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SPECIFICITIES OF PROCEDURE FOR CONDUCTING AN INVESTIGATIVE EXPERIMENT WITH THE PARTICIPATION OF A JUVENILE DURING THE INQUIRY

Abstract. Purpose. The purpose of the article is to analyse the specificities of the investigative experiment with the participation of a juvenile suspect during the inquiry. To achieve this goal, it is necessary to solve the following tasks: to determine the procedure for involving a legal representative, defender, psychologist and teacher of a minor to conduct an investigative action; identify the stages of the investigative experiment and tactics used in its process; analyze the tactics of manipulation and its impact on the child offender.

Research methods. The work is performed using general scientific and special methods of scientific knowledge: dialectical, historical and legal, formal and logical, methods of hermeneutics, generalization, comparison, etc.

Results. Any investigative (search) action is aimed at obtaining the necessary information for criminal proceedings, using legal techniques and methods. The purpose of the investigative experiment is to establish similar or different circumstances that occurred during the commission of an illegal act with the help of correct and lawful actions of the inquiry officer, investigator. In criminal proceedings involving juveniles who conflict with law, the inquiry officer, investigator shall correctly apply tactics and take into account the best interests of the child, including during investigative (search) actions.

Conclusions. In view of current trends to protect the rights and legitimate interests of children involved in criminal proceedings, the tools of such protection are improved increasingly. When conducting investigative (search) actions with juveniles, it is necessary to take into account, first of all, the principles of justice friendly to a child in conflict with law. Specificities of conducting an investigative experiment with a juvenile suspect during the inquiry are: involvement of the legal representative (guardian, tutor), pedagogue, psychologist, and defence counsel in the proceeding; application of tactics aimed at achieving the goal of this investigative action; consideration of the best interests of the child.

Key words: criminal offense, pre-trial investigation, defence counsel, psychological contact, manipulation, tactics.

1. Introduction

During proceedings with juveniles who have committed offences, inquiry officers and investigators often conclude that each of them has its own characteristics. These are the need to apply special knowledge of psychology and the use of psychological tactics to the child. These methods enable law enforcement officers to establish psychological contact with the teenager and properly carry out an investigative (search) action.

Specific aspects of investigative experiment with the participation of juveniles were under

the focus in the works by: V.P. Bakhin, R.S. Bielkin, P.D. Bilenchuk, O.M. Vasiliev, V.L. Vasiliev, V.S. Kuzmichov, Y.D. Lukianchikov, V.M. Salt-evskiy, V.M. Tertyshnyk, K.O. Chaplynskyi, V.Y. Shepitko, and others. Nevertheless, at present, existing studies do not pay sufficient attention to the specificities of investigative (search) actions during an inquiry, pre-trial investigation of criminal offences, in particular those committed by juveniles.

The purpose of the article is to analyse the specificities of the investigative experiment with the participation of a juvenile

suspect during the inquiry. The purpose set requires to solve the following tasks: to determine the procedure for engaging the legal representative, the defence counsel, the psychologist and the pedagogue of the juvenile for the conduct of an investigative action; to identify the stages of the investigative experiment and tactics, applied in the process; to analyse the tactic of manipulation and their impact on the juvenile offender.

Methodological tools are selected in accordance with the purpose set, the specificity of the object and the subject matter of the study. The study includes the use of general scientific and special methods of scientific knowledge: dialectical, historical-legal, formal-logical, hermeneutic method, generalization, comparison, etc.

The scientific novelty of the article is the study of procedural specificities of conducting an investigative experiment with a juvenile suspect, considering tactical methods and ensuring the best interests of the child.

2. Regulatory features of the investigative experiment

During pre-trial investigation of criminal offences, all investigative (search) actions provided for in the CPC of Ukraine (art. 300) are permitted, and the procedure for criminal proceedings involving juveniles is governed by the general rules of the CPC, taking into account chapter 38 (Criminal Procedure Code of Ukraine, 2011). In other words, during the inquiry, the inquiry officer is authorised to carry out investigative (search) actions with the participation of juveniles, including the investigative experiment.

As is known, the investigative experiment is an investigative (search) action aimed at checking and clarifying information that is relevant to establishing the circumstances of a criminal offence by way of reconstructing actions, situation, circumstances of a certain event, and conducting required experiments or tests (art. 240) (Criminal Procedure Code of Ukraine).

Therefore, the purpose of investigative experiment is to check and clarify information of evidentiary value for a criminal offence. O.K. Chernetskyi argues that the positive result of the investigative experiment enables to establish the possible existence of one or another fact only by examination, and the negative result eliminates such a possibility (Chernetskyi, 2015, p. 216).

A ruling by an investigator is not required for the conduct of an investigative experiment. In exceptional cases, when an investigative experiment is carried out in a person's home or other property, the person's voluntary consent is required. If there is no voluntary consent,

the investigative experiment is carried out on the basis of a ruling by the investigating judge at the request of the inquiry officer, as agreed with the prosecutor or at the request of the prosecutor.

A legal representative of the juvenile suspect shall be involved in the investigative experiment. The CPC of Ukraine classifies the following as legal representatives: parents (adoptive parents), guardians, tutors, other close adult relatives or members of family, representatives of the guardianship and custody authorities (art. 44) (Criminal Procedure Code of Ukraine, 2011).

In cases when legal representative's participation may be detrimental to the interests of a juvenile suspect or accused, the court shall, upon his or her plea, at the request of the prosecutor or proprio motu, may, by its ruling, limit the participation of the legal representative in certain procedural or judicial actions or to exclude him/her from participation in the criminal proceedings and to involve in his or her place another legal representative (art. 488) (Criminal Procedure Code of Ukraine, 2011). In this way, procedural guarantees are provided for juvenile participants in criminal proceedings.

The legal representative shall enjoy the procedural rights of the person whose interests he or she represents. The inquiry officer, investigator, prosecutor shall issue a ruling, and the investigating judge or court shall adopt a determination on the involvement of a legal representative a copy of which shall be handed to the legal representative (art. 44) (Criminal Procedure Code of Ukraine, 2011). According to H.M. Minkovskiyi, the participation of a legal representative in criminal proceedings is not only his or her right, but also his or her duty (Minkovskiyi, 1987, p. 86).

If the juvenile suspect has a defence counsel at the time of the investigative experiment, he or she shall be present. A defence counsel is a lawyer who provides defence of the suspect, accused, convicted or acquitted person as well as of the person who is going to be subjected to compulsory medical or educational measures or against whom the issue of applying such measures has been considered, as well as of the person considered to be extradited to a foreign state (art. 45) (Criminal Procedure Code of Ukraine).

It should be noted that the compulsory participation of the defence counsel is ensured in criminal proceedings in respect of persons under the age of 18 years and who are suspected or charged of the commission of a criminal offence – upon establishing that the person concerned is an underage or when in any doubt as to his or her majority (art. 52) (Criminal Procedure Code of Ukraine, 2011).

The next feature is the involvement of a pedagogue or psychologist in an investigative experiment involving a child in conflict with law. This is provided for in article 227 of the CPC of Ukraine, which states that the participation of the legal representative, pedagogue, or psychologist and a medical practitioner, if necessary, should be ensured in investigative (search) actions conducted with involvement of a child or an underage (Criminal Procedure Code of Ukraine).

According to I.V. Buchaka, the pedagogue and psychologist in the course of any investigative (search) action with a juvenile offender pursues an educational and preventive role. They are assistants of the investigator to establish moral and psychological contact with the juvenile (Buchaka, 2020). In addition, the pedagogue and psychologist help to safeguard the legitimate rights and interests of the juvenile during the pre-trial investigation.

It should be noted that in the scientific community there are controversial questions about the correctness and expediency of involving a pedagogue than psychologist in investigative (search) action, since there are no clearly defined rules of his or her procedural status. Can the inquiry officer bring in any pedagogue or psychologist? Or is it still necessary to involve those who have previously met and worked with a juvenile offender? We believe that it is advisable to establish this at the legislative level.

Prior to the beginning of the investigative (search) action, the legal representative, pedagogue, psychologist or doctor is informed of their right to ask clarifying questions to a child or an underage. In exceptional cases, when legal representative's participation can jeopardize interests of the underage witness, suspect, the prosecutor upon underaged person's plea, or proprio motu, may limit the participation of the legal representative in certain investigative (search) actions, or remove him/her from participation in criminal proceedings and invite another legal representative in his or her stead (Ukrainian Criminal Procedure Code, 2011).

Moreover, the focus should be on the tactics used in the preparation and conduct of the investigative experiment concerning a juvenile suspect during the initial inquiry.

A tactical technique is part of forensic tactics. Its definition is still controversial – some authors consider it as a scientific recommendation (Vasiliev), others as a way of action or a line of behaviour (Shepitko, 2004, p.183). We advocate the second perspective, because the tactical technique is the most rational and effective way to carry out procedural action, freely chosen by the investigator, inquiry officer.

The use of the tactical technique in the conduct of an investigative experiment is one of the main factors in achieving the objectives set by this investigative (search) action: check and clarification of information important for pre-trial investigation. The requirements for tactical techniques are as follows:

- Compliance with the legislation in force (tactical techniques shall be in accordance with the principles of legality and the rule of law, and must not violate the rights and legitimate interests of participants, including juveniles);
- Effectiveness (tactical techniques should be used correctly in the process of an investigative action and produce the necessary results);
- Compliance of a tactical technique to a scientific and practical component (different methods and ways used by the investigator or inquiry officer should be based on well-known patterns);
- Ethics and humanity (deception, intimidation, physical and mental violence, etc. are not allowed);
- Psychological, logical and organizational tactical techniques (Chaplynska, 2013, p. 45–46).

3. Features of the investigation of offenses committed by minors

In criminal proceedings involving juveniles, the tactical techniques used by the inquiry officer, investigator during are particularly important. According to the National Strategy for the Juvenile Justice System Reform up to 2023, the best interest of the child is a priority for the development and implementation of child-friendly justice (On approval of the National Strategy for the Juvenile Justice System Reform up to 2023). Therefore, in order to ensure the rights and best interests of the child, whatever the procedural status of the child (offender, victim, witness), the investigator or inquiry officer shall use various types of psychological tactics in their activities. Investigative (search) actions are not excluded.

Therefore, under the current circumstances, the psychological training of police officers is increasingly important, including the choice of the most effective techniques and ways of investigation. First of all, these are tactical techniques of establishing psychological contact, psychological interaction of participants in criminal proceedings, study of the offender's personality, etc. We suggest analysing them.

When investigating offences committed by juveniles, the inquiry officer, investigator rely on the laws of the psychology of communication, such as feeling, perception, thinking, imagination, memory, emotions, will, character, etc. That is, psychological techniques in their totality should be aimed at establishing

psychological contact with its participants. V.L. Vasiliev emphasises that, first of all, it is necessary to study the person with whom you conduct the investigative action, and then to prepare for the process. In his opinion, this enables to establish contact, avoid conflicts and get the necessary evidence (Vasiliev, 2010, p. 470).

The process of conducting the investigative experiment with a juvenile consists of three stages: preparatory (initial), experimental (main) and final (Kaminska, 2021, p. 343). The tactical techniques used by the investigator during these stages include:

- 1) Establishing the purpose of the investigative experiment;
- 2) Determination of the place, time and other conditions;
- 3) Determination of participants in the investigative (search) action, in addition to police officers and juvenile suspects, it is necessary to involve a legal representative, a pedagogue, a psychologist (if necessary, a doctor) to ensure the best interests of the child;
- 4) Drawing up a plan of investigative experiment;
- 5) Preparation of exhibits, items, objects necessary for the demonstration of actions;
- 6) The use of technical means of fixing;
- 7) Informing participants of the date, place and time of the investigative action;
- 8) Clarification of the rights and duties of each person present, including the juvenile;
- 9) Avoiding the humiliation and degrading treatment of participants;
- 10) Staggering of the investigation;
- 11) Recording of the investigation experience (photo-video recording);

12) Recording (Lukashevych, Stratonov, 2002, pp. 87–88).

It is also important to avoid manipulation. Police officers often allow themselves to use speech manipulation against juvenile suspects by secretly forcing a person to perform in a manner that do not coincide with his or her real wishes and opinions (Kaminska, 2021, p.185). These may include: provocation (words or movements); involvement of the suspect in a dispute or conflict, as well as pressure on his or her legal representative; acts of disrespect and contempt for both the adolescent and his or her parents and representatives; wilful prolongation of the investigative action; blackmail and threats. Such ways of communicating with a child are unacceptable and may have a negative impact on his or her mental or psychological state. We advise the inquiry officer, investigator to first give the child the word in order to tell everything and show, and then ask questions.

4. Conclusion

Therefore, the investigative experiment establishes the circumstances of a criminal offence by checking and clarifying information. This procedure is often used in pre-trial investigations of criminal offences committed by juveniles. This category of persons, due to their age and unformed psyche is a special category, involvement thereof in investigative (search) actions is specific. For example, the correct use of tactical techniques during this investigative action enables the juvenile suspect to reveal the circumstances of the commission of the offence in detail, and the investigator to establish psychological contact with the child, to ensure his or her best interests and conduct investigative (search) action qualitatively and legally.

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ПРОЦЕСУАЛЬНІ ОСОБЛИВОСТІ ПРОВЕДЕННЯ СЛІДЧОГО ЕКСПЕРИМЕНТУ ЗА УЧАСТЮ НЕПОВНОЛІТНЬОГО ПІДОЗРЮВАНОВОГО ПІД ЧАС ДІЗНАННЯ

Анотація. Метою статті є аналіз особливостей проведення слідчого експерименту за участю неповнолітнього підозрюваного під час дізнання. Для досягнення мети необхідно вирішити такі завдання: визначити порядок залучення законного представника, захисника, психолога та педагога неповнолітнього для проведення слідчої дії; виокремити етапи слідчого експерименту та тактичні прийоми, які застосовуються в його процесі; проаналізувати тактичний прийом маніпулювання та його вплив на дитину-правопорушника.

Методи дослідження. Робота виконана з використанням загальнонаукових та спеціальних методів наукового пізнання, таких як: діалектичний, історико-правовий, формально-логічний, методи герменевтики, узагальнення, порівняння тощо.

Результати. Будь-яка слідча (розшукова) дія має на меті отримання необхідної для кримінального провадження інформації шляхом застосування законних прийомів та методів. Ціль слідчого експерименту полягає в тому, що за допомогою правильних та законних дій дізнавача, слідчого встановлюються схожі або відмінні між собою обставини, що мали місце під час вчинення проти-правного діяння. У кримінальних провадженнях щодо неповнолітніх, які перебувають у конфлікті із законом, слідчому, дізнавачу необхідно правильно застосовувати тактичні прийоми та враховувати найкращі інтереси дитини, зокрема і під час проведення слідчих (розшукових) дій.

Висновки. З огляду на сучасні тенденції, спрямовані на захист прав та законних інтересів дітей, що є суб'єктами кримінального судочинства, необхідно зазначити, що способи такого захисту постійно удосконалюються. Під час проведення слідчих (розшукових) дій з неповнолітніми необхідно враховувати насамперед принципи правосуддя, дружнього до дитини, яка перебуває у конфлікті із законом. Особливостями проведення слідчого експерименту з неповнолітнім підозрюваним під час дізнання є: залучення до процесуальної дії законного представника (опікуна, піклувальника), педагога, психолога, а також захисника; застосування тактичних прийомів, спрямованих на досягнення мети такої слідчої дії; врахування найкращих інтересів дитини.

Ключові слова: кримінальний проступок, досудове розслідування, захисник, психологічний контакт, маніпуляція, тактичний прийом.

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