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ON THE URGENCY OF MAKING METHODOLOGY FOR INVESTIGATING SOLICITATION OF CHILDREN FOR SEXUAL PURPOSES (ARTICLE 156-1 OF THE CRIMINAL CODE OF UKRAINE)

Abstract. Purpose. The purpose of the article is to prove the urgency of developing a methodology for investigating solicitation of children for sexual purposes and to outline its structure. **Results.** The article emphasises that protection of childhood in Ukraine is a general priority task. It is noted that encroachments on the rights, freedoms and legitimate interests of a child, especially those related to his or her sexual freedom and sexual inviolability, are punishable and necessarily entail liability. It is emphasised that the age and level of development of a child affect the criteria for selecting him or her as a victim of harassment, the ways of committing this unlawful act and the motivation of the perpetrator. During the period of hostilities, due to a number of objective factors, control over the timing of a child's stay in the Internet space and the content to which he or she has access has decreased. In addition, a child's absorption in virtual life and virtual friends is a kind of psychological relief and distraction from current realities. At such times, a child is particularly psychologically and emotionally unstable and vulnerable. The author establishes that criminal offenses committed against a child are characterised by a specific mechanism of commission and by specific activities aimed at their detection, disclosure and investigation. Law enforcement officers are not always able to correctly determine an exhaustive list of circumstances to be clarified during the investigation of these unlawful acts and correctly define the limits of proof; predict the behaviour of participants in criminal proceedings; plan and organise pre-trial investigations; establish effective cooperation; etc. **Conclusions.** The author establishes that the urgency of developing a separate specific methodology, namely, the methodology for investigating solicitation of children for sexual purposes (Article 156-1 of the Criminal Code of Ukraine) is justified by the child's vulnerability to malefactors due to his/her age and emotional and psychological traits; and by the increasing number of cases of criminal offenses related to sexual abuse and sexual exploitation against children, especially with the use of cyberspace and telecommunication technologies; the development of information and telecommunication systems and technologies, their active implementation in criminal activities; the lack of established methods for investigating solicitation of children for sexual purposes and practical experience in detecting, solving and investigating these criminal offenses.

Key words: criminological methodology, sexual exploitation, sexual abuse, investigation methodology, solicitation of children for sexual purposes, formation of methodology.

1. Introduction

Childhood protection is a strategic national priority that is important for ensuring the national security of Ukraine and the effectiveness of the State's domestic policy. In particular, in order to ensure the child's rights to life, health care, education, social protection, comprehensive development and upbringing

in a family environment, the State establishes the basic principles of public policy in this field based on ensuring the best interests of the child. Moreover, childhood protection involves the application of a whole system of state and public measures aimed at ensuring a full life, comprehensive upbringing and development of the child and protection of his or her

rights (Law of Ukraine On Protection of Childhood, 2001). However, unfortunately, despite the State's desire to ensure the best interests of the child, cases of violations of children's rights often occur. Therefore, in order to prevent such violations or at least reduce their number, social relations that arise, change and terminate in the course of ensuring and protecting children's rights are subject to various types of protection by the State. For example, exceptionally socially dangerous acts against a child are under criminal legal protection. Thus, in February 2021, the Special Part of the Law of Ukraine on Criminal Liability was supplemented with a new *corpus delicti*, namely Art. 156-1 of the Criminal Code of Ukraine "Solicitation of children for sexual purposes" (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2021; Criminal Code of Ukraine, 2001).

Evidently, socially dangerous acts are committed against a child that infringe on his or her rights, freedoms and legitimate interests, including solicitation for sexual purposes. Moreover, these attacks are committed taking into account the peculiarities of the physiological and psychological development of the child, who becomes a victim precisely because of his or her age and level of development. These factors also affect the criteria for selecting a child as a victim of molestation, the ways in which this unlawful act is committed, and the motivation of the perpetrator. In this regard, criminal offenses committed against a child are characterised by a specific mechanism of commission, and thus by criminological activities. After all, in order to establish all the circumstances to be proved in criminal proceedings on solicitation of children for sexual purposes and to collect relevant evidence, it is necessary to understand the distinctive features of the mechanism of committing this category of offenses and the difficulties that pre-trial investigation bodies often face in detecting, investigating and solving them. In particular, one of the tools that facilitates the activities of law enforcement agencies and helps to avoid or minimise the previously mentioned difficulties is a separate criminological methodology. Therefore, in the context of the outlined issues, the question of the urgency and timeliness of the formation of such a separate, namely, a specific criminological methodology as a methodology for investigating solicitation of children for sexual purposes is considered relevant.

Prospects, principles of construction and implementation of methodologies for investigating criminal offenses of a particular

type (group), as well as their structure have frequently been under the study in the works of many scholars in the field of criminalistics. In particular, these issues have been comprehensively covered by V.P. Bakhin, R.S. Belkin, L.Ya. Drapkin, V.F. Yermolovych, V.A. Zhuravel, O.N. Kolesnichenko, V.O. Konovalova, A.F. Oblakov, O.V. Pchelina, R.L. Stepaniuk, V.V. Tishchenko, V.Y. Shepitko, A.V. Shmonin, M.P. Yablonov and others. The problem of investigating criminal offenses related to solicitation for sexual purposes committed against children was not ignored. Certain aspects of the formulation and solution of this problem can be found in the scientific works by M.V. Voichyshena, M.M. Yefimov, V.O. Maliarova, T.P. Matiushkova, D.H. Palianychko, etc. However, these developments relate either to the general provisions of making criminological methodologies and their adaptation to practical activities for the detection and investigation of crimes and criminal offenses, or to the specifics of investigating certain types (groups) of criminal offenses against children and/or related to encroachment on sexual freedom and sexual inviolability of a person. A considerable number of scholarly works focus on the criminal law and criminological characterisation of solicitation of children for sexual purposes or so-called "grooming". Meanwhile, there is a lack of comprehensive research on the mechanisms of solicitation of children for sexual purposes and criminological recommendations for its pre-trial investigation. Therefore, the purpose of the present study is to prove the urgency of developing a methodology for investigating solicitation of children for sexual purposes and to outline its structure.

2. Regulatory and legal framework for the protection of children against sexual exploitation and sexual abuse

Due to their status as minor, children need special protection from their families, society and the state. This is emphasised not only at the national but also at the international level. Much attention is paid to children's health and psychosocial development. In this context, the particular social danger and destructive nature of sexual exploitation and sexual abuse against children is emphasised. In particular, according to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, "sexual exploitation and sexual abuse of children have grown to worrying proportions at both national and international level, in particular as regards the increased use by both children and perpetrators of information and communication technologies, and that preventing and combating such sexual exploitation and sexual abuse

of children require international co-operation" (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007). Moreover, sexual exploitation and sexual abuse against a child has a traumatic effect on the child's psyche, thereby causing not only physical harm, but also disrupting the normal life relationships of the minors. In such a situation, the latter are filled with a sense of helplessness and inferiority, which in turn negatively affects the child's further spiritual development (Kozliuk, 2019).

For example, Article 23 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse emphasises the need to criminalise the offense of solicitation of children for sexual purposes. In particular, this provision suggests that the said unlawful act should be understood as an intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the legal age for sexual activities for the purpose of committing any of the offences such as engaging in sexual activities with a child under the legal age for sexual activities or producing child pornography, where this proposal has been followed by material acts leading to such a meeting (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007).

Ukraine, having acceded to the Convention, supplemented the Criminal Code of Ukraine with a relevant provision criminalising solicitation of children for sexual purposes (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2021). Moreover, the legislator clearly defines the age of the subject of the criminal offense of a child who may be a victim of the said offense, the purpose, methods and consequences of this offense. In particular, according to Art. 156-1 of the Criminal Code of Ukraine, solicitation of a child for sexual purposes is an offer of a meeting made by an adult, including with the use of information and telecommunication systems or technologies:

- to a person under the age of sixteen for the purpose of committing any sexual or lewd acts against him/her, if such an offer has been followed by at least one action leading to such a meeting;

- to a minor with the intent to involve him or her in producing child pornography, if after such an offer at least one action has been taken to ensure such a meeting (Criminal Code of Ukraine, 2001).

Furthermore, solicitation of children for sexual purposes may be committed repeatedly or by prior conspiracy by a group of persons, or against a minor (Criminal Code of Ukraine, 2001).

3. Development of criminal legislation and investigation methodologies in the field of child protection from sexual exploitation and sexual abuse

Novelties in the national criminal legislation are clearly justified and are caused by both the crime situation and the degree of development of information technologies and their place in modern society. According to H. Popov, the above amendments and additions are extremely relevant, as children spend more and more time on the Internet (studying, searching for interesting information or new friends, etc.) and the danger can take them by surprise, as strangers who establish friendly relations with children are not always who they say they are. Frequently, such acquaintances are aimed at "grooming," that is, establishing a trusting relationship with a child (including online) for the purpose of sexual abuse. In addition, the timeliness of criminalisation of solicitation of children for sexual purposes is also due to the high level of latency of such offenses, which in turn requires high professionalism from both law enforcement officials (for detection and response) and other professionals involved in pre-trial investigations to bring to justice those responsible for committing the above criminal offenses related to sexual abuse against children (Popov, 2020).

It should be noted that a favourable factor in the increase in cases of solicitation of children for sexual purposes was the transition of offenders to commit socially dangerous offenses. This situation has especially worsened during the COVID-19 pandemic, as the use of online platforms for distance learning and increased time spent online has increased, the use of various social networks and chat rooms has increased the risk for children to encounter cases of sexual exploitation, sexual abuse, and offenders lurking on the Internet (Kukovets, 2021). As a result, the possibility of establishing a trusting relationship with a child for the purpose of sexual abuse increased through online communication ("cyber grooming") (Symonenko, 2022).

Therefore, solicitation of children for sexual purposes is usually committed with the use of information and telecommunication technologies. That is, in fact, a combination of sexual and cybercrime features in the mechanism of committing the type of criminal offenses under study. Thus, it is important to investigate the mechanisms of solicitation of children for sexual purposes and to identify patterns of this

category of unlawful acts and, allowing them for, to formulate forensic recommendations for their timely detection and effective investigation. In other words, it is necessary to formulate a criminological description of solicitation of children for sexual purposes, to determine the specifics of organising their investigation and the tactics of certain procedural actions. All of this once again emphasises the practical need to develop a methodology for investigating solicitation of children for sexual purposes, as the mechanism of its commission is specific, and the very corpus delicti under Article 156-1 of the Criminal Code of Ukraine is relatively new. As a result, pre-trial investigation officers have no experience in detecting, disclosing and investigating them. For example, law enforcement officers are not always able to correctly determine an exhaustive list of circumstances to be clarified during the investigation of these unlawful acts and correctly define the limits of proof; predict the behaviour of participants in criminal proceedings; plan and organise pre-trial investigations; establish effective cooperation; etc. However, modern criminological science lacks any developments in making a methodology for investigating solicitation of children for sexual purposes.

The urgency of making a methodology for investigating solicitation of children for sexual purposes is also indicated by statistics from the Prosecutor General's Office, according to which 8 cases of solicitation of children for sexual purposes were recorded in January-June

2022. Furthermore, in 5 criminal proceedings, a person was notified of suspicion (Website of the Prosecutor General's Office, 2020). This information is noteworthy, especially given the fact that it was recorded under martial law in Ukraine. During the period of hostilities, due to a number of objective factors, control of the timing of a child's stay in the Internet space and the content to which he or she has access has decreased. In addition, a child's absorption in virtual life and virtual friends is a kind of psychological relief and distraction from current realities. At such times, a child is particularly psychologically and emotionally unstable and vulnerable.

4. Conclusions

Therefore, the vulnerability of children due to their age and emotional and psychological traits to intruders; the increase in cases of criminal offenses related to sexual abuse and sexual exploitation against children, especially with the use of cyberspace and telecommunications technologies; the development of information and telecommunication systems and technologies, their active implementation in criminal unlawful activities; the lack of established methods of investigating child sexual abuse and practical experience in detecting, solving and investigating these criminal offenses justifies the urgency of building a separate type of methodology, namely, the methodology for investigating solicitation of children for sexual purposes (Article 156-1 of the Criminal Code of Ukraine).

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ЩОДО НАГАЛЬНОСТІ ПОБУДОВИ МЕТОДИКИ РОЗСЛІДУВАННЯ ДОМАГАНЬ ДИТИНИ ДЛЯ СЕКСУАЛЬНИХ ЦІЛЕЙ (СТ. 156-1 КК УКРАЇНИ)

Анотація. Мета. Метою статті є обґрунтування нагальності побудови методики розслідування домагань дитини для сексуальних цілей та окреслення її структури. **Результати.** У статті наголошено, що охорона дитинства в Україні є загальним пріоритетним завданням. Зазначено, що посягання на права, свободи і законні інтереси дитини, особливо, що пов'язані з її сексуальною свободою і сексуальною недоторканністю, є караними й обов'язково тягнуть за собою відповідальність. Підкреслено, що вік і рівень розвитку дитини впливають на критерії вибору її жертвою домагань, способи вчинення цього протиправного діяння та мотивацію особи злочинця. У період бойових дій через низку об'єктивних факторів знизився контроль за таймінгом перебування дитини в інтернет-просторі та контентом, до якого вона має доступ. Крім того, поглинання дитини віртуальним життям і віртуальними друзями є своєрідним способом психологічної розрядки та відволікання від нинішніх реалій. У такий час дитина є особливо психологічно й емоційно нестійкою та вразливою. Встановлено, що кримінальні правопорушення, скоєні стосовно дитини, відзначаються специфічним механізмом учинення та діяльністю з їх виявлення, розкриття та розслідування. Правоохоронці не завжди можуть правильно визначити вичерпний перелік обставин, що підлягають з'ясуванню під час розслідування вказаних протиправних діянь, і правильно окреслити межі доказування; спрогнозувати поведінку учасників кримінального провадження; розпланувати та організувати досудове розслідування; налагодити ефективну взаємодію тощо. **Висновки.** З'ясовано, що нагальність побудови окремої видової методики, а саме методики розслідування домагань дитини для сексуальних цілей (ст. 156-1 КК України), обґрунтовується вразливістю дитини через її вікові й емоційно-психологічні риси перед зловмисниками; зростанням випадків учинення кримінальних правопорушень, пов'язаних із сексуальним насильством і сексуальною експлуатацією, стосовно дітей, особливо з використанням кіберпростору та телекомунікаційних технологій; розвитком інформаційно-телекомунікаційних систем і технологій, їх активною імплементацією в кримінальну протиправну діяльність; відсутністю сформованих методик розслідування домагань дитини для сексуальних цілей і практичного досвіду з виявлення, розкриття та розслідування вказаних кримінальних правопорушень.

Ключові слова: криміналістична методика, сексуальна експлуатація, сексуальне насильство, методика розслідування, домагання дитини для сексуальних цілей, формування методики.

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