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INVESTIGATIVE EXPERIMENT DURING INVESTIGATION OF CRIMINAL OFFENSES COMMITTED BY UNDERAGE PERSONS

Abstract. Purpose. The purpose of the article is to highlight the features of conducting an investigative experiment involving underage persons in criminal proceedings for criminal offences and to form appropriate scientific provisions and practical recommendations. **Results.** It is underlined that an investigative experiment involving underage persons, as special participants in criminal proceedings, requires considering their procedural status, age, mental development, psychological state, and, accordingly, the application of specially designed organisational measures and tactics that meet the requirements of admissibility and are based on psychology. It should be considered that the organisational and tactical actions at all phases of the investigative experiment will depend on whether an investigative (search) action will be carried out in the form of on-site evidence verification or the actual investigative experiment as a system of experiments, examinations. In preparation for the investigative experiment, considerable attention is paid to the study of the personality of an underage person. The fullest possible information about a child is important for establishing rapport and choosing the right tactics for dealing with an underage person. According to empirical data, in the course of an investigative experiment in the investigation of criminal offences committed by underage persons, they most frequently examine: the possibility of the existence of certain events in the past, processes, phenomena; possibility for the participant of the investigative experiment to perceive a certain event, phenomenon, process, object; possibility of carrying out determined actions in certain conditions; establishment of certain circumstances of the event of criminal offence. **Conclusions.** In order to improve the effectiveness of the investigative experiment involving underage persons in the investigation of criminal offences, a number of recommendations are proposed: the investigation experiment should take place on the site, under conditions and environment in which a criminal offence or the most similar event has occurred; the location of the investigative experiment should be checked beforehand in order to ensure the safety of participants in criminal proceedings, to create an environment as close as possible to the one in which the event occurred; the same or as close as possible to the objects, means and instruments used to commit the criminal offence or their mock-ups should be built up; a thorough and repeated reproduction of experimental actions, detailed verification of evidence with reference to the environment; provision of psychological comfort conditions for the juvenile involved in the conduct of this investigative (search) action.

Key words: investigative experiment, criminal proceeding, criminal offense, inquiry officer, tactical technique, rapport.

1. Introduction

Among the investigative (search) actions during the investigation of criminal offences, in particular, criminal offences committed by underage persons, the investigative experiment is important.

According to the Prosecutor General's Office, 100,707 criminal offences were recorded in 2021, 51,954 persons were notified of the suspicion and 49,751 criminal proceedings were sent to court. Of these, 916 criminal pro-

ceedings with an indictment were related to criminal offences committed by underage persons or with their participation (Official site of the Prosecutor General's Office of Ukraine, 2021). The number of criminal offences committed is alarming. In addition, only in respect of less than half of the reported criminal offences, the indictment files are sent to the court. Statistical indicators on the involvement of juveniles in criminal offences are threatening, which requires an effective response: detection of facts

of illegal activities, investigation of criminal manifestations and implementation of comprehensive preventive activities. The achievement of the objectives of criminal proceedings is facilitated by the effective conduct of investigative (search) actions.

An investigative experiment involving underage persons, as special participants in criminal proceedings, requires considering their procedural status, age, mental development, psychological state, and, accordingly, the application of specially designed organisational measures and tactics that meet the requirements of admissibility and are based on psychology.

The problems of an investigative experiment involving underage persons in criminal proceedings were revealed in the scientific works by V.A. Konovalova, L.D. Udalova, Yu.M. Chornous, and V.Yu. Shepitka. However, an investigative experiment involving underage persons during the investigation of criminal offences has some specificities related to legal regulatory mechanism, organisational actions, tactics, and psychological characteristics. These important issues should be addressed in the article.

According to article 3, para. 12, of the CPC of Ukraine, an underage person is a minor and also a child aged between fourteen and eighteen (Criminal Procedure Code of Ukraine, 2012). An underage person is a special participant in criminal proceedings.

Article 240 of the CPC regulates the conduct of an investigative experiment. In particular, article 240, para. 1, of the CPC provides for that in order to check and clarify importance for establishing circumstances of criminal offence, the investigator or public prosecutor may conduct an investigative experiment by reconstructing behaviour, situation, circumstances of a certain event, and conducting required experiments or tests. The specificities of an investigative experiment involving underage persons derive from the content of article 227 of the CPC and concern the participation of a legal representative, a teacher, a psychologist, or a doctor in investigative (search) actions involving a minor or an underage person. Separately, the specific features of investigative (search) actions involving underage persons are regulated only with respect to interrogation (art. 226, CPC).

In addition, an investigative experiment in the system of investigative (search) actions is of importance in criminal proceedings, because it allows effectively verifying both the testimony and actions of the actors involved in its commission. However, the potential of the relevant investigative (search) action is insufficiently realised, and only 26.1% of the 230 files of criminal proceedings relating to criminal offences

committed by underage persons have been examined using an investigative experiment. This circumstance also influenced the choice of the topic of the scientific article in order to provide both theoretical knowledge and practical recommendations.

The purpose of the article is to highlight the features of conducting an investigative experiment involving underage persons in criminal proceedings for criminal offences and to form appropriate scientific provisions and practical recommendations.

2. General principles of the investigative experiment's organisation and conduct

An investigative experiment in scientific and educational-methodical literature is considered as a method of cognition; an investigative (search) action; a tactic; a stage of the methodology of expert research.

An investigative (search) action, such as an investigative experiment with underage persons in the investigation of criminal offences, is carried out according to the stages as follows: preparatory, working, final.

During preparation for an investigative experiment involving an underage person, it is important to draw up a plan for the conduct of an investigative (search) action. It can be both oral and written. Written one is advisable in complex investigative situations where several underage persons are involved, or participants in the investigative (search) action have a negative attitude to law enforcement officers, or several circumstances in criminal proceedings should be checked simultaneously through complex experimental actions, etc.

In any case, the plan of the investigative experiment should cover: the purpose and objectives of the investigative (search) action; the place and time of its conduct; a certain number of participants; the technical means used. At the stage of preparation, it is necessary to study legal regulations guiding practical activities, materials of criminal proceedings, educational and methodical sources. The option is also developed if the investigative situation is unpredictable requiring a response to ensure the rule of law, the rights and freedoms of citizens (for example, an attempt to escape by the suspect, aggressive behaviour of participants, destruction of physical evidence on the scene).

Before planning an investigative experiment involving an underage person, it is mandatory to conduct an interrogation on the circumstances of criminal proceedings, which is planned to be checked. Other investigative (search) actions may be carried out (examination, simultaneous interrogation of two or more persons already interrogated, search, forensic examination) in

order to more fully outline the subject matter of the future investigative experiment.

The inquiry officer personally, as well as other participants involved, in particular, a specialist, should be familiarised beforehand with the place of the future conduct of the investigative experiment. The purpose of this measure is to: a) visually familiarise oneself with the place where the investigative (search) action to be carried out; and to ascertain whether the information obtained during the interrogation corresponds to the objective situation; to decide on the need for reconstruction to bring the real situation closer to the situation that occurred during the criminal process; b) to clarify, if necessary, from the person, whose testimony will be checked as to the inconsistency of the situation at the scene with his or her testimony; c) to plan measures that should ensure the best option of investigative (search) action: to exclude the possibility of the suspect's escape; to prevent access to the place of investigation (search) of actions of (Piaskovskiy, Chornous, Ishchenko, 2015).

At the stage of preparation, the range of participants in the conduct of investigative (search) action should be determined. First, it is an underage person, whose testimony and actions will be checked. It is necessary to examine his or her personality with a view to implementing tactics of rapport. Moreover, as Yu.M. Chornous argues that the establishment of rapport is a separate task that occurs during the investigation (search), other procedural actions, and is achieved using a system of tactics (tactical combinations) of psychological impact. A prerequisite for the establishment of rapport is a comprehensive study of the personality involved in such action, including psychological study, as well as an analysis of the situation prevailing in criminal proceedings (Chornous, 2020).

The study of the personality of a juvenile offender is a mandatory task of the inquiry officer during criminal proceedings. Thus, the inquiry officer shall precisely establish the age of the minor (date, month, year of birth), the state of health and the general development of the underage person. In case of mental retardation, psychological or psychiatric problems, it should also be established whether the underage person could have been fully aware of the significance of his or her actions and to what extent he or she was able to control them; an exhaustive description of the underage person shall be provided. However, in order to have the fullest possible understanding of the identity of the juvenile offender and to ascertain the causes and conditions that led to the commission of the criminal

offence, such information is insufficient. Data should be obtained on the child's family relations, activities and hobbies, attitudes towards education or work, domestic behaviour, past offences and other data that are positive or negative for the juvenile. Such data is important for establishing rapport, choosing the right tactics for dealing with underage persons during any procedural measures, investigative (search) actions, including investigative experiment.

According to article 227 of the CPC, mandatory participants in an investigative experiment involving a underage person are a legal representative, a teacher or psychologist, and a medical practitioner, if necessary.

In addition, law enforcement officers, namely an operative officer, a juvenile prevention inspector, a criminalist inspector of the National Police of Ukraine, may be involved in the investigative experiment. In order to apply expertise in complex cases, the assistance of experts may be needed, in particular, the Expert Service of the MIA of Ukraine. In order to protect the rights and freedoms of underage persons, a defence counsel and a legal representative of the individual are involved. For tactical reasons, the suspect, victim, witness, defence counsel or representative (CPC, art. 240, paras. 2, 3) may also be involved in this investigative (search) action. In such circumstances, consideration should be given to the general rule that the participation of the suspect, the victim and the witness in the investigation experiment is necessary when: without them, it is impossible to conduct investigate activities, in particular whether the person has professional or other skills; without them, it is impossible to reproduce the environment and conditions necessary for the conduct of experiments; they are involved in the investigative experiment for tactical reasons (Kotiuk, 2013, pp. 130–135).

According to article 223, para. 5, of the CPC of Ukraine, the mandatory participants in the investigative experiment are attesting witnesses. Their number depends on the type, purpose and objectives of the experiment. Considering the specifics of the investigative (search) action (verification may take place outside the locality, require considerable time; verification of the testimony of several people), the investigator must take measures in advance for their selection and involvement. Attesting witnesses should not be persons with mental or physical defects (poor eyesight, hearing) (Piaskovskiy, Chornous, Ishchenko, 2015).

If an investigation experiment is conducted on multiple episodes of the same type or if the testimony of several suspects is verified during the investigation of a single criminal offence,

new persons acting as attesting witnesses should be involved for each experiment.

In some cases, a cynologist with a search dog should be involved in the investigation experiment; technicians should be involved to perform certain physical work (for example, digging, restoring part of the structure). Technical means can also be used for these and other tasks. For example, these are the means of fixation, technical-forensic means, means for reproduction of the situation and events of the crime. Care should also be taken to transport the juvenile suspect, other participants in the investigative (search) action to the place of the investigative experiment, especially if it is a public place, street, park, territory outside the locality, etc.

The investigative experiment provides an opportunity to verify the factual data obtained from the interrogation of victims, suspects, witnesses, presentation for identification, examination of the scene of the incident and other investigative (search) actions. The investigator receives new data confirming or refuting previously obtained information.

V.O. Konovalova argues that the necessity of the investigative experiment in a particular case should be convinced beforehand. To do this, one should analyse the possibility of: verifying the version; attracting certain persons to the experiment; reproducing the atmosphere necessary for the experiment; the admissibility of the experiment in terms of procedural and moral requirements (Konovalova, 1976, pp. 10–16).

3. Organisational and tactical features in the investigation of criminal offences committed by underage persons

It should be considered that the organisational and tactical actions at all phases of the investigative experiment will depend on whether an investigative (search) action will be carried out in the form of on-site evidence verification or the actual investigative experiment as a system of experiments, examinations.

After all, the more measures to reproduce, model and reconstruct the situation of a criminal offence, the more efforts the investigator should make, the greater the opportunities for the use of special knowledge should be used.

According to P. P. Ishchenko, the help of specialists is required in the following cases: when choosing the best type of experiment to perform a specific task; when planning the experiment in accordance with the optimal tactics of its conduct and using scientific-technical means and methods; when selecting objects, items to be used in the experiment; creation of special conditions for the experiment; reproduction of the situation and circumstances of the event for conducting experiments; the conduct

of experimental actions proper in order to ensure their technical and methodical correctness; the fixation of the conduct and the results of the experiment with the help of photography and video recording; correct record of the conduct and results of the experiment in the investigation protocol; evaluation of the results of the experiment (Ishchenko, 1990).

Experimental actions carried out as part of the investigation experiment are grouped into: 1) actions related to reproduction of actions; 2) actions consisting in reconstruction of the situation and circumstances of a crime (Husachenko, 2015, pp. 36-37).

The first group of experimental actions include actions taken to: a) establish the possibility of perceiving any phenomenon, fact, checking the available data and assumptions about the possibility of hearing or observing a phenomenon human being, item in certain conditions; b) establish the ability to perform certain actions in a time-bound setting (evidence of professional or criminal skills, experience); c) establish the possibility and time of overcoming certain distances with or without vehicles (car, bicycle, motorcycle, motor boat).

The experimental actions of the second group, related to reconstruction, include actions taken to: a) clarify the mechanism of the event in general and in detail; b) confirm (refute) the possibility of the existence of a certain phenomenon; c) establish the mechanism for making traces.

The role of a specialist during experimental actions, providing consultations to the inquiry officer on their necessity or, conversely, expediency, is important. For example, if in the process of reproduction it is necessary to carry out experimental actions to establish the possibility of perceiving any fact (to see something, to hear the voice, the sound of a shot), the specialist can focus the investigator's attention on the need to conduct an experiment in conditions as close as possible to those in which the event being investigated took place (at the same time of day, with the appropriate state of the road surface) (Husachenko, 2015, p. 38).

The inquiry officer may involve one or more specialists from one or different fields of knowledge in the investigative experiment.

The specialist helps the investigator at all stages of the investigation experiment, namely: a) to determine the main aspects and identify health hazards during its conduct; b) to reproduce the situation and conditions of conducting experiments, which should correspond as much as possible to this event; c) to make a plan, organise experiments and control them; d) to select analogues or assist in making models

and moulages, tools and items used in the crime; e) to evaluate the results obtained (Kovalenko, 2007).

The assistance of a specialist in an investigation experiment involving underage persons contributes to the effectiveness of this investigative (search) action and, according to data from the criminal proceedings studied, such assistance was used in 90% of cases. According to empirical materials, a specialist in the investigation experiment was involved for the purpose of: video recording of the investigative (search) action; reproduction, reconstruction of the crime scene and its individual elements; determining the procedure for conducting individual experiments and tests; advising the investigator on the preparation, direct conduct and recording of the course and results of the investigative experiment, etc.

The working stage is the stage of direct investigation experiment, which can be called the key, because it is at this stage that the verification, clarification and final ascertainment of the circumstances of criminal misconduct takes place.

The investigative experiment consists of special experiments or tests to obtain new evidence and to verify existing evidence, as well as to verify the story about the possibility of facts, events or phenomena, carried out in the most approximate conditions (Chernetskyi, 2008, pp. 172–177).

The working stage of the investigative experiment begins with an explanation of the participants' rights and duties by the inquiry officer. Moreover, the inquiry officer shall explain to the participants the purpose and procedure of the experimental actions.

According to empirical data, in the course of an investigative experiment in the investigation of criminal offences committed by underage persons, they most frequently examine:

- 1) the possibility of the existence of certain events in the past, processes, phenomena;
- 2) the possibility for the participant of the investigative experiment to perceive a certain event, phenomenon, process, object;
- 3) the possibility of carrying out determined actions in certain conditions, including verification of personal skills;
- 4) establishment of certain circumstances of the event of criminal offence.

The study of theoretical (Kovbasa, 2011) and practical sources showed that in criminal proceedings for criminal offences committed by underage persons, the key objectives were:

- to verify and clarify factual data obtained from the results of individual investigative (search) actions;
- to obtain new evidence;

- to identify and resolve contradictions in the testimony of suspects, accused persons, witnesses and victims;

- to identify the causes and conditions that have contributed to or prevented the commission of a criminal offence, etc.;

- to identify the causes and conditions that have contributed to or prevented the commission of a criminal offence, etc.

A form of the investigative experiment is verification of testimony at the scene. It involves the use of a specific method of obtaining information to identify and clarify data not available to other procedural forms of evidence. This method consists in comparing the evidence of a specific criminal offence related to a particular place with the factual situation at that place shown to the inquiry officer by the person who testified. This method is a variation of the method of comparison, and the latter is the basis for verification investigative (search) actions. The comparison process involves three interrelated elements - narration, demonstration and review. The person whose testimony is verified recounts the events that have occurred at a particular place and the circumstances that are closely related to them. In order to clarify matters, the inquiry officer may ask questions and, with his permission, other participants in the investigative (search) action may do so. The story of the person at the crime scene is accompanied by a demonstration of individual actions not of interest to investigation, as well as individual objects, landmarks belonging to the general complex of this environment (Nehrebet-skyi, 2016, pp. 177–181).

4. Conclusions

In order to increase the effectiveness of the investigative experiment involving underage persons during the investigation of criminal offences, we consider it appropriate to propose that inquiry officers and other persons involved in the conduct of the investigation (search) action the following:

- the investigation experiment should take place on the site, under conditions and environment in which a criminal offence or the most similar event has occurred;

- the location of the investigative experiment should be examined beforehand, both to ensure the safety of participants in criminal proceedings and to create an environment as close as possible to that in which the criminal offence occurred;

- the same or as close as possible to the objects used, means and instruments used to commit the criminal offence should be built up, provided that the means and instruments for committing the criminal offence are dangerous – their mock-ups should be used;

- thorough and repeated reproduction of experimental actions, detailed verification of the evidence in the context of the investigation experiment;
 – provision of psychologically comfortable conditions for underage persons involved in this

investigative (search) action (by explaining the procedure for conducting an investigative experiment, taking into account the emotions and psychological state of underage persons, etc.), that is providing various forms of assistance to a child in conflict with the law.

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ПРОВЕДЕННЯ СЛІДЧОГО ЕКСПЕРИМЕНТУ ПІД ЧАС РОЗСЛІДУВАННЯ КРИМІНАЛЬНИХ ПРОСТУПКІВ, ВЧИНЕНИХ НЕПОВНОЛІТНІМИ

Анотація. Мета. Мета статті – висвітлити особливості проведення слідчого експерименту за участю неповнолітніх у кримінальних провадженнях щодо кримінальних проступків і сформувавши відповідні наукові положення та практичні рекомендації. **Результати.** Наголошено, що проведення слідчого експерименту із неповнолітніми, як особливими учасниками кримінального провадження, потребує врахування їхнього процесуального статусу, віку, розумового розвитку, психологічного стану, і відповідно – застосування спеціально розроблених організаційних заходів і так-

тичних прийомів, які відповідають вимогам допустимості і ґрунтуються на даних науки психології. Необхідно враховувати, що організаційні й тактичні заходи на всіх етапах слідчого експерименту будуть залежати від того, у формі перевірки показань на місці чи власне слідчого експерименту як системи експериментальних, дослідницьких дій буде проведена дана слідча (розшукова) дія. Під час підготовки до слідчого експерименту значна увага приділяється вивченню особи неповнолітнього. Встановлення максимально повної інформації про дитину є важливим для встановлення психологічного контакту, обрання вірної тактики поведінки із неповнолітнім. Як засвідчили емпіричні дані, під час проведення слідчого експерименту у процесі розслідування кримінальних проступків, вчинених неповнолітніми, найчастіше перевіряють: можливість існування в минулому окремих подій, процесів, явищ; можливість сприйняття учасником слідчого експерименту певної події, явища, процесу, об'єкта; можливість реалізації визначених дій у певних умовах; встановлення окремих обставин події кримінального проступку. **Висновки.** З метою підвищення ефективності проведення слідчого експерименту із неповнолітніми під час розслідування кримінальних проступків запропоновано ряд рекомендацій: проведення слідчого експерименту повинно відбуватися на місці, в умовах та обстановці, де відбулася подія кримінального проступку або максимально до них подібних; варто попередньо ознайомитися із місцем проведення слідчого експерименту, з метою забезпечення безпеки учасників кримінального провадження, створення обстановки, максимально наближеної до тієї, за якої відбулася подія; слід прилаштувати максимально наближені до використовуваних предмети обстановки, засоби і знаряддя вчинення кримінального проступку або їх макети; ретельне і кількаразове відтворення експериментальних дій, детальна перевірка показань із прив'язкою до обстановки; забезпечення психологічно комфортних умов для неповнолітнього, який бере участь у проведенні даної слідчої (розшукової) дії.

Ключові слова: слідчий експеримент, кримінальне провадження, кримінальний проступок, дізнавач, тактичний прийом, психологічний контакт.

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