criminal proceedings. Scientific and practical manual. Prospekt. Moscow, Russia.
- PALYUKH, Andriy. 2016. Participation of the prosecutor in evidence during the pre-trial investigation: dissertation of the candidate of legal sciences. Lviv Polytechnic National University. Lviv, Ukraine.
- PANCHUK, Oksana. 2013. Providing a witness with legal assistance in criminal proceedings: dissertation of the candidate of legal sciences. Kyiv, Ukraine.

- PYASKOVSKY, Vadym. 2004. Methods of investigating human trafficking: dissertation of the candidate of legal sciences. Kyiv, Ukraine.
- RESOLUTION OF THE SUPREME COURT. 2018. in case № 760/13866/15-k (proceedings № 51-927km18). Available online. In: <http://reyestr.court.gov.ua/Review/72642008>. Consultation date: 07/03/2021.
- RESOLUTION OF THE SUPREME COURT. 2018. in case № 158/2313/15-k (proceedings № 51-3021km18). Available online. In: <http://reyestr.court.gov.ua/Review/77393408>. Consultation date: 07/03/2021.
- RESOLUTION OF THE SUPREME COURT. 2019. in the case № 243/10386/17 (proceedings № 51-4420km19Z). Available online. In: <http://www.reyestr.court.gov.ua/Review/86755073>. Consultation date: 07/03/2021.
- SERGEeva, Diana; STARENKY, Oleksandr. 2018. Theoretical and applied research of the doctrine of material evidence in criminal proceedings. In: Bulletin of criminal proceedings. № 1. pp. 212–213.
- SERGEeva, Diana; STARENKY, Oleksandr. 2018. Theoretical and applied research of the doctrine of material evidence in criminal proceedings. In: Bulletin of criminal proceedings. № 1. pp. 212–213.
- SHABALIN, Vladimir. 1975. Documentary fixation of evidence (forensic and procedural aspects): abstract of the dissertation of the candidate of legal sciences. Moscow, Russia.
- SMYK, Svetlana. 2018. Grounds and procedural procedure for interrogation at the stage of pre-trial investigation in court: dissertation of the doctor of philosophy. Kyiv. Tarasa Shevchenko National University. Kyiv, Ukraine.
- SOLOV`EV, Aleksandr. 2002. Procedural, psychological and tactical bases of interrogation at the preliminary investigation. Moscow. Russia.
- TURKOT, Mykola; SHCHERBAKOVA, Ganna. 2015. “Tactics of presentation of evidence by the prosecutor during the trial of criminal proceedings against minors” In: Scientific journal of the National Academy of the Prosecutor’s Office of Ukraine. № 1, pp. 170–171.
- VASQUE, Ekaterina. 2010. “Strategies of psychological influence during the interrogation: theoretical and applied aspects” In: Volga scientific journal. №1 (13). pp. 259–260.
- YAKOVINA, Orest. 2020. Investigation of robberies committed by minors: dissertation of the doctor of philosophy. National Academy of Internal Affairs. Kyiv, Ukraine.



UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.39 N° Especial

*Esta revista fue editada en formato digital y publicada en octubre de 2021, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

www.luz.edu.ve
www.serbi.luz.edu.ve
www.produccioncientificaluz.org