

**RESEARCH**  
**ON THE PRE-TRIAL PRACTICES AND THE JUDICIAL PRACTICE**  
**ON APPLICATION OF UKRAINE'S LEGISLATION ON THE CRIMINAL**  
**RESPONSIBILITY WITH RESPECT TO JUVENILES**

**Kyiv – 2018**

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## INTRODUCTION

Juvenile delinquency and other negative phenomena associated with it in the children's and youth environment (neglect, homelessness, and vagrancy, drug, alcohol, and gaming addiction, etc.) have become a social phenomenon, the tendencies of the development of which constitute a threat to the national security of Ukraine. The activity of juveniles is increasing, while at the same time juvenile offenders are getting younger. The high rate of second offences by juveniles is still there, and their cruelty is truly striking. On the other hand, children in conflict with the law in accordance with the constitutional principles of the juvenile policies, current legislation, and international obligations of Ukraine require a humane attitude and special protection by the State. Ensuring the protection of the rights of children in contact with the law (children-victims of offenses and negligence by adults, as well as witnesses of criminal acts) is equally important.

According to state statistics, during 2017, the pre-trial investigation authorities announced that 4,508 persons aged 14-18 years were suspected of committing a crime. At the same time, during the year of 2017, a total of 4,639 criminal offenses were committed against juveniles, as a result of which 5,087 children were victimized. Consequently, nearly 10,000 children were involved in the pre-trial investigation and court proceedings. Therefore, the problem of enhancement of the justice with respect to children and adherence to the principles of the child-friendly justice are extremely relevant.

This study is devoted to the problems of the application of the criminal responsibility legislation with respect to juveniles and counteracting offenses by the actors of the prevention activities, pre-trial investigation authorities, and courts of Ukraine. Its purpose is to identify problems in implementing the norms of the Ukrainian legislation and international treaties, which are a part of the national law, in the field of combating the juvenile delinquency.

The study was carried out based on the analysis of statistics data, preventive practice materials, pre-trial investigation practices, legal practice of helping juveniles in the criminal proceedings, and practices of the judicial consideration of cases involving juveniles. The study includes the results of focus-groups with juvenile practitioners (judges – 15 persons in total; police officers – 33 persons in total and children who are in conflict with the law – 22 children in total) which were performed by the experts of the project in Kyiv, Odesa, Khmelnytsky, Kharkiv and Chernomorsk. The study also used the content analytical materials and the ‘Analysis on the National legislative framework of Ukraine regarding the existing system for protection of children in conflict with the law’

## METHODOLOGY

The Expert group of the project gathered information for this study between June and October 2018 through roundtable discussions and in-depth, semistructured interviews with practitioners, policy-makers, scientists, national experts and CSOs, acting in the area of juvenile justice. AUFRCR conducted six in-person roundtables with a total of 23 stakeholders. The research team also completed 6 in-person focus-groups and a number of in-depth phone interviews with 24 stakeholders and experts in the field (e.g., policy experts, judges, police officers (juvenile prevention officers and investigators, attorneys, prosecutors, law enforcement, youth corrections, and direct service providers) and representatives of national civil society organizations), who brought their unique experiences to this study. We used the comprehensive analytical materials<sup>1</sup>, the ‘Analysis on the National legislative framework of Ukraine regarding the existing system for protection of children in conflict with the law’ (find [here](#)) to identify common themes and recommendations across the interviews and focus group discussions.

### *Who Will Use This Study?*

Identified juvenile practices focal points within government ministries and government agencies whose support is critical to the successful implementation of juvenile justice in Ukraine could also find this study useful. This study is also relevant to all stakeholders interested in protection of the rights of the child in respect to children who are in conflict with the law. Thus, Government Ministries, Policy-makers, State Agencies, Law Schools, NGOs, youth-led organisations and community based institutions would find this study useful. It empowers them to become change agents of juvenile justice mainstreaming within public, parents and children, civil society, and international agencies; thus promoting child protection system and juvenile system in development processes.

The study can be used for:

- Justice professional (judges, attorneys, prosecutors)
- Lawenforcement agencies (juvenile prevention, juvenile investigation)
- Probation officers
- Mediators
- Social workers
- Academicians
- Law students, etc.

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<sup>1</sup> Survey for upper-form pupils and students of the first and second category higher education institutions on the topic "Youth and unlawful behavior", conducted by the Ukrainian Research and Guidance Center for Practical Psychology and Social Work in 2017. Total number of respondents – 10743 persons. [http://www.psyua.com.ua/doc/project/mon\\_analis\\_prot\\_poved.pdf](http://www.psyua.com.ua/doc/project/mon_analis_prot_poved.pdf);

Y. Nazymko, Results of the survey for judges from the appellate instances on the effectiveness of imposition of punishments on juveniles and the possibility of their use in legislative and law-enforcement activities. / Y. Nazymko // Viche. – 2017. – №6. – С. 20–22;

Results of All-Ukrainian survey “Reformation of criminal justice: views of investigators, prosecutors, attorney and judges”/URL: <https://uba.ua/documents/presentation/11-03-2016/Tsymbrivska.pdf>; Natalia Ortynska “Legal status of juveniles: theoretical legal research”, Lviv, 2017

## **SECTION 1. CHILD IN THE SPHERE OF CRIMINAL JUSTICE REGULATION**

***Focal points of this section:*** *to explain the concept of a "child" in Ukrainian legislation, its correspondence to International and European norms and standards; and to give an overview of existing criminal measures in respect to children in conflict with the law.*

### **1.1. The concept of a "child", "minor", and "juvenile" in the national law.**

In Ukraine, the concept of a "child" is regulated in many sources of both national, international, and European regional law, which are not always terminologically and meaningfully concerted with each other. In their hierarchy, the top place is occupied by the Convention on the Rights of the Child, according to which a child means every human being below the age of eighteen years unless under the law applicable to the child, the majority is attained earlier (Article 1). The Convention for the Protection of Human Rights and Fundamental Freedoms mentions minors (Article 5 (d)), without specifying their age, while the European Convention on the Exercise of Children's Rights shall apply to children who have not reached the age of eighteen years (Article 1).

According to Article 1 of the Law of Ukraine "On the Citizenship of Ukraine", a child is a person under the age of 18 years. In accordance with the Law of Ukraine "On the Protection of Childhood", a child is considered to be a person under the age of 18 years (age of majority), unless under the law applicable to the child, he or she gets the rights of a national adult earlier (Article 1). The national legal system includes two different-age demographic groups into the children's category – minors and juveniles. In accordance with the Family Code of Ukraine, a child is considered a minor until he or she reaches the age of fourteen years, while a child is considered a juvenile when aged fourteen to eighteen years (Article 6). According to Article 3 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the "CPC of Ukraine"), the term "juvenile" shall apply to both minors and children between the ages of fourteen and eighteen years.

In one case, the legal regulation with respect to children in conflict with the law extends to persons who have attained the age of eighteen years. Under Article 148 of the Penitentiary Code, all convicted persons, who have attained the age of eighteen years, may be left at a juvenile correctional facility until the completion of the period of their sentence, but not longer than until they reach the age of twenty-two. They are also subject to the conditions of serving a sentence, as well as the nutritional, accommodation, and welfare standards, established for juvenile convicts.

The Law of Ukraine introduced the concept of "a child in conflict with the law" (Article 1), but did not specify its definition. This Law refers to children in conflict with the law to the category of children in difficult life situations. According to the Law, this

category also includes children whose difficult life circumstances are associated with involvement into the worst forms of child labor and ill-treatment, in particular the domestic violence. In the present study, the term "a child in conflict with the law" will be used in relation to minors and juveniles who are suspected, accused, or found guilty of violating the criminal law, and the term "a child in contact with the law" refers to the children who are victims or witnesses in a criminal proceeding.

## **1.2. Criminal justice measures with respect to children in conflict with the law.**

The Criminal Code of Ukraine established two age limits, with the onset of which a child (juvenile) may be held criminally responsible: sixteen years and fourteen years. A sixteen-year-old child may be criminally prosecuted for almost all kinds of crimes. The list of exceptions includes crimes committed by a special actor (for example, a civil servant, since a juvenile cannot occupy any position in a civil service).

Offenses, for which a criminal responsibility is applied after the achievement of age of fourteen years, are characterized by a social danger, accessible for it's understandingly the fourteen year olds.

An exhaustive list of such crimes is provided in Part 2 of Article 22 in the Criminal Code of Ukraine, namely:

- Act of sabotage (Article 113) – *crimes against the fundamentals of Ukraine's national security*;
- Intentional homicide (Articles 115-117); endangering the life of a state or public figure, an employee of a law enforcement agency, a member of a public organization for the protection of public order and the state border, or a serviceman, judge, people's assessor, or juryman in connection with their activities, related to the exercise of justice, a lawyer or representative of a person in connection with activities related to the provision of legal assistance, or a representative of a foreign state (Articles 112, 348, 379, 400, and 443) – *crimes against life of a person*;
- Intended grievous bodily harm (Article 121, Part 3 of Article 345, Articles 346, 350, 377, and 398), intended moderate bodily harm (Article 122, Part 2 of Article 345, Articles 346, 350, 377, and 398) – *crimes against health of a person*;
- Hostage taking, or taking a public officer or a law enforcement agency employee as a hostage (Articles 147, 349) – *crimes against will, honor, and dignity of a person*;
- Rape abuse (Article 152), forcible sodomy (getting sexual satisfaction in an unnatural way)(Article 153) – *crimes against sexual freedom and sexual integrity of a person*;
- Theft (Article 185, Part 1 of Article 262, Article 308), robbery (Articles 186, 262, and 308), plundering (Article 187, Part 3 of Article 262, Article 308), extortion (Articles 189, 262, and 308), willful destruction or damage to property (Part 2 of Article 194, Articles 347, 352, and 378, Part 2 and Part 3 of Article 399) – *crimes against property*;
- Banditry (Article 257), act of terrorism (Article 258) – *crimes against public security*;

- Damage to communication routes and transportation vehicles (Article 277), theft or capture of the railroad rolling stock or an air, sea, or river vessel (Article 278) – *crimes against traffic safety and vehicle operation*; and
- Hooliganism (Article 296) – *crimes against public order and morality*.

By the degree of gravity, the vast majority of these types of crimes are considered as grave and extremely grievous offences.

However, the criminal justice measures (measures of the criminal justice nature)<sup>2</sup> can also be applied to persons who have not attained the age of criminal responsibility. These are minors aged between eleven and fourteen, as well as minors aged fourteen to sixteen, if they committed a socially dangerous act not mentioned in Part 2 of Article 22 in the Criminal Code of Ukraine. For example, a fifteen-year-old child shall not be held criminally liable for a homicide by negligence (Article 119 of the Criminal Code of Ukraine). With respect to these categories of children, who have committed an act prohibited by the criminal law, the State may apply coercive educational measures, which are not criminal responsibility measures.

In general, the following criminal justice measures may be applied to children in conflict with the law:

### **General criminal justice measures<sup>3</sup>:**

1) *Punishment*. The list of punishments that may be imposed on juveniles is exhaustive. These are the following basic types of punishment: 1) fine; 2) compulsory community service; 3) corrective labor; 4) arrest; and 5) deprivation of liberty for a certain period of time, as well as additional penalties in the form of a fine and deprivation of the right to occupy certain positions or engage in certain activities (Article 98 of the Criminal Code of Ukraine). The statistics on the application of this measure indicate that a deprivation of liberty is imposed by the courts as a measure of a last resort<sup>4</sup>. Scientists are of the opinion that the system of punishments with respect to juveniles has not a specificity, but certain differences from the one applicable to adults, and offer their proposals for creation of specific types of criminal punishment that would apply to juveniles only and take into consideration the peculiarities of their development. However, as a rule, specific proposals do not go beyond the modification of the system of the already existing types of punishment. For example, it is proposed to extend the imposition of the compulsory community service for minors, as well as the arrest and

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<sup>2</sup> We use the term "criminal justice measure" to denote the activity of the State, represented by the specifically authorized bodies, regarding the imposition, to a person who committed a socially dangerous act, of measures prescribed by the criminal law. O.V. Us. Criminal justice measures: essence and content. Published in: Current Issues of Criminal Responsibility: Materials of the International Research to Practice Conference, October 10-11, 2013. Kharkiv, 2013, p. 217. The term "measures of the criminal justice", used in the legislation, shall be used as a synonym.

<sup>3</sup> General criminal justice measures have certain specificity in the application with respect to minors.

<sup>4</sup> E.S. Nazimko. Institute for Punishment of Juveniles in the Criminal Law of Ukraine. Genesis, international and European standards, juvenile penology: monograph. Kyiv, Yurinkom, 2016, p. 180.

payment of a fine by installment, and to introduce a domestic arrest as a punishment to the law<sup>5</sup>.

Commission of an offense by a juvenile shall be taken into account by the court as a circumstance that mitigates the punishment (paragraph 3, Part 1 of Article 66 of the Criminal Code of Ukraine);

2) *Exemption from the criminal responsibility in connection with actual repentance*, if the juvenile has sincerely repented after the crime was committed, actively contributed to the crime disclosure, and fully compensated for the damage he or she caused or eliminated the harm caused (Article 45 of the Criminal Code of Ukraine);

3) *Exemption from the criminal responsibility in connection with reconciliation with the victim*, if the juvenile has reconciled with the victim and reimbursed the damage he or she caused or eliminated the harm caused (Article 46 of the Criminal Code of Ukraine);

4) *Exemption from the criminal responsibility in connection with the juvenile's bailment* by the staff of an enterprise, institution, or organization following their request for such bailment (Article 47 of the Criminal Code of Ukraine); and

5) *Exemption from the criminal responsibility in connection with the change in the situation* – that is, if at the time of the criminal proceedings, the wrongdoing committed by the juvenile offender has lost its public danger, or the juvenile has ceased to be socially dangerous (Article 48 of the Criminal Code of Ukraine).

The criminal justice measures, specified in clauses 2-5, may be applied only in case of commission, by a juvenile, of a minor crime or careless crime of a moderate gravity;

6) *Conviction and release from punishment with a probation period*. In the case of convicting a minor to an arrest or deprivation of liberty for a term not exceeding five years, a court may exempt a juvenile from the punishment with the imposition of a probation period of one to two years (Articles 75-78 of the Criminal Code of Ukraine). This measure with regard to a juvenile has its own specific character, defined by Article 104 of the Criminal Code of Ukraine. It is most often applied against juveniles among all other corrective measures despite the confidence of judges and academics in its ineffectiveness<sup>6</sup>;

7) *Conviction and release from serving a sentence with an act of amnesty (pardon)* (Articles 86, 87 of the Criminal Code of Ukraine);

8) Imposition of coercive measures of a medical nature with regard to juveniles who have committed socially dangerous acts in a state of insanity or diminished sanity, or have committed a crime in a state sanity, but got a mental disorder or disease before

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<sup>5</sup> N. Mirosnichenko. Certain suggestions to improve the legislation with respect to the criminal justice measures regarding juveniles. Published in: *Legal influence on the unlawful behavior: actual thresholds* (monograph). Mykolayiv: Ilion, 2016, pp.194-196; N.S. Yuzikova. *Juvenile delinquency: peculiarities, modern tendencies, and measures of prevention and counteraction to it* (monograph). Dnipro: K.O. Bila, 2016, pp. 377-378.

<sup>6</sup> N. Mirosnichenko. The aforementioned work. P. 198.

the imposition of a sentence or while serving their sentence (Articles 92-93 of the Criminal Code of Ukraine);

9) *Exemption from the criminal responsibility and serving a sentence in connection with the expiration of the limitation period* (Article 104 of the Criminal Code of Ukraine);

10) *Conditional release from serving a sentence*. It may be applied with respect to persons who have committed an offense before the age of maturity and serve the imposed sentence in the form of deprivation of liberty, if the convicted person has proved his or her correction with a diligent conduct and attitude to work and education (Articles 81 and 107 of the Criminal Code of Ukraine). It is also possible to *substitute an unserved portion of the criminal sentence with a more lenient punishment*, if the convict has started pursuing a better path (Article 82).

### **Special criminal justice measures.**

11) *Conviction and release from serving a sentence with the application of coercive measures of an educational nature*. A juvenile, who has committed a minor or a moderately severe crime, may be released from the punishment by the court, if it is recognized that, at the time of imposition of the sentence, he or she does not require the imposition of a punishment due to sincere repentance and subsequent impeccable behavior (Article 105 of the Criminal Code of Ukraine); and

12) *Exemption from the criminal responsibility with the application of coercive measures of an educational nature*. A juvenile, who has committed a moderately severe crime or a careless crime of moderate gravity for the first time, may be exempted from the criminal responsibility, if his or her correction is possible without the imposition of the punishment. The same measures may be also applied to a person who, before the age of criminal responsibility, has committed a socially dangerous act, provided for by the criminal law (Parts 1 and 2 of Article 97 of the Criminal Code of Ukraine). Coercive measures of an educational nature are considered a more effective measure than a release from serving a sentence with a probation period<sup>7</sup>.

Based on their content and purpose, the aforementioned criminal justice measures with respect to children in conflict with the law are divided into punitive measures (they include only punishments) and non-punitive (encouraging)<sup>8</sup> measures. At that, the latter are quite diverse, which enables an individual response to crimes / socially dangerous acts and the selection of a measure that best suits the goal of rehabilitation and correction of a child in conflict with the law. However, the vast majority of non-punitive (encouraging) measures of the criminal justice with respect to children in conflict with the law may be applied only in case of their commission of crimes of a minor or moderate severity. In

<sup>7</sup> N. Miroshnichenko. The aforementioned work. pp. 199-200.

<sup>8</sup> N. Miroshnichenko. The aforementioned work; E.M. Veчерova. Non-punitive criminal justice measures with respect to juveniles in Ukraine (criminological grounds): author's abstract from the PhD in Law Thesis: 12.00.08. Odessa, 2010. p. 20.

addition, the effectiveness of the majority of the criminal justice measures with respect to children in conflict with the law remains at a quite low level. Therefore, scholars are encouraged to expand their list, in particular, through mediation, probation, and referral of children for upbringing in a foster family<sup>9</sup>.

### **1.3. Criminological characteristic of crimes, committed by juveniles, and crimes against children.**

#### ***1.3.1. Characteristics of the types of crimes and criminal justice measures with respect to juveniles who committed them.***

In 2016, a total of 22 juveniles were convicted for the intentional homicide, while in 2017 this number dropped to 14 persons (thereof them were aged 14 to 16 years), including one girl. All 14 juvenile offenders were sentenced to deprivation of liberty for a certain period: in particular, one juvenile got a sentence of 3 to 5 years of imprisonment, four juveniles were sentenced for a period of 5 to 10 years, and nine juveniles got a sentence of 10 to 15 years.

43 juveniles were convicted for an *intended infliction of a grievous bodily harm* in 2016. The punishment in the form of deprivation of liberty for a certain period was imposed in 12 cases; one juvenile was released from the punishment, and 30 children were released from serving their sentences with a probation period. In 2017, a total of 29 juveniles were convicted for commission of this offense (of which four minors were aged 14 to 16 years), including one girl. The punishment in the form of deprivation of liberty for a certain period was imposed with respect to 15 juveniles, and 14 juveniles were released from serving their sentences, including 13 persons released from serving a sentence with a probation period and one person – under the amnesty act.

In 2016, a total of five juveniles were convicted *for rape* (similarly to the number of 2017), two of which committed this crime under the alcohol intoxication (in 2017, two juveniles committed this crime under the alcohol and drug intoxication), one juvenile has committed a crime with a group of adults (similarly to the number of 2017). All five juvenile offenders were sentenced to imprisonment for a certain period: in particular, one juvenile got an imprisonment sentence of 2 to 3 years and another one – of 3 to 5 years, while three persons got an imprisonment sentence of 5 to 10 years. In 2017, there were three cases when juveniles were sentenced for rape with an imprisonment for a certain period, while two juveniles were released from serving their sentences with a probation period.

In 2016, a total of 74 juveniles were convicted of *crimes related to trafficking of narcotic drugs, psychotropic substances, their analogues, or precursors*, including two girls, while in 2017 this number rose to 94 minors, including six girls. Out of these of 94

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<sup>9</sup> O.O. Severin. Imposition of criminal justice measures, not related to deprivation of liberty, on juveniles: author's abstract from the PhD in Law Thesis: 12.00.08. Zaporizhia, 2009. p. 17.

convicts, 10 juveniles got a sentence related to the deprivation of liberty for a certain period, one juvenile was arrested, two ones got a sentence with compulsory community service for a certain period, and sentences with a fine were imposed on 42 minors. A total of 36 children were released from the punishment, with 29 of them released from serving a sentence with a probation period and six ones – as a result of the application of the amnesty law.

The greatest number of crimes committed by juveniles constitute *crimes against property*. Thus, in 2016, a total of 2,734 juveniles were convicted of such crimes (888 of them were children committing a crime at the age of 14 to 16 years), including 296 girls. The punishment in the form of deprivation of liberty was applied with respect to 372 juveniles, arrest –to 25 minors, compulsory community service for a certain period was imposed on 246 minors, and 243 children got a fine-based sentence. A total of 1,797 juveniles were released from the punishment, including 1,546 ones who were released from serving a sentence with a probation period, and six minors – as a result of the application of the amnesty law.

In 2017, a total of 2,453 juveniles were convicted of the said crimes (787 of them were children committing a crime at the age of 14 to 16 years), including 280 girls. The punishment in the form of deprivation of liberty was applied with respect to 306 minors, arrest –to 13 juveniles, compulsory community service for a certain period was imposed on 155 minors, and 260 children got a fine-based sentence. A total of 1,654 minors were released from the punishment, including 1,348 children released from serving a sentence with a probation period and 156 juveniles – as a result of the application of the amnesty law. Before committing a crime, 94 minors were at the preventive activities' records of the police or referred to special educational institutions, while 357 ones got a sentence earlier.

In 2017 the Survey for upper-form pupils and students of the first and second category higher education institutions on the topic "Youth and unlawful behavior", has been conducted by the Ukrainian Research and Guidance Center for Practical Psychology and Social Work in 2017<sup>10</sup>. The survey with a total number of respondents of 10743 persons found the following:

- 88% of the surveyed minors indicated that the majority of crimes are committed under the influence of alcohol or narcotic intoxication;
- 65% of the surveyed minors indicated that the purpose of obtaining money (material benefit) is one of the most common factors in committing crimes, which is a consequence of the economic stratification of society and a significant immiserization of the population;

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<sup>10</sup> Survey for upper-form pupils and students of the first and second category higher education institutions on the topic "Youth and unlawful behavior", conducted by the Ukrainian Research and Guidance Center for Practical Psychology and Social Work in 2017. Total number of respondents – 10743 persons. [http://www.psyua.com.ua/doc/project/mon\\_analis\\_prot\\_poved.pdf](http://www.psyua.com.ua/doc/project/mon_analis_prot_poved.pdf)

- 63% of the surveyed minors indicated that the list of the common factors for crime commission includes the coercion for their commission by other persons;
- 57% of the surveyed minors indicated that the reason for the crime commission consisted in the potential impunity for its commission;
- 55% and 53% of the surveyed minors indicated that the reason for the crime commission was to get some entertainment and "to join the crowd";
- 49% of the surveyed minors indicated that the reason for the crime was the legal ignorance.

This survey includes the comparison on the responses from pupils of secondary schools and boarders of the juvenile correctional facilities concerning the expediency of imposing a punishment in the form of a deprivation of liberty for certain types of crimes, which are most prevalent among minors, in %:

What do you think, for what crimes, committed by 14-16-year olds, it is expedient to impose an imprisonment sentence?	Students of gymnasiums, schools, lyceums, and vocational schools		Boarders of the juvenile correctional facilities	
	An imprisonment sentence should be imposed	No imprisonment sentence should be imposed	An imprisonment sentence should be imposed	No imprisonment sentence should be imposed
Causing bodily harm	55	45	63	37
Theft	39	61	49	51
Robbery	70	30	60	40
Brigandage	64	36	65	35
Extortion or fraud	56	44	54	46
Hooliganism	31	69	44	56
Murder	96	4	85	15
Rape	95	5	81	19
Narcotic drug manufacture and dealing	89	11	69	31
Unlawful appropriation of vehicles	51	49	54	46

The State statistics on the criminality do not include indicators on the gender characteristics of minors who have committed an offense. Let us consider them through the example of statistical indicators in the Khmelnytskyi region.

In 2013, criminal proceedings were initiated with respect to 139 juveniles, of which 124 were masculine gender minors and 15 were juvenile women. The majority of crimes committed by them are offences against property. Then, in the descending order, there were offences against the public order and morality, traffic safety, and transport vehicle operation. Particular attention should be paid to crimes against the life and health of a person: out of 12 such crimes, two were committed by girls.

#### **1.4. Staff composition and special training of actors of criminal proceedings involving children.**

##### ***1.4.1. Staff composition and special training of actors of preventive activities.***

Preventive activities with respect to children in Ukraine are carried out by several

agencies, the list of which includes the following:

1) *Bodies of the national police*, which carry out preventive and prophylactic activities aimed at preventing the commission of offenses, reveal the reasons and conditions that promote the commission of criminal and administrative offenses, and take measures, within their competence, for their elimination (paragraphs 1 and 2 of Article 23 of the Law of Ukraine "On the National Police", Article 5 of the Law of Ukraine «On the bodies and services on minors and special institutions for children»). The performance of these functions has been assigned to juvenile prevention subdivisions and district police inspectors (Department of Preventive Activities, Juvenile Prevention Division, and relevant Prevention Activities Divisions at the Head Offices of the National Police in the regions, the Autonomous Republic of Crimea, and cities of Kyiv and Sevastopol, as well as Juvenile Prevention Departments) and also to police patrol staff (Traffic Police Department). As an example, let us mention a clause from the Provision on the Department of Preventive Activities at the Head Office of the National Police in the Kyiv region: "Clause 36. Prevents children from committing offenses, organizes individual preventive work with minors who are in conflict with the law and work to counteract the involvement of children in criminal activities, alcohol abuse, begging, and other unlawful activities"<sup>11</sup>;

2) *Services on minors*. This actor of the preventive activity is responsible for implementing, at a respective territory, the state policy on issues of social protection of children, prevention of child abandonment and homelessness, and commission of offenses by juveniles (Section 3 of the Model Regulations on the Service on minors)<sup>12</sup>;

3) *Juvenile probation sector* of a respective administrative and territorial unit of Ukraine is responsible for definition of the criminogenic factors influencing the behavior of a juvenile convict; development and implementation of measures on the work with minors that will help minimize the risk of committing new offenses by applying a methodology for assessing the risk of committing a repeated criminal offense (paragraph 2 of the Model Regulations on the Juvenile Probation Sector)<sup>13</sup>;

4) *Divisions of juvenile justice* at the regional prosecutor's offices, which shall coordinate the activities of law enforcement agencies of the appropriate level in the field

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<sup>9</sup> Regulations on the Department of Preventive Activities at the Head Office of the National Police in the Kyiv region: Approved by the Decree of the Head Office of the National Police in the Kyiv region No. 90 UA, dated December 31, 2015. [Electronic resource]. - Access mode: <http://upd.kv.npu.gov.ua/korisna-informacia/zakonodavcha-baza/2579/>

<sup>10</sup> On Approval of Model Regulations on the Service on minors: Cabinet of Ministers of Ukraine; Resolution, Regulations, and List No. 1068, dated August 30, 2007. [Electronic resource]. - Access mode: <http://zakon0.rada.gov.ua/laws/show/1068-2007-%D0%BF>

<sup>11</sup> Model Regulations on the juvenile probation sector: Ministry of Justice of Ukraine; Order, Regulations No. 2649/5, dated August 18, 2017. [Electronic resource]. Access mode: <http://zakon3.rada.gov.ua/laws/show/z1031-17/paran4#n4>

of counteracting criminality, in particular through arrangement and conduct of joint meetings, establishment of interdepartmental working groups, implementation of pre-concerted measures, and carrying out of analytical activities (Part 2 of Article 25 of the Law of Ukraine "On the Prosecutor's Office")<sup>14</sup>;

5) *Centers for the provision of the free-of-charge secondary legal aid*. They shall carry out legal awareness raising work at educational establishments, institutions of extracurricular education, institutions of post-graduate education, and educational institutions for orphans and children deprived of parental care (subclause 2 of paragraph 13 of the Regulations on centers for the provision of the free-of-charge secondary legal aid)<sup>15</sup>. The typical form of this work is arrangement and holding of thematic seminars within the framework of the Week of Law (the first week of December), excursions, and other educational activities;

6) *Centers of social services for families, children, and youth* are responsible for carrying out social and preventive work aimed at preventing families, children, and youth from finding themselves in the sticky living circumstances; as well as for identification of families, children, and youth who have found themselves in the sticky living circumstances and are in need of outside help (paragraph 6 of the Regulations on the Center of Social Services for Family, Children, and Youth)<sup>16</sup>;

7) Non-governmental organizations (NGO) and individuals (volunteers). NGOs in preventive activities are represented predominantly within the framework of implementation of individual projects (grants). For example, within the framework of the implementation of the National Police "Street Law" project<sup>17</sup>, within the framework of implementation of the project on countering bullying (harassment among children) – "I have the right to be myself" – carried out by the Juvenile Prevention Division of the Department of Preventive Activities at the National Police together with the Ukrainian Institute for the Study of Extremism)<sup>18</sup> or measures of the State government bodies (for

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<sup>12</sup> On the Prosecutor's Office: Law of Ukraine No. 1697-VII, dated 14.10.2014. [Electronic resource]. Access mode: <http://zakon0.rada.gov.ua/laws/show/1697-18>

<sup>13</sup> On approval of the Regulations on centers for the provision of the free-of-charge secondary legal aid: Ministry of Justice of Ukraine; Order, Regulations № 967/5, dated 02.07.2012. <http://zakon5.rada.gov.ua/laws/show/z1091-12>

<sup>14</sup> On Approval of the General Regulations on the Center of Social Services for Family, Children, and Youth: Cabinet of Ministers of Ukraine; Resolution, Regulations, and List No. 573, dated 01.08.2013: [Electronic resource]. - Access mode: <http://zakon5.rada.gov.ua/laws/show/573-2013-%D0%BF>

<sup>15</sup> Street Law in Mukacheve: "Through law and education to justice" / News of Transcarpathia. November 6, 2017. [Electronic resource]. - Access mode:

<http://transcarpatia.net/transcarpathia/social/88250-street-law-u-mukachev-do-spravedlivost-cherez-zakon-ta-osvtu-foto.html>

<https://pershij.com.ua/policeyski-yuvenalnoi-prevencii-sp/>

<sup>16</sup> The police launched a project against harassment at schools / Espresso. March 6, 2018. [Electronic resource]. - Access mode:

<https://espresso.tv/news/2018/03/06/policiya-zapustyla-proekt-proty-ckuvannya-u-shkolakh>

example, cooperation with probation bodies while conducting training sessions with minors<sup>19)</sup> or local communities in a particular area.

8) *State power and local self-government bodies*. Their activities are usually carried out through the adoption and promotion of the implementation of individual programs in the field of protection of children's rights and counteraction to offenses. Such activities represent the exercise of their powers in the field of social security and public order (Articles 13, 16, 23, and 25 of the Law of Ukraine "On Local State Administrations"; Articles 32 and 34 of the Law of Ukraine "On Local Self-Government in Ukraine").

As a rule, actual data on the staff composition of actors of the preventive activities is not reflected in the government statistics, which makes it impossible to analyze the correspondence of the actual number of employees with the regular staffing of agencies (services, departments, etc.). In this regard, it is not always possible to determine the compliance with the workload norms, and therefore the ability of the relevant service to ensure the high-quality performance of its duties.

Availability of a special training of employees of bodies and services for children and special institutions and social protection institutions for children (that is, major actors of preventive activities) has been provided for in Article 14 of the Law of Ukraine "On the bodies and services for children and special institutions for children". The State shall provide special training and retraining of their managers and professionals (educators, social psychologists, sociologists, lawyers, medical workers, and law enforcement officers). However, at present there is no training system for children's bodies and services and special institutions for children, just as there are no professional requirements for holding respective positions at these bodies and services. For example, the list of requirements for participation in the competition for filling a vacancy of a specialist or a manager at a service on minors includes only a university degree with any major. Special training and retraining of such professionals, as a rule, are carried out in the form of short-term courses, seminars, and trainings.

#### ***1.4.2. Staff composition and special training of actors of criminal proceedings.***

Actors of criminal proceedings, in accordance with the functions performed in the proceedings, are divided into the following:

- 1) Participants who perform the function of justice (investigating judge, court, and jury);
- 2) Participants who perform the function of prosecution (actors of the pre-trial investigation, prosecutor, and victim);

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<sup>17</sup> Sector of juvenile probation of the Dnipro City [Electronic resource]. - Access mode: [https://www.facebook.com/pg/%D0%A1%D0%B5%D0%BA%D1%82%D0%BE%D1%80-%D1%8E%D0%B2%D0%B5%D0%BD%D0%B0%D0%BB%D1%8C%D0%BD%D0%BE%D1%97-%D0%BF%D1%80%D0%BE%D0%B1%D0%B0%D1%86%D1%96%D1%97-%D0%BC-%D0%94%D0%BD%D1%96%D0%BF%D1%80%D0%B0-434633090332704/posts/?ref=page\\_internal](https://www.facebook.com/pg/%D0%A1%D0%B5%D0%BA%D1%82%D0%BE%D1%80-%D1%8E%D0%B2%D0%B5%D0%BD%D0%B0%D0%BB%D1%8C%D0%BD%D0%BE%D1%97-%D0%BF%D1%80%D0%BE%D0%B1%D0%B0%D1%86%D1%96%D1%97-%D0%BC-%D0%94%D0%BD%D1%96%D0%BF%D1%80%D0%B0-434633090332704/posts/?ref=page_internal)

- 3) Participants who perform the function of defense (suspect or accused, legal counsellor, and legal representative);
- 4) Participants who perform an auxiliary function (civil defendant, civil plaintiff, etc.)<sup>20</sup>.

The Criminal Procedure Law requires that any criminal proceedings, involving a child in conflict with the law, shall be carried out by the specifically authorized actors of the pre-trial investigation and judges.

In accordance with Article 484 (Part 2) of the Criminal Procedure Code of Ukraine, a criminal proceeding against a juvenile, including a case when a criminal proceeding is conducted against several persons, at least one of whom is a juvenile, shall be carried out by an investigator who is specifically authorized by the head of the pre-trial investigation authority to conduct pre-trial investigations with respect to juveniles.

In practice, the head of the investigating department identifies investigators specifically authorized to conduct pre-trial investigations concerning minors<sup>21</sup>. Requirements for such persons are not legally established. Meanwhile, the Guiding Principles emphasize the need for a special training for working with children in conflict with the law and with children in contact with the law: "All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them.

Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability".

In accordance with the requirements of the CPC of Ukraine (Part 14 of Article 31), any criminal proceedings with respect to juveniles shall be carried out by a judge, specifically authorized for such proceedings. Under the Law of Ukraine "On the Judicial Administration and Status of Judges" (Parts 3-7 of Article 18), in local courts of general jurisdiction and appeal courts, judges authorized to conduct criminal proceedings against minors shall be elected from among the judges of the relevant court by a meeting of judges of this court for a term not exceeding three years, and can be re-elected. A judge authorized to conduct criminal proceedings with respect to juveniles may be elected from the list of judges with a period of service as a judge for at least ten years, experience in conducting criminal proceedings in the court, and a high moral stature, organizational competencies, and professional qualities. In case there is no judge in a court with the required period of service, a judge authorized to conduct criminal proceedings with respect to juveniles shall be elected from among the judges with the longest period of

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<sup>18</sup> A.V. Stolitniy. System and structure of actors of criminal proceedings. Comparative and analytical law. 2015. No. 6. p. 315.

<sup>19</sup> Regulations on the bodies of pre-trial investigation at the National Police of Ukraine: Approved by the Decree of the Ministry of Internal Affairs of Ukraine No. 570, dated July 6, 2017. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/z0918-17>

service at the position of the judge.

The aforementioned requirements for judges should be assessed positively, taking into account the prospects of reforming the juvenile justice system in Ukraine. However, such a specialization of courts of general jurisdiction still has a partial and formal nature. The quite narrow staff list in general courts of first instance sometimes does not allow the appointment of several judges for the consideration of juvenile cases, and if only one judge, authorized to conduct criminal proceedings against juveniles, has been elected in the court, then he or she will be the only one to administrate justice with respect to juveniles – without any alternatives. Requirements for a judge, authorized to conduct criminal proceedings against minors, do not include the need for a special training<sup>22</sup>.

As of today, judges and investigators of the National Police, authorized to deal with cases involving children, do not undergo special training for working with children. They get a higher education degree in Law or Law Enforcement Activities, whose curricula usually do not provide for the acquisition of appropriate competencies. As an example, let's mention the working program of such academic discipline as "Criminal Process", which is being studied by cadets and students of the National Academy of Internal Affairs: it does not foresee the study of (at least as a separate topic) peculiarities of proceedings on cases involving children<sup>23</sup>. The need to include relevant academic disciplines in the curriculum for training of experts and the law enforcement staff is emphasized upon by the scientists<sup>24</sup>. However, to date, this has been done only by individual educational institutions (Oles Gonchar Dnipropetrovsk National University, University of the State Fiscal Service of Ukraine, Scientific and Research Institute for International Relations at the National Aviation University, National University "Odessa Law Academy", and International Humanitarian University).

The need for specialization of judges, authorized to consider cases against juveniles, and the requirements for their selection are not complied with by all courts. Thus, for example, the Appeal Court of the Volyn region, when considering a complaint against the verdict of the Shatsk District Court of the Volyn region, found that there had been three judges working in the Shatsk District Court of the Volyn region, and, at the time of consideration of the aforementioned criminal proceedings, the presiding judge had a period of service less than ten years, while another judge of this court had the necessary length of service to handle the proceedings of such a category.

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<sup>22</sup> S.V. Overchyuk. Development of the juvenile justice in Ukraine in the context of implementation of the court specialization principle. The Journal of the National University "Ostroh Academy", Law series. 2014. No. 2 (10): [Electronic resource]. - Access mode: <http://lj.oa.edu.ua/articles/2014/n2/14osvpss.pdf>

<sup>23</sup> [https://www.naiu.kiev.ua/files/kafedru/kkp/rpnd\\_krymprotses.pdf](https://www.naiu.kiev.ua/files/kafedru/kkp/rpnd_krymprotses.pdf)

<sup>24</sup> N.M. Krestovska. Academic discipline "Juvenile Justice" in the system of training of law enforcement officers. Problems of the legal science and law enforcement activities. 2016. No. 2. pp. 196-198; E.S. Nazimko. Institute of punishment for Minors in the Criminal Law of Ukraine. Genesis, international and European standards, and juvenile penology: monograph. K. Yurinkom Inter, 2016. p. 303-310.

In its turn, the composition of the court shall be recognized as unlawful if the rules on the quantitative composition of judges are violated during the conduct of criminal proceedings with respect to minors, as well as in case of any non-compliance with the requirements of Article 31 of CPC regarding the length of service of a judge who conducts criminal proceedings of a particular category.

The Court of Appeal concluded that the court of first instance, while considering the above-mentioned criminal proceedings, admitted material violations of the requirements of the criminal procedure law, and therefore the verdict of the local court shall be canceled with the appointment of a new consideration in the court of first instance<sup>25</sup>.

The procedure for determining the specialization of judges for consideration of the described category of cases appears to be imperfect. It should not be "tied" to a 10-year service at this position, since the length of service is not an indicator of readiness for work with minors. Much more important is the requirement for special training for a judge authorized to consider criminal proceedings against minors. However, the law is lacking this very requirement.

The most important actor of criminal proceedings in juvenile cases is a legal counsellor whose function can only be performed by an attorney. The Law of Ukraine "On the Defense Attorneys and Advocacy Activities" does not provide for the specialization of a defense counsellor for participation in the defense of children in a criminal proceeding.

In addition, in accordance with Articles 44 and 59 of the CPC of Ukraine, the legal representative of the minor – suspect, accused, or victim – is engaged into the participation in the proceedings together with him or her. The question arises whether the legal representative of the minor has sufficient knowledge and experience (both life and professional) in order to represent the interests of the child. Does the legal representative act to ensure the best interests of the child? Given the practice, it is known that the legal representative himself or herself is in a state of stress and is not able to objectively understand the reason for his or her involvement in the proceedings. In addition, thinking subjectively, as a rule, the legal representative is unable to take measures to create a comfortable environment for the child during the conduct of investigative actions and to prevent the psychological impact on the child by the investigator, prosecutor, and the court. It is quite uncommon, but there are cases where a child witness, after the interrogation, becomes a suspect in a given criminal offense.

Consequently, the actions of the legal representative cannot be considered for 100% as an assistance to the juvenile.

Taking into consideration the aforementioned information, it would be expedient

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<sup>25</sup> Resolution, April 04, 2018; Case No. 168/475/17 Proceedings No. 11-kp / 773/152/18; Court of Appeal of the Volyn region [Electronic resource]. Access mode: <http://www.reyestr.court.gov.ua/Review/73162791>

to introduce a specialization on the protection and representation of minors within the legal counsellors' community, with the introduction of appropriate changes in the statutory and regulatory enactments. In fact, both a child in conflict with the law and a child in contact with the law are special categories of children in a sticky life circumstances, and working with them requires a special approach – in particular, the study of their psychology, rapid mood changes, and specific thinking, etc. The main thing in this case is the desire to help children and change their worldview for the better and to achieve the best interests of the child during the provision of legal assistance, regardless of objective and subjective factors, the ability to talk and inform the child of the actual circumstances and to ascertain the desires of the juvenile. However, this should be learned from trainers who directly studied and had practical communication with children – in conflict with the law and vice versa, extensive material support, and positive and negative education.

## SECTION 2. PREVENTIVE ACTIVITIES WITH RESPECT TO CHILDREN IN CONFLICT WITH THE LAW AND CHILDREN IN CONTACT WITH THE LAW

***Focal points of this section:*** *this section presents findings from workshops with experts; focus-groups, in-person and distance interviews with police officers, soci and the other relevant stakeholders and summarizes existing practice in prevention area, practice gaps, the barriers practitioners face in their work and the child audiences that could benefit most from child-friendly preventive activities.*

### **2.1. Regulatory basis for prevention with respect to children in conflict with the law.**

International standards on the juvenile justice recognize the preventive (prophylactic<sup>26</sup>) activities for juvenile as the major and inalienable element in the system of protection of children in conflict with the law and as an integral part of the implementation of the juvenile justice policy. For example, the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) explicitly state that preventing juvenile delinquency is the most important aspect of crime prevention in the society (paragraph 1). Therefore, preventive activities should be considered among the main means of influencing children in terms of legal education and crime prevention.

The regulatory framework for preventive activities with respect to children is quite substantial in scope, unstructured, and diverse (Laws, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, ministries, local authorities, and local self-government bodies), which complicates its use to a certain degree.

The system of bodies, institutions, and organizations that carry out preventive activities with respect to children is defined by the laws of Ukraine "On bodies and services on minors and special institutions for children", "On Probation", "On the National Police", "On the Prosecutor's Office", "On the social work with families, children, and youth», «On the volunteer activities", and "On Public Associations".

The powers, forms, and methods of preventive activity of the above-mentioned prevention actors are specified in the by-laws, including: Regulations on the Ministry of Youth and Sports of Ukraine; Regulations on the Ministry of Social Policy of Ukraine; Regulations on centers for the provision of the free-of-charge secondary legal aid; General Regulations on the Center of social services for families, children, and youth; Instruction on organization of work of the juvenile prevention subdivisions at the National

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<sup>26</sup> Prevention of offenses among children should be understood as the activities of the bodies and services on minors and special institutions for children, aimed at identifying and eliminating the causes and conditions conducive to the commission of offenses by children, as well as the positive influence on the behavior of individual children at the territory of Ukraine, in its individual regions, in families, at enterprises, institutions, or organizations, regardless of the form of ownership, and at the place of residence (Article 3 of the Law "On bodies and services on minors and special institutions for children").

Police of Ukraine.

It should be noted that there is a lack of awareness of actors of the preventive activities' implementation concerning the international standards (acts) in this area and relevant practices of working with minors. There is a need for a wider access to collections of such statutory and regulatory enactments – in particular, of the UN and its bodies, the UN Committee on the Rights of the Child, the Council of Europe, the European Union, etc.

## **2.2. Forms of preventive activities.**

The Ukrainian legislation does not establish the prescribed forms of preventive or prophylactic activities. The Law of Ukraine "On the National Police" entrusts the National Police with the exercise of preventive and prophylactic activities aimed at preventing the commission of offenses (paragraph 1, Part 1 of Article 23). The Law of Ukraine "On Probation" speaks of the following types of preventive activities for children: development of a pre-trial report on a defendant minor, assistance in engagement of juvenile convicts to education and obtaining complete secondary education, and implementation of probation programs (Article 12), which has been specified in the Model Regulations on the Juvenile Probation Sector (paragraph 1 of Section II).

The Law of Ukraine "On the social work with families, children, and youth" contains the notion of social prophylaxis – a kind of social work aimed at preventing difficult life situations of families, children, and youth, as well as immoral, unlawful behavior in families, among children and youth, identification of any negative impact on the life and health of children and young people, and the prevention of such exposure and the spread of socially dangerous diseases among children and young people (Article 1).

The Law of Ukraine "On volunteer activity" stipulates the provision, by volunteers, of assistance to victims of crime, assistance to the authorized body on probation in carrying out the supervision on convicts and conducting social and educational work with them (Part 3 of Article 1).

Generalization of measures, which can be taken by actors of the preventive activities with respect to children, makes it possible to identify the following basic forms of the preventive work:

- Individual conversations (awareness raising, preventive, and educational ones) with children who are in conflict with the law;
- Training and awareness raising lectures, seminars, and trainings by representatives of actors of the preventive activities, being conducted at educational institutions;
- Raids on the places of concentration of minors engaged in vagrancy, begging, and

use of narcotic and toxic substances, in order to detect and remove them out of this environment;

- Joint raids, in particular of juvenile prevention inspectors and the representatives of the service on minors, to check the living conditions of children in families that have found themselves in the sticky living circumstances;

- Prophylactic work with parents, legal representatives, and family members of children, who have found themselves in the sticky living circumstances (awareness raising, preventive, and educational discussions, clarification of individual issues, and training on particular issues of the parents' performance of their duties);

- Measures to detect cases of violation of the trade regulations and sales of tobacco products and alcoholic beverages to juveniles;

- Development and distribution of thematic informational brochures, materials, and business cards with the contact data of the authorized bodies;

- Social advertising in the media and on the advertising media;

- Participation of representatives of the authorized state bodies in TV and radio programs, provision of materials for publication in printed and online publications on coverage of the actual issues of ensuring the rights of the child and preventing offenses among minors;

- Conducting inspections before the start, as well as during the season of children's recreation camps;

- Organization and implementation of comprehensive targeted thematic programs (both all-Ukrainian and territorial) on the preventive activities for juveniles ("Street Children", "Train Station", "Teenager", "Vacations", "Summer", and "Lesson");

- Arrangement and running of various campaigns involving children and youth, aimed at the formation of the law-adhering behavior among children, healthy lifestyle skills, etc.

- Development and support of thematic websites: on security (examples: Safety for kids and adults (<http://hit-live.info/>), Compass (<https://www.coe.int/en/web/compass/peace-and-violence>), edutainment ones for children (Pustunchik (<https://pustunchik.ua/>), Posnayko(<http://posnayko.com.ua/ru/>), etc. The Gurt Resource Center contains information on various programs and competitions for youth and children's social programs (<http://gurt.org.ua/>). It is worth noting that virtually all actors of the preventive activities have either an official website or a page on an official website of the public authority, or at least a page in the social network, providing a possibility to inform children and their parents about their activities and services that they provide;

- Holding, with participation of the state authorities and NGOs, as a rule, for children who have found themselves in the sticky living circumstances, of actions (evening meetings, speeches, visits to entertainment establishments, etc.) devoted to events related to various aspects of ensuring the rights of the child (Day of protection of

the rights of the child, the First Bell, the New Year, etc.);

- Arrangement and conduct of events on the formation of a legal culture, as well as skills of legal and security behavior of minors (holding discussion clubs, legal brain rings, etc.);

- Organization of work of a specialized establishment within the regional center of social services for family, children, and youth, called "Mobile consulting point on the social work" (Bobrynets district of the Kirovograd region)<sup>27</sup>;

- Formation of groups of juveniles based on their interests and conducting various events of the informational and legal education nature (Kramatorsk City "League of future policemen" – an organization created by children under the support of the Head Office of the National Police in the Donetsk region<sup>28</sup>, Plast – a Ukrainian Scout Organization<sup>29</sup>, etc.); and

- Messaging, by the authorized bodies of the state authorities, of newsletters with information for enterprises, institutions, and organizations about the negative trends in the children's and youth environment.

At the same time family<sup>30</sup> is recognized by minors as an important value and life environment for them, which also has a high level of trust. In turn, public authorities (social agencies, courts, and the police) are not perceived by juveniles as something trustworthy and close to them: children do not consider these institutions as defenders of their rights.

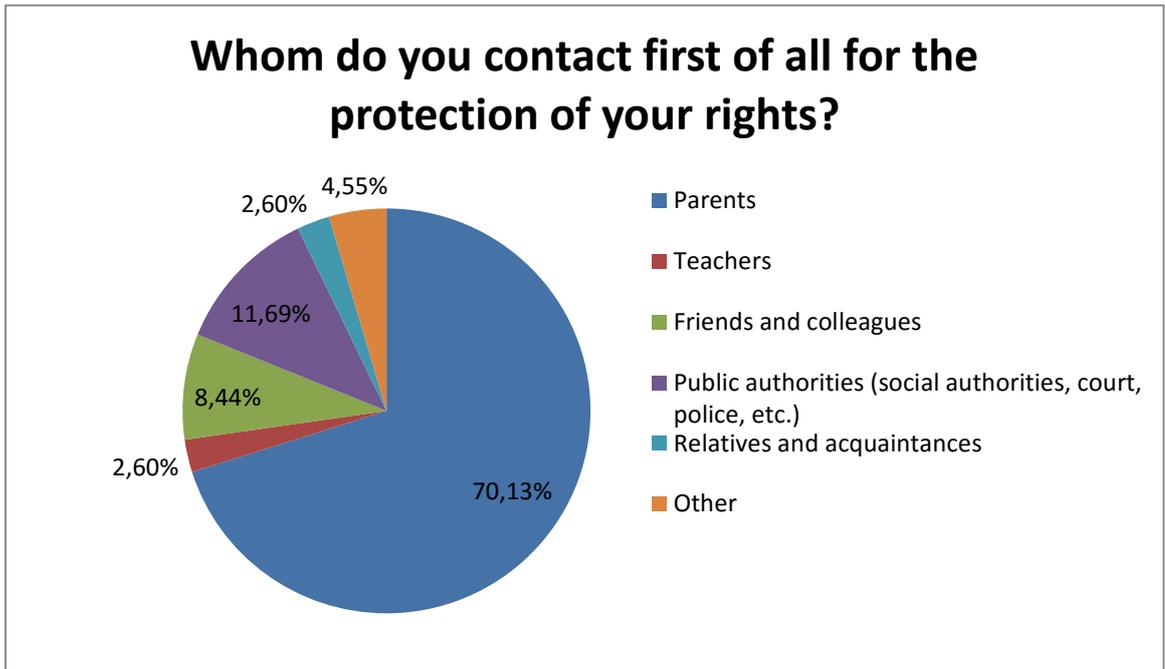
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<sup>27</sup> Kirovograd Regional Center of social services for family, youth, and children. [Electronic resource]. Access mode: <http://ocsssdm.kr-admin.gov.ua/050518.html>

<sup>28</sup> League of Future Policemen. [Electronic resource]. Access mode: <http://liga-police.com.ua/>

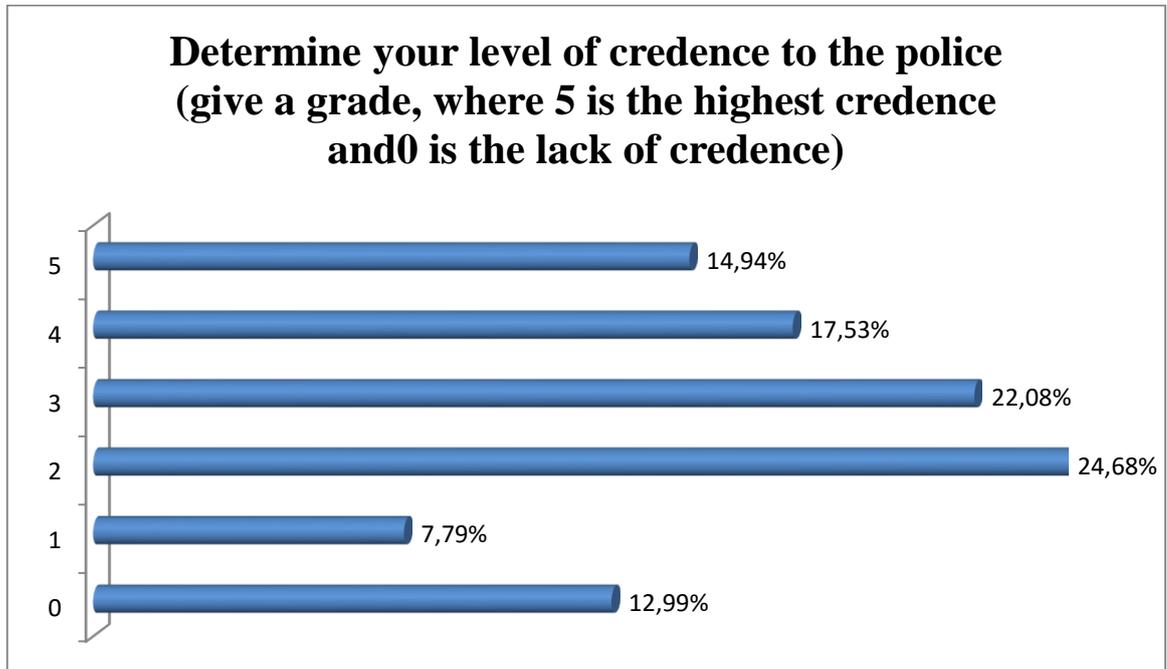
<sup>29</sup> Plast - Ukrainian scouting [Electronic resource]. Access mode: <http://www.plast.org.ua/>

<sup>30</sup> Natalia Ortynska "Legal status of juveniles: theoretical legal research", Lviv, 2017

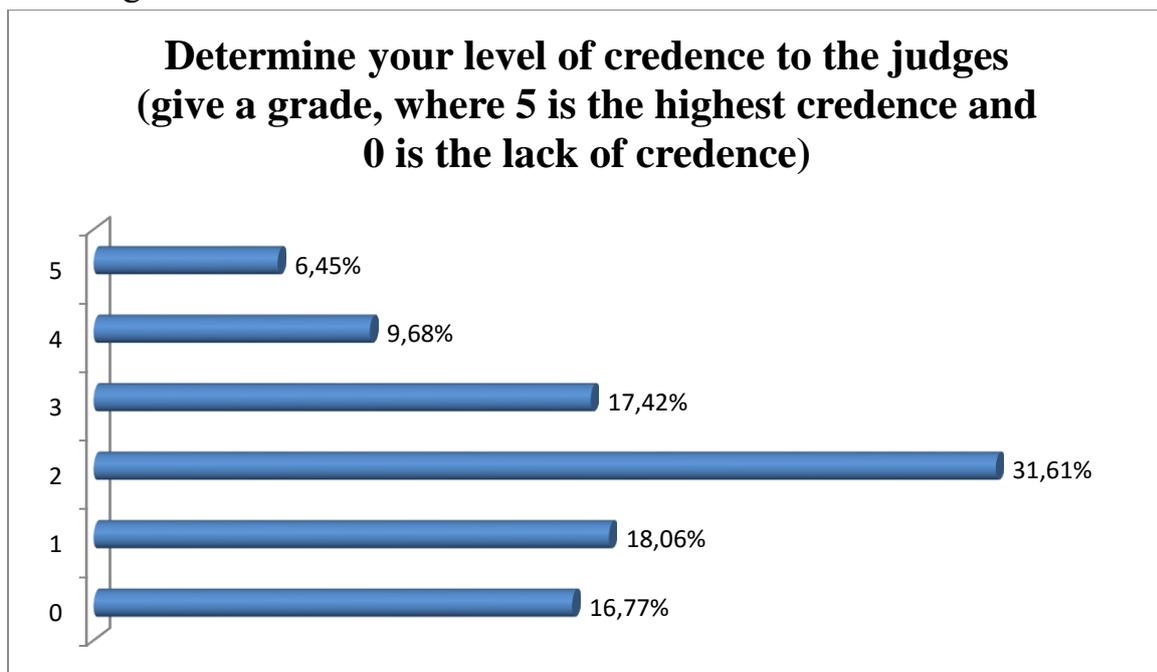


Therefore, efforts to prevent juvenile delinquency should be aimed, first of all, at creating appropriate conditions for the development of the child in the family, and promoting the enhancement of the functional capacity of the family. On the other hand, public authorities should change approaches to communication with minors.

The data below demonstrate that children does not support conclusions of state authorities do not support the conclusions of the state authorities regarding the high level of their trust in the police, indicating the lack of proper communication between juveniles and the police, and the fact that children do not perceive the police as a friendly body. Such situation characterizes the general level of distrust to the state and the legal system that do not adequately ensure the protection of children:

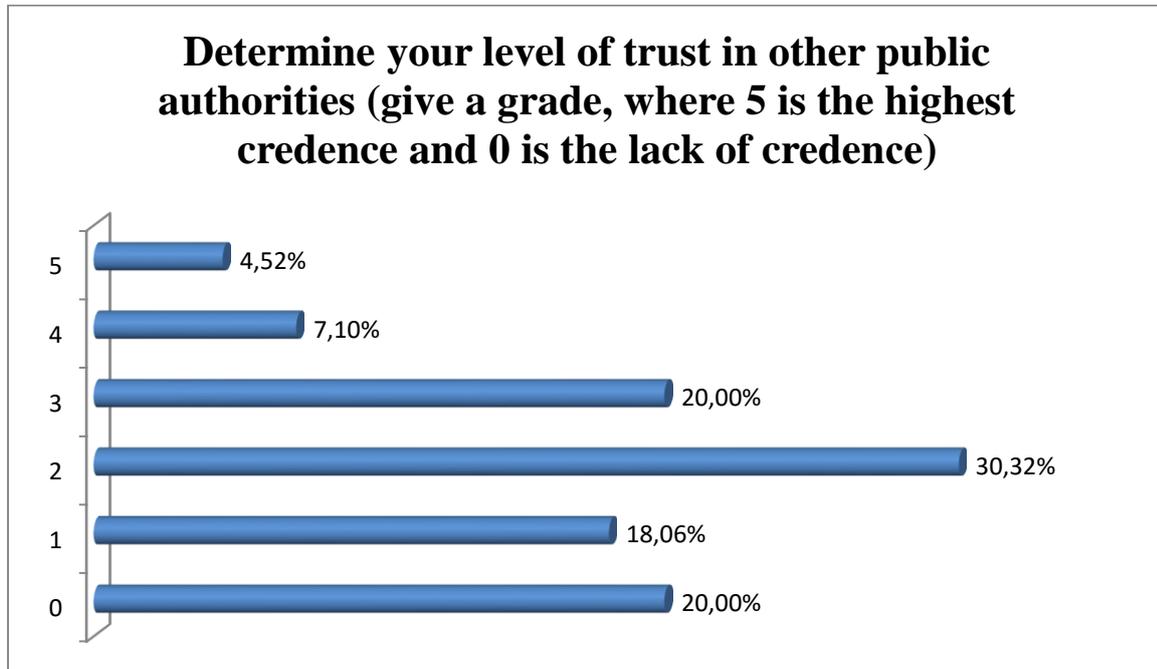


These data are the result of children's unawareness of the role of the courts in the society and the grounds and content of the courts' activities.



They also reflect the attitude of children to the consequences of the courts' work (imposition of sanctions against a person) and characterize the attitude to this body that exists in the society, revealing the general level of distrust to the state and the legal system, which do not sufficiently ensure the protection of children.

The distrust to other state bodies dealing with children is to a greater extent associated with the lack of attention from these bodies to the real problems of juveniles, as well as with the focus of these bodies mainly on the execution of their respective statutory tasks.



That is why they have a low level of credence among children, and the latter do not perceive them as child-friendly agencies.

### **2.3. Prevention programs for children.**

#### ***2.3.1. Types of preventive activity programs.***

The analysis of prevention programs for children makes it possible to identify the following main types:

1. By level of implementation: national; regional; and local.

This indicates the need for the development and subsequent consistent implementation of both comprehensive programs and programs in separate areas at all three levels.

2. By executor: single person ones (an executor is a state body or an NGO); joint ones (executors are several state bodies); and consolidated ones (executors are several state bodies, a local self-government body, and an NGO).

This indicates the need to involve the maximum number of interested actors of the preventive activities in the development and implementation of programs, which ensures not only the formation of a proper set of services for minors, but also contributes to attracting a sufficient quantity of resources for the effective implementation of the relevant programs.

3. By content:

- Programs aimed at ensuring the exercise of social protection, exercise of children's rights, and prevention of juvenile delinquency (classes and training sessions with children and families, who have found themselves in the sticky living circumstances, on matters of responsible parenting and safety of children during the summer holidays, etc.);

- Programs aimed at strengthening the institutional capacity of actors of the

preventive activities (training of the personnel of the state body on the prevention of human trafficking, problems of professional burnout, educational and training programs, etc.).

This indicates the need for development and subsequent consistent implementation of programs in two directions simultaneously.

4. By the subpopulation coverage: programs designed for children; programs designed for children and their parents (legal representatives, family members); and programs designed for the general circle of consumers.

This indicates the need to engage into the programs the maximum number of stakeholders involved in the consumption of relevant social or security services, which will ensure a systemic impact on the maximum number of persons.

### ***2.3.2. National-level preventive programs for children.***

Preventive activities on the prophylaxis and counteraction of the offenses of children and against children have been provided for by a number of the State social programs and action plans, among which there are the following:

State targeted social program "Youth of Ukraine" for 2016-2020, the implementation of which will enable the reduction of the level of offenses among young people by 20 percent by 2020, intensifying the legal education and participation of juveniles in socially significant public activities;

State program for overcoming child abandonment and homelessness for 2006-2010;

National Action Plan for the implementation of the UN Convention on the Rights of the Child for the period until 2016;

State social program "National Action Plan for the implementation of the UN Convention on the Rights of the Child" for the period up to 2021 (approved by the Cabinet of Ministers of Ukraine on May 30, 2018);

On approval of the Action Plan for the implementation of the Strategy for national patriotic education of children and youth for 2017-2020, which provides for the conduct of educational and awareness-raising measures on the formation of healthy lifestyles and prevention of offenses (paragraph 48);

State social program on human trafficking counteraction for the period up to 2020;

Plan of measures to implement the National Human Rights Strategy for the period up to 2020;

National program of legal education of the population (approved in 2001, measures are still being taken); and

State Drug Policy Strategy for the period up to 2020.

The following should be included into the list of the all-Ukrainian preventive measures:

Measures to hold the All-Ukrainian Week of Law (held annually on the week that

includes December 10 – Human Rights Day), aimed at ensuring observance and respect for human and civil rights and freedoms, preventing violations of human and civil rights and freedoms, or facilitating their renewal;

Annual Action "The 16 Days of Activism Against Gender-Based Violence" (November 25 – December 10), which was initiated by the First Global Institute for Women's Leadership in 1991<sup>31</sup>; and

“School Police Officer «program of cooperation between general education institutions and the police: the purpose of the program is to promote the activities of educational establishments on the prevention of offenses among children and to ensure a safe learning environment.

### ***2.3.2. Regional and local child prevention programs and measures.***

Prophylactic measures for preventing the commission of offenses by and against children are usually provided for by the regional and local programs:

Comprehensive crime prevention and combating programs for 2016-2020 of the Regional State Administrations and district and city councils, which usually contain sections dedicated to the issues of counteracting the juvenile delinquency and overcoming child abandonment and homelessness (but there are issues concerning the implementation of the provisions of these programs and evaluation of their effectiveness);

Regional targeted social programs of the national patriotic education of children and youth for 2017-2020 (example –the Vinnitsa region<sup>32</sup>);

### ***2.3.3. Disadvantages of preventive programs for children.***

Grounded in the insights and perspectives of those who work directly with children in contact and conflict with the law, the national researchers identified the following disadvantages of existing preventive programmes for children:

- they are not always of a systemic nature, being implemented on specific issues;
- they have no connection with each other and do not take into consideration the results of implementation of previous programs;
- they are not always implemented at the territory of the entire country, but, as a rule, only at the territory of certain regions (territorial communities). After the implementation, as often as not, they are not widely disseminated or extensively used on a permanent basis;
- there is no assessment on the real coverage of program users (minors, parents, other persons, and actors of preventive activity), and also there is no evaluation on the

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<sup>31</sup> On November 24, an annual action "The 16 Days of Activism Against Gender-Based Violence" starts / Government Portal. November 22, 2017 [Electronic resource]. Access mode: <https://www.kmu.gov.ua/ua/news/250444648>

<sup>32</sup> On the Regional targeted social program for the national patriotic education of children and youth for 2017-2020: Resolution of the Vinnytsia Regional Council, dated December 20, 2016 [Electronic resource]. Access mode: [http://vin-ocssdm.com.ua/docs/programy/PR\\_patriot\\_2017-2020.pdf](http://vin-ocssdm.com.ua/docs/programy/PR_patriot_2017-2020.pdf)

effectiveness and longevity of the program implementation results;

- there is not always a comprehensive approach to the implementation of prevention programs for children who are in conflict with the law;

- based on the results of the implementation of programs, or in this regard, the State does not always take additional measures for the law enforcement, social, informational, and other purposes, associated with the conditions and results of the implementation of the existing programs;

- results of analytical generalizations on the programs already implemented, or results of the analysis and forecasts on the development of juvenile delinquency as a basis for the development of programs have not been established;

- there are no results of the assessment on the efficiency of implementation of the national and regional programs on children's rights already completed; and

- non-governmental actors in the field of protection of children's rights are quite rarely engaged into the implementation of government-developed programs.

#### ***2.3.4. Assessment on the efficiency of preventive activities by actors of prevention with respect to children.***

According to the data received by the "U-report" within the framework of the study on the "Justice for Children" topic:

- The police (39%) are second only to relatives (48%), to whom the adolescents would turn if they encountered a situation with a crime / offense;

- The best bodies (according to juveniles) that can protect the latter and provide them with the necessary assistance if they face a crime / offense: the police (40%), legal advisers (27%), social services (9%), NGOs (7%), and international organizations (5%).

According to Ms. L. Zub, the head of the Juvenile Prevention Division at the National Police of Ukraine, since the start of 2017 a total of 1,100 children addressed the police with the reports of cases of violence both against them and against their relatives. This, in her opinion, is the evidence of the fact that children began to trust the police more<sup>33</sup>.

The children's opinion on the organization of efficient preventive work, aimed at reducing the number of offenses and crimes, is also extremely important. According to the data received by the "U-report" within the framework of the study on the "Justice for Children" the following measures were recognized by children as the most effective in terms of reducing the number of offenses and crimes: development of a legal culture (67%); improvement of the psychological climate in classes (66%); introduction of high-quality preventive programs (64%); and provision of legal information regarding the consequences of the commission of crimes (64%).

Children recognized the following measures as the least effective in terms of reducing the number of offenses and crimes: prohibition of movies and programs,

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<sup>33</sup> Children started to turn to the police by themselves more often, looking for help against their abusers / Sober look. 11.09.2017 [Electronic resource]. - Access mode: <http://tverezo.info/post/31530>

popularizing the criminal behavior (35%); energization of local communities (44%); and regular visits of a police officer to educational institutions (51%). The survey testifies to a certain discrepancy between the position of children as direct consumers of the human rights advocacy and preventive services and their providers (the state authorities), which is an evidence to the following:

- a) Insufficient communication between these groups, and
- b) Absence of an effective mechanism for assessing the results of the human rights advocacy and preventive activities by the state bodies.

The majority of experts interviewed agree that Ukraine should make more efforts to apply international standards and best practices of other countries in the field of juvenile prevention (legal advisers – 98%, judges – 92%, prosecutors – 87%, and investigators – 85%)<sup>34</sup>.

### **SECTION 3. A CHILD AT THE STAGE OF PRE-TRIAL INVESTIGATION**

***The focal points of this section:** Grounded on national legislation and interviews with practitioners, the project researchers defined principles of appropriate practice at various points in pre-trial investigation, identified resources to align child development principles with the everyday practice of those working with system-involved children.*

#### **3.1. Regulatory basis for criminal proceedings involving children in conflict with the law and children in contact with the law.**

In a criminal proceeding, a child may act as a suspect or accused (a child in conflict with the law), victim or witness (a child in contact with the law).

The procedure for criminal proceedings against juvenile suspects or accused persons has been determined by the general rules of the criminal procedure, taking into account the provisions of Chapter 38 "Criminal proceedings with respect to minors" of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine). During the criminal proceedings, children shall enjoy additional guarantees for observance and protection of their rights and legitimate interests (Part 2 of Article 10 of the CPC of Ukraine).

There are two types of criminal proceedings concerning crimes / socially dangerous acts committed by children in conflict with the law<sup>35</sup>:

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<sup>34</sup> Discussion on the results of the all-Ukrainian survey "Reformation of the criminal justice: the view of investigators, prosecutors, legal advisers, and judges". March 11, 2016. URL.: <https://uba.ua/documents/presentation/11-03-2016/Tsymbrivska.pdf>

<sup>35</sup> Y.M. Gidulianova. Types of proceedings concerning minors under the new criminal procedure legislation of Ukraine. Published in: Legal Life of Modern Ukraine: Abstracts from the speeches at the

1) Criminal proceedings with respect to minors, who, at the time of commission of a criminal offense, have already reached the age, from which a criminal prosecution may be initiated. Peculiarities of criminal proceedings with respect to such children are aimed, first of all, at securing additional guarantees, in comparison with adults, for the protection of rights and interests of minors, protected by the law;

2) Proceedings concerning minors, who, at the time of commission of a socially dangerous act, have not yet reached the age, from which a criminal prosecution may be initiated. Such proceedings may be determined purely as proceedings for the resolution of the issue on the use of coercive measures of an educational nature.

During the pre-trial investigation, the investigator and all other persons, taking part in it, are obliged to carry out the procedural actions in a manner that least violates the usual way of life of a juvenile and corresponds to his or her age and psychological peculiarities, to explain the essence of the procedural actions and decisions and their significance, to listen to the minor's arguments while making any procedural decisions, and to take all other measures aimed at avoiding the negative impact on the minor.

Chapter 38 of the CPC of Ukraine consists of 18 articles (from 484 to 502) containing specific norms that should be applied in cases involving children. However, most of them define procedures for juvenile suspects and accused. There are no procedures for children witnesses or victims in this chapter, as they are of a general nature.

Peculiarities of the criminal proceedings against juvenile suspects or accused include the following:

1) *Establishment of additional circumstances of the case*, namely: full and comprehensive information on the identity of the minor; the attitude of the minor to the act committed by him or her; conditions of life and upbringing of a minor; and the presence of adult instigators and other accomplices in a criminal offense (Article 485 of the CPC of Ukraine);

2) If necessary, to determine the existence of a developmental impairment of a juvenile suspect or accused by conducting a *comprehensive psychological and psychiatric examination*, and a *psychological examination* – to determine the level of development of the suspect or accused (Article 486 of the CPC of Ukraine);

3) Participation in the criminal proceedings of *parents or other legal representatives* of a minor suspect or accused, in particular, serving a subpoena to a juvenile via them by an investigator, prosecutor, investigating judge, or court, and their participation in investigative (exploratory) actions, interrogation of the juvenile who has

not yet reached the age of sixteen or has been recognized as mentally retarded (Articles 44, 227, and 488-489 of the CPC of Ukraine);

4) Participation of an *educator, psychologist, or doctor* in the interrogation of a minor suspect or accused who has not yet reached the age of sixteen or has been recognized as mentally retarded (Article 489 of the CPC of Ukraine);

5) *Peculiarities of imposition of the pre-trial restrictions*. Any detention and remand into custody of a minor suspect or accused shall be used as the pre-trial restriction only in a case when the minor is suspected or accused of committing a grievous or extremely grievous crime, provided that the imposition of another pre-trial restriction does not ensure the prevention of the risks specified by the CPC. In addition to taking into account these grounds, the investigating judge or the court, considering the practice of the European Court of Human Rights (judgment of 27.11.2008 in the case of "Svershov v. Ukraine"), shall also take into consideration the age of the suspect (accused).

Juvenile suspects or accused may be subjected to referral under the supervision of parents, guardians, or caregivers, while juveniles who are brought up at an institution for children may be referred under the supervision of the administration of this institution (Articles 492-493 of the CPC of Ukraine). A person, who has committed a socially dangerous act before reaching the age of criminal responsibility, may be placed to a reception center (remand house) for children for a term of up to thirty days, if the act committed by the minor is punishable with a deprivation of liberty for a term of more than five years (Part 4 of Article 499 of the CPC of Ukraine).

A pre-trial investigation on a juvenile case is completed:

- 1) By sending a criminal complaint to the court;
- 2) By sending to the court of a motion for a relief from criminal liability under general grounds (Article 286 of the CPC of Ukraine), or a motion for imposition of coercive measures of educational nature in cases where the juvenile has not yet reached the age, from which a criminal prosecution may be initiated (Article 22 of the CPC of Ukraine), or the juvenile has committed a crime of minor gravity or a careless crime of moderate gravity for the first time (Article 292 of the CPC of Ukraine).

The CPC of Ukraine does not provide for a lower age limit for involving a child in a criminal proceeding as a witness or victim. The peculiarities of participation of a child witness and/or victim (a child in contact with the law) are as follows:

- 1) Involvement in the legal proceedings of a legal representative of a child victim (Articles 59 and 227 of the Criminal Code of Ukraine), in particular, a subpoena on the summons of a minor, as a rule, is handed over to his or her father, mother, adopter, or legal representative (Part 4 Article 135 of the CPC of Ukraine), and the interrogation shall be conducted in the presence of the legal representative (Article 226 of the CPC of Ukraine);

2) Interrogation of a minor or juvenile shall be conducted in the presence of an educator or a psychologist and, if necessary, a doctor (Part 1 Article 226 of the CPC of Ukraine);

3) No compulsory attendance of a witness may be applied with respect to a juvenile (Part 3 Article 140 of the CPC of Ukraine);

4) A juvenile witness under the age of sixteen shall get a clarification on his or her duty to provide true testimony without any warning on the criminal responsibility for refusing to testify and for wilful false testimony (Part 4 Article 226 of the CPC of Ukraine); and

5) An interrogation of a minor or juvenile witness and/or victim may be conducted in a videoconference mode with a broadcast from other premises (Article 232 of the CPC of Ukraine).

However, the CPC of Ukraine is not the only legislative act that regulates all aspects of criminal proceedings involving children. In particular, the Law of Ukraine "On the Free-of-charge Legal Aid" (paragraph 2 in Part 1 of Article 14) provides for the provision of the free-of-charge secondary legal aid to children who have found themselves in the sticky living circumstances (that is, children in conflict with the law and children who are victims of offenses). It includes the following types of legal services:

1) Protection;

2) Representation of interests of persons entitled to the free-of-charge secondary legal aid in courts, other state bodies, bodies of local self-government, and in front of other persons; and

3) Execution of documents of a procedural nature.

The Law of Ukraine "On the Free-of-charge Legal Aid" provides the right to the free-of-charge secondary legal aid to all persons in criminal proceedings with respect to whom, in accordance with the provisions of the CPC of Ukraine, a defense counsellor is involved by an investigator, prosecutor, investigating judge, or court for the purpose of a dock defense or conduct of an individual procedural action (paragraph 1 in Part 1 of Article 14).

After the completion of the pre-trial investigation, materials on the criminal proceedings with respect to minors are sent for judicial consideration, the specifics of which, in relation to juveniles, are to provide them with additional guarantees of their rights and interests. First, this is the duty of the court to carry out the procedural actions in a manner that least violates the usual way of life of a juvenile and corresponds to his or her age and psychological peculiarities, to explain the essence of the procedural actions and decisions and their significance, to listen to the minor's arguments while making any

procedural decisions, and to take all other measures aimed at avoiding the negative impact on the minor (Part 2 Article 484 of the CPC of Ukraine). Secondly, this is the participation of parents or other legal representatives of the juvenile who are summoned to a court session (Article 488 of the CPC of Ukraine). Thirdly, this is the participation in the judicial review of representatives of the service on minors and of the authorized subdivision of the National Police bodies, who are summoned to a court session (Article 496 of the CPC of Ukraine). However, the absence of the latter is not a ground for suspending the proceedings. Fourthly, this is the presentation to the court of the pre-trial report, executed by the probation body and characterizing the accused minor (Article 314-1 of the CPC of Ukraine). According to the academicians, the main supportive tools to ensure the rights and guarantee the interests of a juvenile accused are the activity of a defense counsellor, whose presence at a court session is mandatory, and the experience of a judge (bench) due to the specialization of the latter in the administration of criminal justice proceedings with respect to minors<sup>36</sup>.

Higher-level courts pay specific attention to the peculiarities of the judicial consideration of cases with respect to juveniles.

However, some of the acts of the judiciary power, due to certain legislative changes, are already obsolete and do not take into account modern international standards of juvenile justice, in particular, the Guidelines on the Child-Friendly Justice (hereafter referred to as the Guidelines). The Guidelines require that "Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimized or denied under the pretext of the child's best interests. This applies to all judicial and non-judicial and administrative proceedings".

The norms of the CPC of Ukraine show certain inconsistency with the Guidelines. Thus, for example, Article 490 of the CPC of Ukraine contains the provision that an interrogation of a minor suspect or accused shall be carried out in accordance with the rules provided for in this Code, in the presence of a defense counsellor. At that, it does not provide for the right of the child to choose a defense counsellor or to disagree with the appointed defense counsellor.

A suspect shall have the right "to be clearly and promptly informed about his or her rights, provided for by this Code, as well as to get a clarification on them" (subparagraph 2 of paragraph 3 in Article 42 of the CPC of Ukraine). The content of the suspect minor's right is narrower than the right provided for in the Guidelines, according to which: "From their first involvement with the justice system or other competent authorities (such as the police, immigration, educational, social, or health care services) and throughout that process, children and their parents should promptly and adequately receive the relevant

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<sup>36</sup> V.V. Romanyuk. Criminal proceedings with respect to minors: monograph. Kharkiv: "Madrid Publishing House", 2016. p. 170.

information. Child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialized websites and help lines established".

It is worth noting that the system of procedural safeguards in the CPC of Ukraine is aimed primarily at respecting the rights of children in conflict with the law (suspects or accused), while the rights of children in contact with the law (witnesses and victims) are to some extent overlooked by the legislator.

Academician note a lot of gaps in the current CPC of Ukraine regarding the guarantees of protection of the rights and interests of minor victims, and indicate, when giving a special status to juvenile suspects and accused, it would be quite expedient to attach a special status to other minors in criminal proceedings – in particular, the victims<sup>37</sup>.

In the process of implementation of procedural actions (procedures) in cases involving children, especially in those where children are witnesses or victims of violent acts, both the environment and location of their conduct are of great importance. The "Green Room" technique<sup>38</sup>, which provides for the interviewing (interrogation) of a child, who is a victim or witness of a crime, in conditions that minimize and prevent re-injury of the child's psyche, taking into consideration his or her individual psychological and psycho physiological traits. Such conditions should be created in a specifically arranged location, equipped with additional audio and video means for recording information. This complies with the Guidelines fully: "Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favorable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have". However, today the well-arranged "Green rooms" are not available at the pre-trial investigation bodies (the only exception is Kyiv).

"When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child".

### **3.2. Activities of actors in the pre-trial investigation within the criminal proceedings involving children: problematic issues.**

According to the CPC of Ukraine, the information on criminal offenses committed

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<sup>37</sup> O. Krukevich. Juvenile victims as participants in the criminal proceedings. Historical and legal magazine. 2015. # 2 (6). [Electronic resource]. Access mode: [http://historylaw.eenu.edu.ua/publ/2015\\_92\\_2\\_6/rozdil\\_6\\_tribuna\\_molodikh\\_uchenikh/o\\_krukevich\\_n\\_epovnolitni\\_poterpili\\_jak\\_uchasniki\\_kriminalnogo\\_procesu/37-1-0-189](http://historylaw.eenu.edu.ua/publ/2015_92_2_6/rozdil_6_tribuna_molodikh_uchenikh/o_krukevich_n_epovnolitni_poterpili_jak_uchasniki_kriminalnogo_procesu/37-1-0-189)

<sup>38</sup> "Green rooms": statutory and regulatory support to the functioning / K.B. Levchenko, M.V. Yevsyukova; under the editorship of O.M. Bandurka and K.B. Levchenko - Kyiv: LLC «Ukraine» Agency, 2012. – 24 p.

after 20.11.2012, including the ones committed by children and with respect to children, shall be included by all pre-trial investigation authorities to the Uniform Register of Pre-trial Investigations, which is held (managed) by the General Prosecutor's Office of Ukraine (in accordance with the Regulations on the procedure for maintaining the Uniform Register of Pre-trial Investigations, approved by the order of the General Prosecutor's Office No. 139, dated April 6, 2016). The prosecutor's offices have been entrusted with the tasks to execute uniform reports on criminal offenses in the country and to provide information on this issue.

According to Part 2 of Article 484 of the CPC of Ukraine, "a criminal proceeding against a juvenile, including a case when a criminal proceeding is conducted against several persons, at least one of whom is a juvenile, shall be carried out by an investigator who is specifically authorized by the head of the pre-trial investigation authority to conduct pre-trial investigations with respect to juveniles".

In accordance with the Regulations on the pre-trial investigation bodies at the National Police of Ukraine, the head of the Investigating Department is the one to determine investigators who are specifically authorized to conduct pre-trial investigations concerning minors.

People that conduct an interview or interrogation of children need special training. The Guidelines state that:

"All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them.

Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability".

However, today the National Police investigators authorized to investigate cases involving children do not have any special education. They get a general legal education at the departmental higher education institutions. The working syllabus of the "Criminal Procedure" academic discipline, as a rule, does not provide for separate studies on the peculiarities of cases involving children<sup>39</sup>.

Procedural actions (procedures) involving children are formalized and do not contain clear instructions for their implementation in order to respect the rights and ensure the best interests of the child. The Guidelines understand the following under the concept of the best interests of the child in the criminal proceedings:

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<sup>39</sup> Criminal procedure: a working syllabus of the academic discipline for training of professionals with the bachelor's degree in Law (081) within the "Law" subject area (08) / National Academy of Internal Affairs; Criminal Procedure Department. – Kyiv, 2017. [Electronic resource]. Access mode: [https://www.naiu.kiev.ua/files/kafedru/kkp/rpnd\\_krymprotses.pdf](https://www.naiu.kiev.ua/files/kafedru/kkp/rpnd_krymprotses.pdf)

"Views and opinions of the involved or affected children should be given due weight;

All other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;

A comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child".

The best interests of all children involved in the same procedure or case must be separately assessed and balanced in order to reconcile a potential conflict of interest of the children.

An example of a failure to take into account the best interests of a child victim of a criminal offense is the absence of the norm in a similar article 485 of the CPC of Ukraine "Circumstances to be established in criminal proceedings with respect to minors". Today it concerns only a child who has committed an offense. Analyzing the article itself from the standpoint of the Guidelines, it is possible to state its formal compliance with the Guidelines. However, it does not include any mechanisms by which an investigator can reveal complete and comprehensive information about the personality of the juvenile, his or her age, state of health and development level, conditions of life and education, and attitude to the offense committed, as well as other socio-psychological traits of the person.

Another example of ignoring the best interests of the child of involved in the criminal procedure, namely a witness and a victim, is article 486 of the CPC "Multidisciplinary psycho-psychiatric and psychological examination of a minor suspect or accused». No such examination is commissioned for a victim or witness, although the child's psychological trauma due to the crime witnessed (violent acts, traffic accident, rape, etc.) is obvious. At the moment, even the mandatory nature of conduct of certain procedures for identifying the state of a child, who is suspected of committing an offense, is not complied with. The disposition of Article 486 of the CPC contains a reservation "if necessary" (Part 1) and "a psychological examination may be commissioned" (p.2). Moreover, this means that the decision is taken by the investigator individually and at his or her own discretion.

One of the signs of the child-friendly justice, including during the application of pre-trial investigation procedures, is the protection of privacy and family life:

"The privacy and personal data of children who are or have been involved in judicial or non-judicial proceedings and other interventions should be protected in accordance with national law. This generally implies that no information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including images, detailed descriptions of the child or the child's family, names or addresses, audio and video records, etc.

Whenever children are being heard or giving evidence in judicial or non-judicial proceedings or other interventions, where appropriate, this should preferably take place in camera. As a rule, only those directly involved should be present, provided that they do not obstruct children in giving evidence.

Professionals working with and for children should abide by the strict rules of confidentiality, except where there is a risk of harm to the child".

Instead, the norm of Article 487 of the CPC of Ukraine "Clarification of the conditions of life and upbringing of a minor suspect or accused" does not provide for any mechanisms for its application in compliance with the aforementioned principles of the child-friendly justice. Thus, the investigator sends inquiries concerning the characteristics of the minor to the relevant authorities and services of local self-government, educational institutions, and establishments, and at the same time does not warn them about the criminal responsibility for the disclosure of information necessary for him or her in the criminal proceedings. In addition, there is an objective risk of a bias from the part of the responsible persons regarding a child suspected of committing a criminal offense. There is a typical characteristic of children from their place of study: "For a certain time they were normal, and then they started to be completely different persons, skipping classes at school, behaving rudely while talking with teachers, and starting to show an aggression against their classmates".

### **3.3. The practice of involving professionals during the pre-trial investigation to ensure the best interests of the child.**

Part 2 of Article 484 of the CPC of Ukraine provides for that "an investigator, a prosecutor, an investigating judge, a court, and all other persons taking part in the criminal proceedings are obliged to carry out the procedural actions in a manner that least violates the usual way of life of a juvenile and corresponds to his or her age and psychological peculiarities, to explain the essence of the procedural actions and decisions and their significance, to listen to the minor's arguments while making any procedural decisions, and to take all other measures aimed at avoiding the negative impact on the minor". But in what way can an investigator understand whether the procedural actions (procedures) correspond to the age and psychological characteristics of the child, as well as assess their negative impact?

The All-Ukrainian survey "Reformation of the criminal justice: the view of investigators, prosecutors, legal advisers, and judges"<sup>40</sup> indicates that to a certain extent they underestimate the importance of participation of experts (educators and psychologists) in the criminal proceedings concerning juveniles as a means of individualizing the approach to dealing with minors, which may affect the decision of the

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<sup>40</sup> Discussion on the results of the all-Ukrainian survey "Reformation of the criminal justice: the view of investigators, prosecutors, legal advisers, and judges". March 11, 2016. URL.: <https://uba.ua/documents/presentation/11-03-2016/Tsymbrivska.pdf>

investigator on their involvement. The survey for investigators testifies to the fact that, in their activity, there is no single established practice of interaction with the agencies authorized to perform actions on the protection of the rights of the child. This fact indicates the need to strengthen the interaction of all authorized bodies and services to ensure the protection of the rights and interests of minors who have found themselves in conflict with the law.

These are some examples of aforementioned questionnaire-based survey:

*“Is the participation of an educator, psychologist, or doctor in the criminal proceedings concerning juveniles an instrument for improvement of investigation effectiveness?”*

Yes – 37%; No – 63%.

*“Do you embrace the proposal that the participation of a psychologist, educator, or doctor in the procedural actions concerning a minor suspect (the psychological and pedagogical support to the investigation) should”:*

Be mandatory – 21%; Be at the discretion of the investigator - 79%.

*“ Is it expedient to involve representatives of the service on minors in the area of the juvenile's residence at the pre-trial investigation stage in order to comply with the requirements of Articles 485 and 487 of the CPC and to provide objective information on the personality of the juvenile to the investigator?”*

Expedient – 55%; Not expedient – 45%.

An investigator of the pre-trial investigation body is not a professional in child psychology or pedagogics. Therefore, for a full compliance with the abovementioned requirements, the investigator should involve relevant professionals. The Guidelines determine the need to assess the legal, psychological, social, emotional, physical, and cognitive status of a juvenile in a criminal proceeding.

The engagement of professionals in the pre-trial investigation procedures in cases involving children is governed by the general norms of the CPC of Ukraine (Article 71). A professional may be involved by the parties to the criminal proceedings during a pre-trial investigation "to provide consultations during the pre-trial investigation" and "to provide direct technical assistance (taking photographs, developing schemes, plans, and drawings, selecting samples for conduct of an examination, etc.)". Involvement of professionals is necessary for carrying out appropriate assessments on the psychological state of the victim, witness, or suspect, as well as on the ability to objectively perceive what is happening. In fact, a professional in a pre-trial investigation involving a child "serves" the interests of the investigation, rather than creating an environment conducive to the child-friendly procedural actions.

The norms of the criminal procedure law considerably narrow the role of professionals who can ensure the "friendliness" of the pre-trial investigation procedures. Thus, according to:

- Part 3 of Article 354 of the CPC (Peculiarities of interrogation of a minor or juvenile witness or victim): "Before the start of the interrogation, a legal representative, educator, psychologist, or doctor shall get an explanation on their obligation to be present

during the interrogation, as well as on the right to protest against questions and to ask questions...";

- Part 2 of Article 491 of the CPC (Participation of a legal representative, educator, psychologist, or doctor in the interrogation of a minor suspect or accused): "Before the start of the interrogation, a legal representative, educator, psychologist, or doctor shall get an explanation on their right to put questions to a minor suspect or accused. The investigator and/or prosecutor shall have the right to exclude a question, but the question shall be entered in the protocol".

At the same time, as of today, there are no officially approved unified techniques, with which professionals, who take part in the criminal procedures as specialists involved, can work. Although this is exactly what has been emphasized by the Guidelines: "A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, doctors, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case".

A multidisciplinary forensic psycho-psychiatric examination and a psychological examination of a juvenile suspect or accused shall be conducted only if necessary (and not for the purpose of identifying the interests and needs of the child, but for the purpose of investigating and determining the future criminal justice measures). A multidisciplinary psycho-psychiatric examination shall be conducted to address the issue whether the juvenile suspect or accused has a mental illness or mental retardation and is capable of realizing, fully or partially, the meaning of his or her actions and of directing them in a particular situation is assigned a comprehensive psycho-psychiatric examination. A psychological examination shall be conducted to determine the level of development and other socio-psychological traits of the juvenile minor suspect or accused, which must be taken into consideration when imposing a punishment and choosing a measure of an educational nature (Article 486 of the CPC of Ukraine).

In addition, the analysis on the investigative practices reveals certain disadvantages and controversial issues in the assignment of a multidisciplinary forensic psycho-psychiatric examination, which indicate that the assignment of such examination is not always determined by the interests of the case.

Thus, as evidenced by the data presented, investigators and judges in general have insufficiently clear ideas about the tasks of the multidisciplinary forensic psycho-psychiatric examination and the grounds for its assignment. At that, the most frequent confusion arises in relation to the limits of competence of the forensic psychological examination and the range of issues addressed by it. This leads to an excessive, extensive assignment of multidisciplinary forensic psycho-psychiatric examinations, instead of which, in many cases, it would be expedient to confine oneself to a single-disciplinary forensic psychiatric examination. Obviously, employees of the judicial and investigative

bodies have a conviction about the allegedly greater evidentiary foundation of the multidisciplinary forensic psycho-psychiatric examinations; therefore, the psychological component of the examination is added "just in case", as a peculiar psychological "preventive examination"<sup>41</sup>.

### **3.4. Activities of a legal counsellor at the pre-trial investigation stage in the criminal proceedings involving children: problematic issues.**

The Fundamental Law of Ukraine defines the right of every person to a professional legal assistance. In cases provided for by the law, this assistance is provided free of charge. Everyone is free to choose an advocate of his or her rights (Article 59). Article 63 of the Constitution of Ukraine stipulates that a suspect, accused, or defendant has the right to a defense. To provide professional legal assistance, there is an advocateship in Ukraine, whose independence is guaranteed. A defense counsellor is the only actor to defend a person from the criminal prosecution (Article 132<sup>2</sup>).

For persons under the age of 18 years, who are suspected or accused of committing a criminal offense, or with respect to whom the imposition of coercive measures of an educational nature is foreseen, the State shall ensure the participation of a defense counsellor from the moment of establishment of the fact of minority, or from the moment of appearance of any doubt that the person is an adult, which has been expressly defined by the law (paragraphs 1-2 of Part 2 Article 52 of the CPC of Ukraine). According to the Law of Ukraine "On the Free-of-charge Legal Aid", those persons belonging to the category of children in the sticky living circumstances, get the legal aid on a free-of-charge basis (paragraph 2 of Part 1 Article 14).

What are the problems with the admission of a defender to a minor? As a rule, after the establishment of the fact of a minority of the detained person, the authorized person who has carried out such detention shall immediately notify parents or adoptive parents, guardians, caregivers, and the guardianship and wardship authorities on this fact.

The CPC of Ukraine grants a legal representative the majority of the procedural rights of the juvenile, whose interests he or she represents, which makes it possible to compensate for the inability of minors, due to their psycho-physiological immaturity and certain social and psychological un-adjustment, to fully realize and defend their rights and interests and to be active actors in the criminal procedure law relations. However, the participation of a legal representative is not always a positive thing; sometimes the behavior of a legal representative in a criminal proceeding, his or her psychological effect on the minor may negatively affect the course of the criminal proceedings in general. The presence of parents (other persons who may act as legal representatives) during the interrogation creates a peculiar psychological pressure, which can condition wilful or

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<sup>41</sup> A.V. Kanishchev. Main shortcomings of the assignment of a multidisciplinary forensic psycho-psychiatric examination in the criminal procedures. Archive of psychiatry. 2012. Vol. 18, No. 1. pp. 105-106.

unintentional provision of false testimonies by the interrogated juvenile. In the presence of the said persons, the minor may be confused at the interrogation, feel shame or fear, and get distracted from questions, as he or she will monitor the reaction of parents and answer the questions taking this reaction into account<sup>42</sup>.

There is another problem: before the arrival of a legal representative, an authorized person communicates with the child, which makes it possible at this stage to obtain maximum information on the criminal offense and the participation of the minor in it. Upon the arrival of the legal representative, explanations are obtained, which are recorded in a documentary format and make it possible to submit information regarding the criminal offense committed to the Uniform Register of Pre-trial Investigations. An investigator, a prosecutor, an investigating judge, or a court are entrusted with an obligation engage a defense counsellor (an advocate) in the event that the suspect is a minor (Part 1 Article 49, paragraph 1 of Part 2 Article 49 of the CPC of Ukraine). This takes time despite the fact that, in the case of obtaining a resolution of the investigator or prosecutor, or the ruling of the investigating judge or the court to involve a defense counsellor for carrying out the dock defense or for conducting a certain procedural action, the Center for the provision of the free-of-charge secondary legal aid is obliged to immediately appoint a defense counsellor for the juvenile (paragraph 3 of Part 1 Article 17, Part 6 Article 19 of the Law of Ukraine "On the Free-of-charge Legal Aid").

Before the time of arrival of a legal representative, before the defense counsellor is brought, and finally, until the suspect's status is received, a minor may be questioned as a witness (this may be conducted without the obligatory participation of the defense counsellor). In any case, there is a period of time an underage person has while communicating with people who are directly interested in obtaining information about a criminal offense, since such information will allow to prove the guilt of the juvenile person himself or herself for the commission of this offence.

A suspicion of the commission of a criminal offense shall be officially announced to the detained person within 24 hours from the moment of actual detention (Part 3 Article 278 of the CPC of Ukraine). A motion on the selection of a pre-trial restriction shall be considered within 72 hours from the moment of actual detention (Article 186 of the CPC of Ukraine). Consequently, there are also certain periods of time here, when a child has an uncertain status and future and does not get the required legal aid.

In accordance with the Quality Assurance Standards for the provision of the free-of-charge secondary legal aid in the criminal proceedings, approved by the Order of the Ministry of Justice of Ukraine No. 386/5, dated 02/25/2014, after obtainment of the instruction by the Center for the provision of the free-of-charge secondary legal aid, a defense counsel gains familiarity with the materials of the criminal proceedings within

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<sup>42</sup> O.M. Krukevich. Participation of a minor witness in criminal proceedings. Bulletin of the criminal proceedings. 2016. No. 4, p. 154.

the time set in accordance with the law or within a reasonable period time. Then he or she has a confidential meeting with the client, required for the following:

- Clarification of the juvenile's rights with the presentation of a relevant memo (booklet), provided by the Center,
- Clarification of the circumstances of the criminal offense as expounded by the client,
- Reception of the relevant legal information from the juvenile,
- Coordination of the legal position with the client and, based on the results of the aforementioned,
- Execution of a corresponding protocol based on the form set in Appendix 1 to these Standards<sup>14</sup>.

It should be noted separately that it happens very rarely in practice that a court selects a pre-trial restriction that is not related to taking into custody, when such pre-trial restriction is objected by the defense and demanded by the prosecution. Judges do not want to take responsibility and make decisions on this issue, taking into account the documents attached to the motion for imposition application of a pre-trial restriction. Meanwhile, temporary detention facilities are not child friendly, who:

- Has been detained, but without any sufficient information on the commission of a criminal offense by him or her;
- Is suspected of committing a criminal offense, but without proper reasoning; and
- Based on legal grounds, has not been found guilty yet.

The issue of shortening the time to consider a decision on selecting a pre-trial restriction with respect to a minor is also a debating point. Investigators and prosecutors oppose this, grounding it with the need to have enough time to write procedural documents, conduct procedural actions, and obtain the necessary information for a motion on the selection of a pre-trial restriction.

Part 4 of Article 28 of the CPC of Ukraine stipulates that criminal proceedings against a minor should be conducted promptly and considered in the court in the first place. Therefore, in practice, the defense may apply to the prosecutor, investigating judge, or the court with a motion for the need to conduct criminal proceedings (or individual procedural actions) in shorter terms than those provided for by the CPC of Ukraine – in particular, in a case of restriction of the rights or interests of the suspect or the accused person.

A minor witness has the right to defense, but in fact has no ability to ensure it. Moreover, it happens quite often that, after the interrogation of a minor witness, the latter gets a suspect / accused status, where the participation of the defense counsellor is mandatory. The introduction of a mandatory representation of juvenile witnesses by an

advocate will ensure the best interests of the child, regardless of the latter's procedural status in the criminal proceedings<sup>43</sup>.

An advocate shall be the only person to carry out the representation of another person in a court (Article 132<sup>2</sup> of the Constitution of Ukraine), but there are certain restrictions on the representation of minors or juveniles. This provision appears to be not fully complying with the Guidelines and other standards of the juvenile justice when it comes to criminal proceedings involving minor witnesses, victims, and civil plaintiffs. In this case, their rights are limited with respect to the provision of professional legal assistance, since there is no obligation for an advocate to participate in the criminal proceedings for representation of their interests.

In accordance with the Law of Ukraine "On the Free-of-charge Legal Aid", such persons may get an advocate appointed, but the circumstances for such appointment have not been specified. An appeal for the provision of one of the types of legal services provided for by this Law (carrying out the representation of interests of persons entitled to a free-of-charge secondary legal aid in courts, other state bodies, local self-government bodies, and in front of other persons; drawing up of documents of a procedural nature) concerning children shall be submitted by their legal representatives at the place of actual residence of the child or his or her legal representatives, regardless of the registration of the place of residence or the abiding place of the person (Part 2 of Article 18). Hence, it follows from this that the issue whether a professional legal assistance is going to be provided to a minor or not directly depends on a legal representative.

The criminal procedure law has provided a witness with the right to use the legal aid from an advocate, but we cannot see this provision in the Law regulating the advocacy activities. There is almost no question when a legal representative has an opportunity to conclude an agreement on the provision of legal assistance with an advocate on terms of payment of a fee for the services rendered. However, there is a fully different situation when such an opportunity is absent.

Paragraph 4 of Article 18 of the Law "On the Free-of-charge Legal Aid" stipulates that, together with an appeal for the provision of the free-of-charge secondary legal aid, the legal representative of the person has to submit documents, confirming that the person or persons, concerning whom the legal representative submits the appeal, belong to one of the vulnerable categories, envisaged by Part 1 of Article 14 of this Law. That is, there is another restriction, because the aforementioned document may not be there, or the legal representative may not be willing to collect such documents. In addition, conducting an urgent investigative action removes the possibility for operative appointment of an advocate in the absence, at the disposal of the legal representative, of all the necessary

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<sup>43</sup> O.M. Krukevich. Participation of a minor witness in criminal proceedings. Bulletin of the criminal proceedings. 2016. No. 4, p. 158.

documents during his or her first visit to the local Center for the provision of the free-of-charge secondary legal aid.

Taking into account the legal position agreed with the client, the advocate shall, within the limits of the powers, specified by the letter of attorney, take part in all procedural actions carried out with the participation of the client, or those that may restrict or violate the rights and legitimate interests of the client, at all stages of the criminal proceedings (paragraph 1 of Section IV of the Quality Assurance Standards for the provision of the free-of-charge secondary legal aid in civil and administrative proceedings and representation in criminal proceedings). However, the question arises as to how to act in the absence of such a legal position agreed with the client.

The Law "On the Free-of-charge Legal Aid" provides for the grounds and procedure for substitution of advocates (Article 24), who provide the free-of-charge secondary legal aid, and termination of the provision of such assistance (Article 23). However, it does not contain any provisions on the possibility of the advocate's substitution in case of opposing views of the latter and the client on the manner of representation. According to the Law of Ukraine "On the Defense Attorneys and Advocacy Activities", an advocate is obliged to refuse to perform a contract entered into by the advocate, if the performance of the contract may conflict with the interests of the advocate, his or her family members or close relatives, the law office or the lawyers' association, where he or she is a founder (participant), or conflict with the professional duties of the advocate, as well as subject to the presence of other circumstances that may lead to a conflict of interest.

We should distinguish conflict with the client and with the legal representative who applied for the provision of such assistance in the interests of the underage person. In these cases, the advocate gets an instruction from the local Center for the provision of the free-of-charge secondary legal aid to represent the interests of the minor directly, and not from the legal representative. Therefore, any dissatisfaction by itself of the legal representative with the actions of an advocate, representing a minor witness, victim, or civil plaintiff in the criminal proceedings, does not indicate any improper legal assistance.

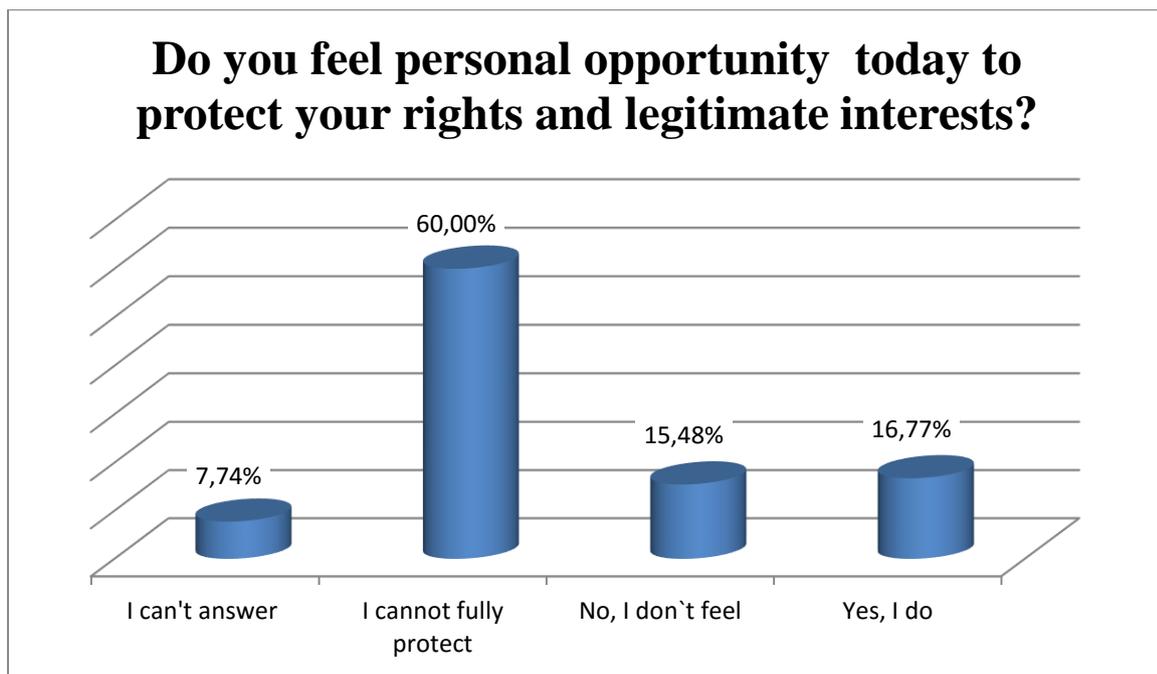
There are also differences in the time frame for considering criminal proceedings in the courts, namely: they are shortened in a case of admission of guilt by a minor, and, as a result, such case shall be considered under a simplified procedure.

The psychological situation is calmer, because of the existing trust in the defense counsellor whom the client and the legal representative have chosen. There are a fully concerted position and clear implementation of the advocate's advice by the client in order to take as much action as possible to obtain the necessary evidence, which would justify the position of the defense team.

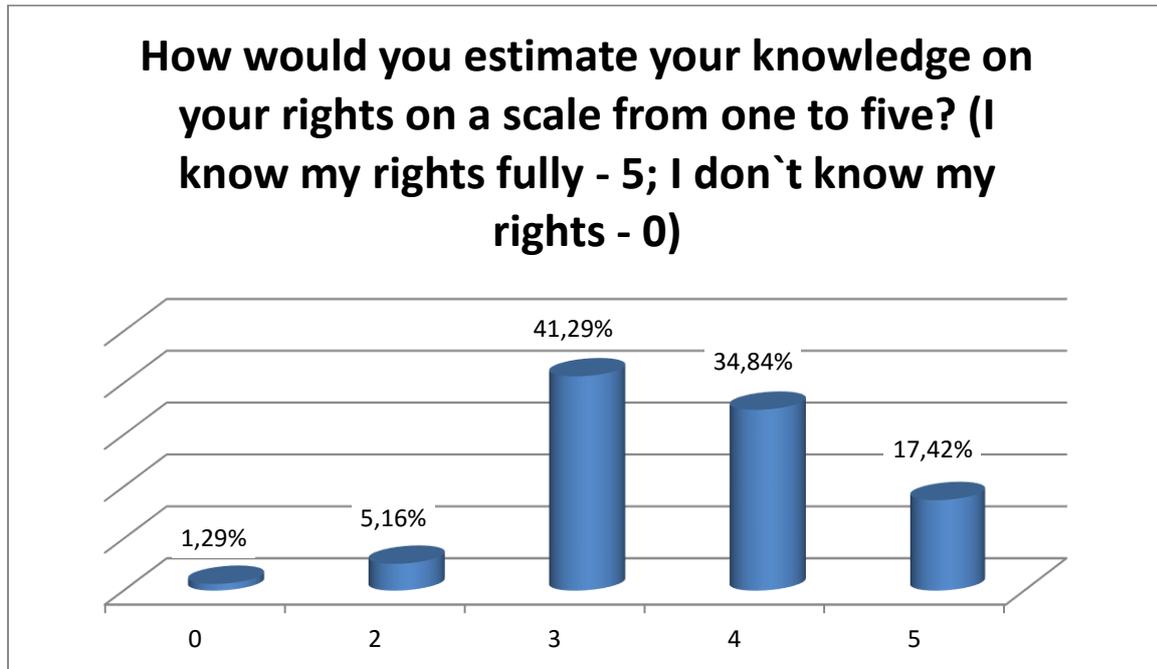
One more essential problem is lack of awareness of the juveniles of their rights.

The specified data point out the low legal culture of juveniles, their certain indifference to cases of violation of the law in their environment, and the prevalence of legal nihilism among minors. All this is the result of insufficiently effective activities of socialization actors (family and school) and insufficient effectiveness of measures being taken by the prevention bodies (state agencies and services on children's rights).

The low level of ability to personally protect their rights<sup>44</sup> and legitimate interests by the majority of children is the evidence of both their low institutional capacity to act in this area (lack of awareness of the forms and behaviors in case of violation of their rights) and the feeling of incapability to influence certain situations (in particular, their non-acceptance as full-fledged and possessing equal rights' citizens by the adults). This also testifies to the low level of credence to the majority of state bodies that should ensure the protection of children's rights. That is, there are reasons to speak about the low level of implementation of guarantees with respect to the rights of minors.



<sup>44</sup> Natalia Ortynska "Legal status of juveniles: theoretical legal research", Lviv, 2017



The lack of the juveniles' awareness of their rights directly affects the ability of minors to effectively oppose violations of their rights and to take efficient measures for their restoration, and also points out to the need to increase the efficiency of the state bodies' activities in formation of the minors' competences regarding the awareness, use, and protection of their rights. This requires the transition in the state bodies' activities from the model of informing to the model of educating.

## SECTION 4. A CHILD AT THE JUDICIAL CONSIDERATION STAGE

***Focal points of this section:*** *This section is focused on existing national court proceedings, specialization of judges and general characteristics of the judicial consideration of cases concerning minors. Held in-depth focus groups and interviews with judges and experts helped to identify the most essential practice gaps and learn how research can better inform policy and practice. The interviewees emphasized that day-to-day practices with minors have been slower to change and that additional work is needed to facilitate change at that level and additional work is needed in other areas of justice reform.*

### **4.1. Organizational and legal principles of legal proceedings concerning minors.**

In accordance with the requirements of the CPC of Ukraine (Part 14 of Article 31), criminal proceedings with respect to minors shall be carried out by a judge, specifically

authorized for such activity. Under the Law of Ukraine "On the Judicial Administration and Status of Judges" (Parts 3-7 of Article 18), in local courts of general jurisdiction and appeal courts, judges authorized to conduct criminal proceedings against minors shall be elected from among the judges of the relevant court by a meeting of judges of this court for a term not exceeding three years, and can be re-elected. A judge authorized to conduct criminal proceedings with respect to juveniles may be elected from the list of judges with a period of service as a judge for at least ten years, experience in conducting criminal proceedings in the court, and a high moral stature, organizational competencies, and professional qualities. In case there is no judge in a court with the required period of service, a judge authorized to conduct criminal proceedings with respect to juveniles shall be elected from among the judges with the longest period of service at the position of the judge.

The aforementioned requirements for judges should be assessed positively, taking into account the prospects of reforming the juvenile justice system in Ukraine. However, such a specialization of courts of general jurisdiction still has a partial and formal nature. The quite narrow staff list in general courts of first instance sometimes does not allow the appointment of several judges for the consideration of juvenile cases, and if only one judge, authorized to conduct criminal proceedings against juveniles, has been elected in the court, then he or she will be the only one to administrate justice with respect to juveniles – without any alternatives. Requirements for a judge, authorized to conduct criminal proceedings against minors, do not include the need for a special training<sup>45</sup>.

Unfortunately, most of the court premises are not suitable for the consideration of cases involving children. There are no properly equipped courtrooms, "green rooms" (rooms for interrogation of child witnesses or victims of crimes), which adversely affects the consideration of this category of cases.

The list of solitary examples includes the arrangement in the pilot court of the appropriate courtroom, which was adapted for the consideration of cases involving children (Ivano-Frankivsk City Court). Other positive examples are the "green room" in the Lutsk City District Court<sup>46</sup>; a child's area to improve the stay of children in courts in the Bakhmach District Court of the Chernihiv region<sup>47</sup>. However, such examples are of a single nature and are implemented by the staff of the courts themselves. The "Green Room" technique provided for interviewing juvenile victims of sexual abuse or crimes

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<sup>45</sup>Overchyuk S.V. Development of the juvenile justice in Ukraine in the context of implementation of the court specialization principle. The Journal of the National University "Ostroh Academy", Law series. 2014. No. 2 (10): [Electronic resource]. - Access mode: <http://lj.oa.edu.ua/articles/2014/n2/14osvpss.pdf>

<sup>46</sup> I. Plakhtiy. Children's ("green") room in the court as a condition for ensuring child questioning standards / Judicial power of Ukraine. [Electronic resource]. Access mode: <https://court.gov.ua/press/news/421393/>

<sup>47</sup> Children's area arranged / Judicial power of Ukraine: Bakhmach District Court of the Chernihiv region. [Electronic resource]. Access mode: <https://bh.cn.court.gov.ua/sud2501/press-centr/news/407107/>

against sexual integrity. The main component of the technique is the arrangement of special premises, equipped with audio and video recording devices, which creates favorable conditions for talking with a child (toys, comfortable furniture, special paint color scheme, etc.). In addition to the premises, there is a special developed course for training of interviewers (police officers, psychologists, investigating judges, and prosecutors). The use of such premises allowed avoiding repeated traumatization when interviewing victims of sexual crimes in the court. As of today, the National Police occasionally uses one special room of this kind in the city of Kyiv. Fitting of such rooms requires quite significant financial expenditures (approximately \$10,000) that the police cannot receive from the Government due to the poor lobbying of this issue by the National Police leaders. The training of experts, who are supposed to conduct interviews, is not carried out due to the mistakes in the reform of the specialized unit (liquidation of the criminal police department on minors). The staff of the specialized police unit (juvenile prevention) are not entitled, in accordance with the law, to carry out procedural actions, the list of which includes interrogation of a minor victim, witness, or suspect. Interrogations of minors, who are suspected of having committed criminal offenses or are crime witnesses or victims, are carried out at the offices of the investigating police officers in accordance with general practices.

The specialization of judges authorized to deal with juvenile cases and the requirements for their selection are not complied with by all courts. Thus, for example, the Appeal Court of the Volyn region, when considering a complaint against the verdict of the Shatsk District Court of the Volyn region, found that there had been three judges working in the Shatsk District Court of the Volyn region, and, at the time of consideration of the aforementioned criminal proceedings, the presiding judge had a period of service less than ten years, while another judge of this court had the necessary length of service to handle the proceedings of such a category.

In its turn, the composition of the court shall be recognized as unlawful if the rules on the quantitative composition of judges are violated during the conduct of criminal proceedings with respect to minors, as well as in case of any non-compliance with the requirements of Article 31 of CPC regarding the length of service of a judge who conducts criminal proceedings of a particular category.

The Court of Appeal concluded that the court of first instance, while considering the above-mentioned criminal proceedings, admitted material violations of the requirements of the criminal procedure law, and therefore the verdict of the local court shall be reversed with the appointment of a new consideration in the court of first instance<sup>48</sup>.

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<sup>48</sup> Ordinance, April 04, 2018; Case No. 168/475/17, Proceedings No. 11-kp / 773/152/18; Court of Appeal of the Volyn region [Electronic resource]. Access mode: <http://www.reyestr.court.gov.ua/Review/73162791>

We would like to emphasize that the procedure for determining the specialization of judges for consideration of the described category of cases appears to be imperfect. It should not be "tied" to a 10-year service at this position, since the length of service is not an indicator of readiness for work with minors. Much more important is the requirement for special training for a judge authorized to consider criminal proceedings against minors. However, the law is lacking this very requirement.

#### 4.2. General characteristics of the judicial consideration of cases concerning minors.

The generalization of judicial statistics on the judicial consideration of criminal proceedings with respect to juveniles in 2016-2017, presented in Tables 3 and 4, was carried out based on the data of the State Judicial Administration<sup>49</sup>.

**Table 3.**

#### **Criminal proceedings on juvenile cases, 2016-2017.**

Year	Number of criminal proceedings	Number of juveniles in the proceedings	Completed by first instance courts				Number of unconsidered criminal proceedings
<b>2016</b>	6,041	7,438	4,240				1,801
			With imposition of a sentence	With the closure of the proceedings on the case	Returned to the Prosecutor's office	With imposition of coercive measures of a medical nature	
			3,099	535 with respect to 574 juveniles	140 criminal indictments with respect to 190 minors	12 criminal proceedings with respect to 13 minors	
<b>2017</b>	6 408	7 976	3 872				2536
			2,854	with respect to 545 juveniles	90 criminal indictments with respect to 128 persons	15 criminal proceedings with respect to 16 persons	

It is noteworthy that, in 2016, a total of 255 sentences were passed on the basis of reconciliation agreements and 59 sentences – on the basis of the agreement on the admission of guilt. In 2017, there were 237 and 89 such sentences, respectively.

<sup>49</sup> T. Slutska. Juvenile delinquency: what does the statistics say? Judicial and legal newspaper: blog. 2018, April 26. [Electronic resource]. Access mode: <https://sud.ua/ru/news/blog/117843-zlochinnepovnolitnikh-pro-scho-govorit-statistika>

**Table 4.**

**Imposition of coercive measures of an educational nature on the juveniles,  
2016-2017.**

	Considered			Left unconsidered
<b>2016</b>	<b>379</b>			<b>88</b>
	342 rulings on the imposition of coercive measures of an educational nature with respect to 398 juveniles	11 motions were returned to prosecutors	25 proceedings were closed	
<b>2017</b>	<b>308</b>			<b>138</b>
	264 rulings on the imposition of coercive measures of an educational nature with respect to 347 juveniles	14 motions were returned to prosecutors	29 proceedings were closed	

A half of the total number of motions regarding the imposition of coercive measures of an educational nature were represented by motions regarding the imposition of coercive measures of an educational nature with respect to persons who have not reached the age, from which a criminal prosecution may be initiated. In particular, in **2016** a total of 185 such motions were considered, while in **2017** there were 132 motions of this kind.

In 2017, a total of 2,021 juveniles were released from the punishment (in **2016**–2,273), including 1,639 cases with a probation period (in **2016**– 1,991 cases), based on the amnesty law – 213 cases (in **2016**–15 cases).

The number of appeals against the rulings of the first instance court, passed with respect to minors, is insignificant. Its rate does not exceed 1% of the total number of court rulings. As an example: in the first half of 2014, the Kyiv Court of Appeals overturned only two court decisions by the courts of first instance with the appointment of a new consideration<sup>50</sup>.

<sup>50</sup> Generalization of the judicial practice of consideration criminal proceedings concerning crimes, committed by minors, in 2013 and the first half of 2014: Kyiv City Court of Appeal / I. Palenik, V. Vikhrenko. p. 32. [Electronic resource]. Access mode: [www.apcourtkiev.gov.ua/wp-content/uploads/2015/07/palenik1.doc](http://www.apcourtkiev.gov.ua/wp-content/uploads/2015/07/palenik1.doc)

### **4.3. Guarantees of a fair trial when considering criminal proceedings concerning children: problematic issues.**

The drafting of a pre-trial report is a positive novelty of our legislation and according to Article 314-1 of the CPC is mandatory in criminal proceedings against all minors accused of committing a crime.

In their ordinances, when appointing a court hearing of a case, in the majority of cases, judges indicate the need for a pre-trial report and give appropriate instructions to the probation service. Example: "Monastyrskyi District Probation Division should execute a pre-trial report on the juvenile accused and submit it to the court by 14:30 of December 27, 2017"(similar instructions are also contained in other specified ordinances)<sup>51</sup>.

The courts increasingly take into account the data of the pre-trial reports in their decisions. For example, criminal proceedings under Part 2 of Article 185 of the Criminal Code of Ukraine, the details of which were entered into the Unified Register of Pre-trial Investigations (hereinafter referred to as the URPI), under No. 12016240010005275, were considered by the Khmelnytskyi District City Court, taking into account the pre-trial report of the probation bodies. A punishment of a one year-long deprivation of liberty has been imposed, with the application of the provisions of Article 75 of the Criminal Code of Ukraine (the accused girl has been released from serving the sentence passed, if she does not commit a new crime within 1 year of the probationary period and performs the duties assigned to her)<sup>52</sup>. The age of the accused person was 17 years. Besides, her inclusion to the "D" records at the Khmelnytskyi regional narcological dispensary was established with the following diagnosis: behavioral and mental disorders due to the abuse of narcotic drugs and an addiction syndrome.

In addition, subject to the presence of one and the same component element of a criminal offense, different types of punishment have been selected, which indicates the individual approach of judges to the resolution of a particular case, taking into account the peculiarities inherent only to it.

However, there are cases of absence, in the criminal proceedings, of the conclusions by the probation bodies with the simultaneous assignment of duties to appear periodically for registration, which fact is both a negative manifestation of neglect of the

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<sup>51</sup> Ordinance, April 16, 2018; Shevchenkivsky District Court in the city of Chernivtsi; Case No. 727/3053/18; Proceedings No. 1-kp / 727/207/18 [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/73432192>; Ordinance, 14.12.2017; Buchach District Court of the Ternopil region; Case No. 603/426/17 [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/71142231>; Ordinance, 03.01.2018; Rokytnyansky District Court of the Kyiv Region; Case No. 371/1393/17; Proceedings No. 1-kp / 375/18/18 [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/71428455>

<sup>52</sup> The verdict of Khmelnytskyi City Court, dated 16.01.2018; Case No. 686/20928/17 [Electronic Registry]. Access mode: <http://www.reyestr.court.gov.ua/Review/71713647>

Law and a violation of the procedure for consideration of cases involving a minor accused and a negation of the rights of the child.

The contents of the pre-trial report are taken into account by the judges, which fact they expressly state in their sentences. For instance, the Zhovtnevyi District Court in Kryvyi Rih (the Dnipropetrovsk region), in its sentence on the juvenile accused of robbery, has taken into account the opinion of the probation body that the execution of his sentence in a community is possible provided that both supervision and application of social and educational measures are carried out, namely the undertaking, by the juvenile, of an education and prevention program called "Choice for a Change". The juvenile was sentenced to the compulsory community service<sup>53</sup>. Similar arguments are had been presented in other judgments we have analyzed, including the ones related to the approval of agreements on reconciliation. An example here is the verdict of the Khmelnytskyi District City Court with respect of the minor accused of committing theft<sup>54</sup>.

However, the practice of application of Article 314-1 is uneven. There are situations where no pre-trial report was executed in cases with accused juveniles, and this was not recognized as a material violation of the law. For example, the cassation appeal of the prosecutor to the Supreme Court was filed against the verdict of the Tulchynskyi District Court of the Vinnytsia region on September 25, 2017 concerning a minor who stole a mobile phone, and against a corresponding ordinance of the Court of Appeal of the Vinnytsia region, dated November 23, 2017. The prosecutor, not denying the proven guilty of the juvenile in committing the criminal offense and the criminal law assessment under Part 1 of Article 185 of the Criminal Code, requested to cancel judicial decisions on the basis of Part 1 of Article 438 of the CPC and to initiate a new consideration in the court of first instance. While giving reasons to his position, the prosecutor pointed out that the local court had violated the requirements of the second part of Article 314-1 of the CPC, since the preliminary case hearing did not resolve the issue of execution of a pre-trial report on the accused juvenile. In the opinion of the prosecutor, this led to the incorrect application of the law of Ukraine on the criminal responsibility and inconsistency of the punishment imposed with the severity of the criminal offense and the personality of the convicted juvenile. However, the Supreme Court ruled that the absence of the pre-trial report, in view of the provisions of Article 412 of the CPC, was not a material violation of the criminal procedure law, which would prevent the court from passing a lawful and well-grounded judicial decision with regard to the imposition of the punishment and would entail a mandatory reversal of such decision<sup>55</sup>.

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<sup>53</sup> Sentence, January 11, 2018; Case number 212/4628/17, 1-kp / 212/115/18; Zhovtnevyi District Court of Kryvyi Rih, the Dnipropetrovsk region [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/71541951>

<sup>54</sup> Sentence, April 13, 2018; Case number 686/4381/18; Khmelnytskyi City District Court of the Khmelnytskyi Region [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/73725116>

<sup>55</sup> The Supreme Court; Ordinance of May 14, 2018; Case No. 148/1207/17; Proceedings No. 51- 4436 sk 18 [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/74120938>

Thus, we can see that, based on the position of the Supreme Court, the absence of a pre-trial report in a case, the execution of which is mandatory for cases involving juveniles, is not a ground for a reversal of the relevant court decision if the punishment was imposed in accordance with the law.

In addition, the attention is drawn to the lack of an established practice and a low professional culture of execution of pre-trial reports, which the courts pay attention to while considering cases with respect to juveniles.

There are cases when the execution of a pre-trial report is prolonged at the request of the probation body<sup>56</sup>, which as a result leads to delaying the consideration of the case.

From our point of view, there is another important problem, related to the absence of any legislative guarantees in Ukraine for those persons who are no longer underage, but are of a young age (for example, aged 18 to 23 years) and still need special protection (ensuring of guarantees) as compared with adults.

This problem can be seen through an example of a particular case, which was the subject of consideration by the Supreme Court in April 2018. According to the circumstances of the case, the decision of the court of appeals reversed the district court's decision with regard to refusal to impose, with respect to the accused person, coercive measures of an educational nature in the form of a caution.

A minor has committed a socially dangerous act at the age of 15 years – that is, before reaching the age, from which a criminal prosecution may be initiated. While driving a VAZ-21051 car without the right to drive, he collided with a Skoda Octavia A-5 car. One of the VAZ-21051 passengers got a grievous bodily harm, threatening his life at the time of the collision, and he died later as a result of such harm. The driver of Skoda Octavia A-5 and his passengers got a moderately severe bodily harm.

During the consideration of the case, the Supreme Court has found that, contrary to the requirements of the law, the court of appeal had imposed coercive measures of an educational nature to the accused person, who, at the time of consideration of the motion, had already reached his adulthood.

In such circumstances, the panel of judges considers that the court of appeal, while passing a judgment on the imposition of a coercive measure of an educational nature with respect to the accused person in the form of a caution, misapplied the law of Ukraine on the criminal responsibility and committed a material breach of the requirements of the criminal procedure law, which violations were unconditional grounds for the reversal of the judicial decision<sup>57</sup>.

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<sup>56</sup> Ordinance, November 16, 2017; Case number 493/1936/16-k, Proceedings No. 1-kp / 493/39/17; Baltsky District Court of the Odessa region [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/70262691>

<sup>57</sup> The Supreme Court; Ruling, April 12, 2018. [Electronic resource]. Access mode: <http://www.reyestr.court.gov.ua/Review/73438119>

The corresponding position is also enshrined in paragraph 1 of the Resolution by the Plenary Session of the Supreme Court of Ukraine No. 2, dated May 15, 2006, "On the practice of judicial consideration of cases on the imposition of coercive measures of an educational nature", according to which the law provides for the use of coercive measures of an educational nature for juveniles exclusively – that is, a person shall be a minor not only at the time of commission of the crime, but also at the time of the case consideration by the court.

In their practice, while imposing punishments, the courts try to take into account the major international standard in the field of juvenile justice – United Nations Standard Minimum Rules for the Administration of Juvenile Justice (hereinafter referred to as the Beijing Rules). However, according to the Unified State Register of Judicial Decisions, the cassation instance in Ukraine has made references to the specified international document only in three cases<sup>58</sup>; appellate courts have referred to it in approximately 500 cases; while the courts of first instance have passed approximately 150 sentences with the corresponding reference, including 9 times in 2018 (based on the calculations by P.I. Parkhomenko).

The Supreme Court, in its new composition, has not used this possibility yet.

This indicates the absence of a systemic application of the Beijing Rules, including the application by the highest judicial authority, and demonstrates incomplete understanding of the scope of their application and possibilities of use. For example, the panel of the cassation court believed that the local court did not sufficiently take into account the data on the personality of the minor and other specific circumstances of the case and determined a coercive measure of an educational nature, which by its nature is clearly unfair. The court of cassation referred to the provisions of the Beijing Rules, according to which the juvenile justice should be aimed, first of all, at promoting juvenile welfare to the greatest possible extent and to ensure that any measures with respect to the juvenile are always proportional to both the individual traits of the offender's personality and the circumstances of the offense.

The court further emphasized that the decision on the referral of the minor to a special educational institution – a school of social rehabilitation – for a term of three years was not properly substantiated by the court of first instance, indicating only the following: the juvenile did not work and studied at a gymnasium school; had good character references from the places of his residence and studies; had satisfactory living conditions and satisfactory influence of adults; and had a satisfactory level of development and was not on the records of narcologists and psychiatrists. In addition, the court of appeal in its

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<sup>58</sup> Superior Specialized Court of Ukraine for civil and criminal cases; Ordinance, October 27, 2015 [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/53162997>; Superior Specialized Court of Ukraine for civil and criminal cases; Ordinance, April 11, 2014 [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/38140298>; Superior Specialized Court of Ukraine for civil and criminal cases; Ordinance, April 26, 2013 [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/32030740>

decision noted that one of the adults – the minor's father – had a negative influence on the child. At the same time, it was not taken into account that the minor had repeatedly become the champion and prizewinner of the regional championship, international and all-Ukrainian wrestling tournaments, and the materials of the case also contain character references that characterize the juvenile exclusively positively. Conversely, the case file had no negative data on the minor's father, which would impede his upbringing in the family.

Consequently, the reference to the Beijing Rules was a pure formality.

While deciding on the scope for the use of coercive measures of an educational nature with respect to the juvenile, the court of cassation concluded that the possibility of rehabilitation of the latter within the family has not yet been lost, and that was why the cassation court imposed a coercive measure of an educational nature in the form of probation (under the supervision of the court) for a term of one year<sup>59</sup>.

In another case, the Odessa Regional Court of Appeal referred to the Beijing Rules by choosing a pre-trial restriction for a minor suspect in the form of a house arrest<sup>60</sup>, arguing this by a provision of the Beijing Rules, which was completely irrelevant to the issue under consideration. Similarly, there was inappropriate argumentation of the Lychakivskiy District Court of the city of Lviv in its non-guilty verdict against a minor accused of stealing a mobile phone<sup>61</sup>.

Application of the Beijing Rules and other international standards in the field of children's rights looks more appropriate in the decision of the Court of Appeal of the Zaporizhia region<sup>62</sup>. The Panel of Judges drew attention to the fact that the need to impose a punishment for the juvenile in the form of the deprivation of liberty in the above circumstances was not only ungrounded in that case, but also contrary to the norms of the international law: the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the administration of juvenile justice (the Beijing Rules), in particular Article 40 of the Convention on the Rights of the Child and clauses 5, 7, 11, 16, and 17 of the UN Standard Minimum Rules. Thus, the said norms of the international law indicate the need to establish data on the personality of a juvenile offender in order to determine the proportionality of the reaction for the committed offense, and also emphasize that, taking into account the data on the personality of the minor, there is a

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<sup>59</sup> Superior specialized court of Ukraine for civil and criminal cases; Ordinance, April 11, 2014. [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/38140298>

<sup>60</sup> Court of Appeal of the Odessa region; Ordinance, February 19, 2018; proceedings 11-cs / 785/248/18: <http://reyestr.court.gov.ua/Review/72392153>

<sup>61</sup> Lychakivskiy District Court of the city of Lviv; Sentence of February 17, 2017; Case No. 463/450/16-k; Proceedings No. 1-kp / 463/37/17 [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/64779580>

<sup>62</sup> Court of Appeal of the Zaporizhia region; Ordinance, February 05, 2018; Proceedings No. 11-kp / 778/471/18 [Electronic resource]. Access mode: <http://reyestr.court.gov.ua/Review/72037940>

need, whenever possible, not to resort to a formal consideration of the case, including the consideration by the court, but to resort to the possibilities for a pre-trial termination of the case with the imposition of alternative measures of public and social influence, which allows limiting the negative effects of the administration of the juvenile justice (for example, the criminal conviction and sentence stigma).

There are cases when a court mentions a certain phrase from the UN Standard Minimum Rules, which is somehow quoted out of the context and does not meet the purpose of the relevant standard or is not relevant to the situation under consideration.

There is a systemic violation of the national legislation and international standards of juvenile justice, when the courts, while imposing a punishment on juveniles, forget that committing an offense by such a person is a mitigating circumstance, which in any case should be taken into account by the court when passing a sentence. For example, the Appeal Court of the Vinnytsia region eliminated the mentioned shortcoming in the judgment by the court of first instance and indicated, in the statement of reasons for the sentence, the application of a circumstance, mitigating the punishment, with respect to the minor – namely, the commission of a criminal offense by a juvenile<sup>63</sup>.

Another quite serious practical problem is the release from criminal responsibility of juveniles with the use of coercive measures of an educational nature (Article 97 of the Criminal Code), which covers minor crimes and careless crime of a moderate gravity. Meanwhile, a significant share of crimes being committed by minors consists of theft or hooliganism (Articles 185, 296 of the Criminal Code), which relate to intentional crimes of a moderate gravity. This eliminates the possibility of using the specified procedure. Such persons may be released only from punishment, and not from the criminal responsibility. Consequently, such persons shall get a sentence passed, which finds them guilty of committing a crime, and coercive measures of an educational nature are used only in the court verdict (Article 105 of the Criminal Code). An example is the verdict of the Sadhirskyi District Court in the city of Chernivtsi:

"PERSON\_3 is found guilty of commission of a criminal offense, stipulated in Part 2 of Article 15, Part 2 of Article 185 of the Criminal Code of Ukraine.

PERSON\_4 is found guilty of commission of a criminal offense, stipulated in Part 2 of Article 15, Part 2 of Article 185 of the Criminal Code of Ukraine.

On the basis of Part 1 of Article 105 of the Criminal Code of Ukraine, to release PERSON\_3 from the punishment, without defining its type and length, with the use of coercive measures of an educational nature in the form of the referral of the minor under the supervision of his mother (PERSON\_9, INFORMATION\_7) for a term of 1 year.

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<sup>63</sup> Court of Appeal of the Vinnytsia region; Ordinance, March 23, 2018; Case number 130/517/16-k, Proceedings No. 11-kp / 772/341/2018 [Electronic resource]. Access mode:<http://www.reyestr.court.gov.ua/Review/72999868>

On the basis of Part 1 of Article 105 of the Criminal Code of Ukraine, to release PERSON\_4 from the punishment, without defining its type and length, with the use of coercive measures of an educational nature in the form of the referral of the minor under the supervision of his mother (PERSON\_6, INFORMATION\_8) for a term of 1 year"<sup>64</sup>.

However, there is an example of the opposite. The Kyiv City Appeal Court, when considering the prosecutor's petition of appeal, concluded that, based on the requirements of Article 97 and 105 of the Criminal Code of Ukraine, the court had not had any legal grounds for closing the criminal proceedings against minors, and, based on the consequences of the consideration of the case on the merits in this criminal proceeding and after the fulfillment of the requirements of Article 363 of CPC of Ukraine, had been supposed to comply at least with the requirements of Articles 364 and 365 of the CPC of Ukraine and to pass a sentence, as stipulated in Part 1 of Article 369 of the CPC of Ukraine, and, during the consideration on the issue of punishment, to consider the possibility of exempting the juveniles from the punishment with the use of coercive measures of an educational nature. Therefore, the court had made a judicial decision with a material violation of the requirements of the criminal procedure law, which in general does not meet the requirements of Article 370 of the CPC of Ukraine<sup>65</sup>.

It would be more expedient and appropriate to the international standards on the juvenile justice to extend the provisions of Article 97 of the Criminal Code of Ukraine also to the intentional crimes of a moderate gravity, which would exclude the passing of sentences with respect to minors, who have committed such crimes and, instead, would encourage the application of a more child-friendly procedure in the form of a release from criminal responsibility with the use of coercive measures of an educational nature.

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<sup>64</sup> Sadhirsnyi District Court in the city of Chernivtsi: Sentence, May 15, 2018; Case No. 726/2169/17, Proceedings No. 1-kp / 726/18/18 [Electronic resource]. Access mode:

<http://www.reyestr.court.gov.ua/Review/74437699>;

<http://www.reyestr.court.gov.ua/Review/72268914>;

<sup>65</sup> Court of Appeal in the city of Kyiv; Ordinance, May 07, 2018; Case No. 11-kp / 796/840/2018 [Electronic resource]. Access mode: <http://www.reyestr.court.gov.ua/review/73986852>

## CONCLUSIONS

### Introduction

The main goal of this study is to conduct a comprehensive expert evaluation of current Ukrainian practices and of the normative and legal base and the laws, based on the analysis of available statistics data, preventive practice materials, pre-trial investigation practices, legal practice of helping juveniles in the criminal proceedings, and practices of the judicial consideration of cases involving juveniles. These expert conclusions identify the strengths and weakness of existing pre-trial practice and the judicial practice on application of National legislation on the criminal responsibility with respect to juveniles and with a special focus on the rights of children who are in conflict with the law.

### 1. Conclusions to Section 1. A Child in the sphere of criminal justice regulation

1.1. National legislation defines a child as a person under the age of eighteen, which definition fully complies with international standards in the field of protection of children's rights. The laws on the criminal responsibility and on the criminal proceedings use a term "juvenile", the meaning of which coincides with the meaning of the term "child". The term "juvenile" covers children in conflict with the law (suspects and accused of committing a crime and convicted for commission of a crime) and children in contact with the law – children acting in a criminal proceeding as witnesses and victims.

In one case, the legal regulation with respect to children in conflict with the law covers persons who have attained the age of eighteen years. Under Article 148 of the Penitentiary Code, all convicted persons, who have attained the age of eighteen years, may be left at a juvenile correctional facility until the completion of the period of their sentence, but not longer than until they reach the age of twenty-two.

1.2. Children under the age of sixteen and, in cases specified by the criminal law, children under the age of fourteen may be held criminally responsible. However, criminal proceedings are carried out, and criminal justice measures in the form of coercive measures of an educational nature are applied, with respect to children who have committed a socially dangerous act at an age from 11 years to the age of criminal responsibility.

Both punishments and non-punitive criminal justice measures can be applied with respect to children in conflict with the criminal law, including the following:

- Exemption from the criminal responsibility in connection with actual repentance;
- Exemption from the criminal responsibility in connection with reconciliation with the victims;
- Exemption from the criminal responsibility in connection with the juvenile's bailment;
- Exemption from the criminal responsibility in connection with the change in the situation;
- Conviction and release from punishment with a probation period;

- Conviction and release from serving a sentence with an act of amnesty (pardon);
- Imposition of coercive measures of a medical nature;
- Exemption from the criminal responsibility and serving a sentence in connection with the expiration of the limitation period;
- Conditional release from serving a sentence and substitution of an unserved portion of the criminal sentence with a more lenient punishment;
- Conviction and release from the punishment with the use of coercive measures of an educational nature; and
- Exemption from the criminal liability with the use of coercive measures of an educational nature.

The variety of punitive and non-punitive measures of criminal justice enables individualization of responding to crimes / socially dangerous acts of minors and selection of a measure that best suits the purpose of rehabilitation and correction of a child in conflict with the law.

***The problem is*** that the overwhelming majority of the non-punitive measures of criminal justice for children in conflict with the law can only be applied if they commit crimes for the first time and, moreover, a crime of a minor or moderate gravity.

Among the types of punishment, most often appointed for minors, deprivation of liberty for a certain period is still at the top of the list. The statistics on the punishments for the most common offence within the juvenile delinquency – theft – in 2017 is a typical example: 306 juveniles were sentenced to deprivation of liberty, 13 minors were sentenced to an arrest, the compulsory community service was chosen for 155 juveniles, and 260 children were fined.

***Non-punitive measures of criminal justice are fairly criticized for their ineffectiveness.*** For example, such a form of compulsory measures of an educational nature as caution does not provide for carrying out, by minors, their parents, or any persons in general, of any actions for re-socialization of an offender.

1.3. The state of juvenile delinquency in 2016-2017 should be assessed as a stable one: every year a little more than 6,500 criminal offenses committed by minors were recorded. An alarming fact is that almost a half of them are grave and extremely grievous crimes, while such crimes as intentional grave bodily harm, rape, robbery, drug-related crimes, and hooliganism have a trend to become more frequent. The numbers of administrative offenses committed by minors remain quite high.

***The State statistics on juvenile delinquency and statistics on offenses committed against children need to be improved.*** In particular, it is the introduction of gender indicators for juvenile offenders. ***The statistics on children – victims of administrative offenses and crimes remain unrepresentative:*** the Uniform report on the criminal offenses in the country for the corresponding month of the current year shows only the information on the number of schoolchildren (students of secondary schools, vocational schools, and higher education institutions) from the total number of victims, but the

number of child victims with the age from 0 to 6 years is not accounted for, while they are the most vulnerable victims of crime and require the most extensive attention.

## **2. Conclusions to Section 2. Preventive activities with respect to children in conflict with the law and children with contact with the law**

2.1. Counteracting the juvenile delinquency in Ukraine is entrusted to the legally defined actors. The range of actors of the preventive activities is defined by the law and includes the following: the national police bodies; services on minors; juvenile probation sector; centers for provision of the free-of-charge secondary legal aid; centers of social services for families, children, and youth; non-governmental organizations (NGOs) and individuals (volunteers); and state authorities and local self-government bodies.

*2.2. The problem is the lack of a clear definition, at the law level, of the role and place of the prosecutor's offices and probation bodies in carrying out of preventive activities with respect to minors* (their powers have been defined only by certain subordinate acts).

The legislative definition of the workload norms for main actors of the preventive activity is also required.

*There are also a number of problems in coordinating the preventive activities of various bodies, services, and institutions.* In particular, the prosecutor's office has been entrusted with the task of taking measures to coordinate the actions of the law enforcement agencies on the counteraction to criminality, but the preventive work is carried out not only by the law enforcement agencies. There is a need for further strengthening of the interaction between juvenile delinquency subdivisions, juvenile probation sectors, and centers for the provision of the free-of-charge secondary legal aid, services on minors, educational institutions (in particular, school psychologists and social educators), and public organizations active in this field, as well as individuals (volunteers).

*2.3. Preventive activities should not be regarded as the exclusive competence of the law enforcement agencies* (the national police and probation bodies). Its objective is the protection and exercise of the rights of children and creation of conditions for their comprehensive development and a safe and child-friendly environment. Therefore, there is a need for more active involvement of the resources and capabilities of the Ministry of Youth and Sports of Ukraine, territorial communities, self-government bodies of higher education institutions, youth councils of territorial communities, children's and youth organizations, etc. into ensuring the social component of the preventive activities.

The practice of development and implementation of a nationwide Comprehensive Program on the prevention of offenses and the fight against criminality at appropriate

periods needs to be renewed as a basis for preventive activities in the country, including such activities with respect to the juvenile delinquency.

### **3. Conclusions to Section 3. A Child at the stage of pre-trial investigation**

**3.1.** In accordance with the law, a criminal proceeding with respect to a juvenile shall be conducted by the specifically authorized pre-trial investigation bodies and judges, which fact should be assessed as a positive innovation.

However, the practice of formation of a staff corps of persons, authorized to conduct proceedings with respect to juveniles, does not always correspond to the standards of the child-friendly justice. For instance, professional requirements for such persons at the pre-trial investigation bodies are not legally established. The head of the investigating department determines investigators, specifically authorized to conduct pre-trial investigations concerning minors, by his or her order.

Unlike with the investigators, the law has determined the requirements for a judge, authorized to consider juvenile cases, as well as the procedure for his or selection. However, these requirements include only a ten-year period of work as a judge and do not include any special training for a candidate for such position. The narrow staff composition of the courts sometimes does not allow authorizing more than one judge to consider cases of minors, and then the appointment of a juvenile case for consideration by such a judge becomes a zero option. Therefore, the specialization of judges authorized to consider juvenile cases and the requirements for their selection are not complied with by all courts.

As of today, employees of the juvenile delinquency subdivisions, National Police investigators, the staff of the juvenile probation sector, and judges authorized to deal with cases involving children do not undergo any special training for working with children. *The specialization of an advocate for participation in the defense of a child in the criminal proceedings has not been provided for by the law at all.*

**3.2. *Most of the premises of the National Police bodies and the courts are not suited for investigation and consideration of cases involving children.*** There are no properly equipped courtrooms, "green rooms" (rooms for interrogation of child witnesses or victims), which negatively affects the consideration of the described category of cases.

Most of the norms of the current Criminal Procedure Code, which regulate criminal proceedings concerning minors, formally correspond to the international standards of juvenile justice, including the Guidelines on the child-friendly justice. *The problem is the lack of, or low, specification of the tools for their implementation.*

The possibility to interrogate a minor or juvenile witness or victim with the help of video conferencing (remote pre-trial investigation) at both the pre-trial investigation stage and the stage of judicial examination shall be considered as a positive novelty. In this

way, the risk of secondary dramatization of a witness or a victim through a contact with a person, being suspected or accused of the commission of a crime, is minimized. However, such a method of conducting a procedural action is a right and not an obligation of the actors of criminal proceedings.

3.3. The additional guarantees of a juvenile participant in the criminal proceedings, whether as suspect, accused, witness, or victim, should be also evaluated positively. The list of such guarantees includes the following:

- Presence of a legal representative of the child (parents, guardian, or caregiver) at the proceedings;
- Time limits for conduct of an interrogation (no more than 1 hour without an interruption and no more than 2 hours a day);
- Involvement, if necessary, a psychologist, educator, or doctor to take part in the interrogation of a juvenile; and
- Mandatory participation of a defense counsellor in a criminal proceeding with respect to a minor.

In accordance with the he law, legal protection in the form of a defense shall be granted to a juvenile suspect or accused free of charge.

***At the same time, it should be noted that there are several problems at the pre-trial stage of the criminal proceedings:***

- ✓ Uncertainty about the role of a legal representative, educator, psychologist, and doctor in carrying out the procedural actions involving the minor. It is assumed that the legal representative is called to support the child during the conduct of procedural actions. However, the question remains as to how he / she is able to do based on the level of his or her knowledge. A conflict between the legal representative of the child and the best interests of the child, especially when it comes to domestic violence, also cannot be ruled out.
- ✓ The role of an educator, psychologist, and doctor in the procedural actions is unclear. Taking into consideration the fact that their involvement is ensured solely based on an initiative of the person, administering the criminal proceedings, their task is not to support the child, but to facilitate the achievement of the purpose of the procedural action.
- ✓ The role of an expert in the criminal proceedings involving children appears to be quite similar: a comprehensive psycho-psychiatric examination and a psychological examination are to be scheduled solely at the discretion of the investigator, and only with respect to a minor suspect.
- ✓ Despite the legally defined participation of a legal representative and a defense counsellor (advocate) in the legal proceedings, there are possibilities for an investigator to communicate with a minor behind their back (as a rule, right after the detention). In such a way, the investigating authorities are trying to obtain the

maximum information on a criminal offense and on the participation of a minor in such criminal offense.

- ✓ It can be stated that, as compared with children in conflict with the law, the protection of the rights of children in contact with the law – witnesses and victims – is weaker. In particular, although they are entitled to the free-of-charge secondary legal aid, the engagement of a defense counsellor to protect the rights of children in contact with the law is extremely rare, taking into account the fact that participation of a defense counsellor in the proceedings involving a juvenile witness or victim is not mandatory.
- ✓ In law and in practice, the child victim's right to be heard and his or her special needs are not ensured, while the minor's thoughts during the conduct of procedural actions are not always taken into account. In addition, the law has provided for any psychological examination for a child victim.

#### **4. Conclusions to Section 4. A Child at the judicial consideration stage**

4.1. An analysis on the practice of imposition of punishments and taking other criminal justice measures with respect to juveniles shows that courts basically apply the national legislation correctly. A few disadvantages are usually corrected by the appellate instance: the judicial practice concerning juveniles is generalized and analyzed by the higher judicial authorities, and the judicial staff gets proper information on the results of such generalization and analysis.

*A typical mistake in the application of the national legislation and international standards of justice is the imposition of a punishment for juveniles without taking into consideration the minority status as a mitigating circumstance.* Another common mistake is the improper exemption from criminal responsibility with the imposition of coercive measures of an educational nature for juveniles who have committed intentional moderately severe crimes (in this case, a sentence should be issued with a release from the punishment).

4.2. When initiating the judicial consideration of a case, in most cases, judges in their ordinances indicate the need to execute a pre-trial report and give appropriate instructions to the probation service. The judges also increasingly take into account the data of pre-trial reports in their decisions. However, based on the position of the Supreme Court, the absence in the case of a pre-trial report, the execution of which is mandatory in cases involving juveniles, is not considered as a ground for reversing the relevant court decision, if the punishment was imposed in accordance with the law. It would be expedient and relevant to the international standards of juvenile justice to extend the provisions of Article 97 of the Criminal Code of Ukraine for intentional moderately severe crimes.

4.3. Judges try to take into account the UN Convention on the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") and other international standards. However, these documents are quite often used for purely decorative purposes, for the "decoration" of the verdict or ordinance.

## **5. Cross-sectoral conclusions**

5.1. All actors of preventive activities, bodies of pre-trial investigation, and courts need to be more widely informed about the international standards and child-friendly justice practices, in particular the introduction of innovative methodologies and action programs, as well as special training for the staff. There is a need to work out the issues of coordination of the activities, exchange of training and methodological materials, plans, and programs between the centers for training and skill improvement of the National Police and the training and qualification improvement at the centers of the State Criminal Executive Service of Ukraine in terms of conduct of the training (qualification improvement, training sessions) for the personnel of the bodies involved in the preventive activities with regard to minors (this does not exclude the possibility of involving similar centers of the social protection agencies, etc.).

5.2. There is a need to intensify the awareness-raising activities for minors and their legal representatives regarding the social and legal services that may be provided by the public authorities, and to intensify the provision of information about the bodies that can assist in a crisis situation – in particular, a situation related to the offense concerning the child and the offense committed by the minor himself or herself (centers of social services for families, children, and youth; centers for the provision of the free-of-charge secondary legal aid; services on minors; juvenile delinquency prevention subdivisions; etc.).

It seems expedient to develop a nationwide program for informing children about the activities of bodies and services for children and special institutions for children. At a minimum, it is the arrangement and placement of a separate stand (board) at all educational institutions with information about the services of the authorized state bodies and local NGOs and their contacts.

## **BIBLIOGRAPHY AND LIST OF REFERENCES**

Constitution of Ukraine: Adopted at the 5<sup>th</sup> session of the Verkhovna Rada of Ukraine on June 28, 1996 No. 254k / 96-VR [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

### **International documents**

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2013)[Electronic resource]. Access mode: <https://rm.coe.int/16804c2188>

Convention on the Rights of the Child: Adopted by the UN General Assembly on November 20, 1989 and came into force in Ukraine on September 27, 1991 [Electronic resource]. Access mode: [http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995\\_021](http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_021)

UN Committee on the Rights of the Child, General Comment No. 10 (2007): Children's rights in juvenile justice, April 25 2007, CRC/C/GC/10 [Electronic resource]. Access mode: <http://www.refworld.org.ru/docid/4ffd3c082.htm>

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines): International document, dated 14.12.1990.[Electronic resource]. Access mode: [http://zakon2.rada.gov.ua/laws/show/995\\_861](http://zakon2.rada.gov.ua/laws/show/995_861)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), November 29, 1985. [Electronic resource]. Access mode: [http://zakon4.rada.gov.ua/laws/show/995\\_211](http://zakon4.rada.gov.ua/laws/show/995_211)

## Laws

Code of Ukraine on Administrative Offenses: Law of Ukraine, No. 8073-X, dated December 07, 1984 [Electronic resource]. Access mode: <http://zakon3.rada.gov.ua/laws/show/80731-10>

Criminal Code of Ukraine: Law of Ukraine, dated April 5, 2011. [Electronic resource]. Access mode: <http://zakon4.rada.gov.ua/laws/show/2341-14>.

Criminal Procedure Code of Ukraine: Law of Ukraine, dated April 13, 2012. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/4651-17>.

Penitentiary Code of Ukraine: Law of Ukraine, dated July 11, 2003. [Electronic resource]. Access mode: <http://zakon4.rada.gov.ua/laws/show/1129-15>.

On the bodies and services for children and special institutions for children: Law of Ukraine No. 20/95-VR, dated January 24, 1995. [Electronic resource]. Access mode: <http://zakon2.rada.gov.ua/laws/show/20/95-%D0%B2%D1%80>

On the social work with families, children, and youth: Law of Ukraine No. 2558-III, dated June 21, 2001. [Electronic resource]. Access mode: <http://zakon2.rada.gov.ua/laws/show/2558-14>.

On the volunteer activity: Law of Ukraine № 3236-VI, dated 19.04.2011. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/3236-17>.

On public associations: Law of Ukraine No. 4572-VI, dated March 22, 2012. [Electronic resource]. Access mode: <http://zakon2.rada.gov.ua/laws/show/4572-17>.

On the citizenship of Ukraine: Law of Ukraine No. 2235-III, dated January 18, 2001. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/2235-14>.

On the National Police: Law of Ukraine No. 580-VIII, dated 07.07.2015.

[Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/580-19>.

On protection of childhood: Law of Ukraine No. 2402-III, dated April 26, 2001 (as of January 21, 2016) [Electronic resource]. Access mode: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2402-14>.

On probation: Law of Ukraine № 160-VIII, dated 05.02.2015. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/160-19>.

On the Prosecutor's Office: Law of Ukraine No. 1697-VII, dated 14.10.2014. [Electronic resource]. Access mode: <http://zakon2.rada.gov.ua/laws/show/1697-18>.

On the Judicial Administration and Status of Judges: Law of Ukraine No. 1402-VIII, 02.06.2016. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/1402-19>.

### **Subordinate laws**

Regulations on the bodies of pre-trial investigation at the National Police of Ukraine: Approved by the Decree of the Ministry of Internal Affairs of Ukraine No. 570, dated July 6, 2017. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/z0918-17>.

Regulations on the procedure for maintaining the Uniform Register of Pre-trial Investigations: Approved by the order of the General Prosecutor's Office No. 139, dated April 6, 2016. [Electronic resource]. Access mode: <http://zakon3.rada.gov.ua/laws/show/z0680-16>.

Regulations on the Department of Preventive Activities at the Head Office of the National Police in the Kyiv region: Approved by the Decree of the Head Office of the National Police in the Kyiv region No. 90 UA, dated December 31, 2015. [Electronic resource]. - Access mode: <http://upd.kv.npu.gov.ua/korisna-informacia/zakonodavchabaza/2579/>.

Procedure for execution of a pre-trial report: Approved by the Order of the Ministry of Justice of Ukraine №200 / 5, dated January 27, 2017. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/z0121-17>.

On the All-Ukrainian Week of Law: Approved by the Decree of the President of Ukraine № 1149/2008, dated 08.12.2008. [Electronic resource]. Access mode: <http://zakon0.rada.gov.ua/laws/show/1149/2008>.

On Approval of the General Regulations on the Center of Social Services for Family, Children, and Youth: Cabinet of Ministers of Ukraine; Resolution, Regulations, and List No. 573, dated 01.08.2013: [Electronic resource]. - Access mode: <http://zakon5.rada.gov.ua/laws/show/573-2013-%D0%BF>.

On approval of the Regulations on centers for the provision of the free-of-charge secondary legal aid: Ministry of Justice of Ukraine; Order, Regulations № 967/5, dated 02.07.2012. <http://zakon5.rada.gov.ua/laws/show/z1091-12>.

On Approval of Model Regulations on the Service on minors: Cabinet of Ministers of Ukraine; Resolution, Regulations, and List No. 1068, dated August 30, 2007. [Electronic resource]. - Access mode: <http://zakon0.rada.gov.ua/laws/show/1068-2007-%D0%BF>.

Quality Assurance Standards for the provision of the free-of-charge secondary legal aid in the criminal proceedings and representation in the criminal proceedings: Approved by the Order of the Ministry of Justice of Ukraine No. 386/5, dated 25.02.2014. [Electronic resource]. - Access mode: <http://zakon0.rada.gov.ua/laws/show/z1554-17>.

Quality Assurance Standards for the provision of the free-of-charge secondary legal aid in the criminal proceedings: Approved by the Order of the Ministry of Justice of Ukraine No. 386/5, dated 25.02.2014. Official Bulletin of Ukraine (official publication). March 14, 2014.

Model Regulations on the juvenile probation sector: Ministry of Justice of Ukraine; Order, Regulations No. 2649/5, dated August 18, 2017. [Electronic resource]. Access mode: <http://zakon3.rada.gov.ua/laws/show/z1031-17/paran4#n4>.

Model structure and staffing of the district, city, district in cities, and district in Kyiv Centers of social services for family, children, and youth: Ministry of Social Policy of Ukraine; Order, Structure No. 709, dated June 29, 2016. [Electronic resource] Access mode: <http://zakon2.rada.gov.ua/laws/show/z0941-16/paran2#n2>.

### **Program acts**

State program for overcoming child abandonment and homelessness for 2006-2010: Approved by the Resolution of the Cabinet of Ministers of Ukraine No. 623, dated May 11, 2006. [Electronic resource]. Access mode: <http://zakon3.rada.gov.ua/laws/show/623-2006-%D0%BF>.

State social program "National Action Plan for the implementation of the UN Convention on the Rights of the Child" for the period up to 2021 (approved by the Cabinet of Ministers of Ukraine on May 30, 2018). [Electronic resource]. Access mode: <https://www.kmu.gov.ua/ua/news/uryad-uhvaliv-nacionalnij-plan-dij-shodo-realizaciyi-konvenciyi-oon-pro-prava-ditini-na-period-do-2021-roku>.

State social program on human trafficking counteraction for the period up to 2020: Approved by the Resolution of the Cabinet of Ministers of Ukraine No. 111, dated 24.02.2016. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/111-2016-%D0%BF>.

State targeted social program "Youth of Ukraine" for 2016-2020: Approved by the Resolution of the Cabinet of Ministers of Ukraine No. 148, dated 18.02.2016. [Electronic resource]. Access mode: <http://zakon3.rada.gov.ua/laws/show/148-2016-%D0%BF#n11>.

On approbation of the pilot model of cooperation between educational institutions and the police "School police officer": Letter of the Ministry of Education and Science of Ukraine No. 2 / 2-14-966-16, dated May 27, 2016. [Electronic resource]. Access mode: <https://imzo.gov.ua/osvita/pozashkilna-osvita-ta-vihovna-robota/programa-shkola-i-politsiya/>.

On the Nation-wide social program "National Action Plan for the implementation of the UN Convention on the Rights of the Child" for the period up to: Law of Ukraine № 1065-VI, dated March 5, 2009. [Electronic resource]. Access mode: <http://zakon3.rada.gov.ua/laws/show/1065-17>.

On approval of the Action Plan for implementation of the National strategy for human rights for the period up to 2020: Order of the Cabinet of Ministers of Ukraine No. 1393-r, dated November 23, 2015. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/1393-2015-%D1%80>.

On approval of the Action Plan for the implementation of the Strategy for national patriotic education of children and youth for 2017-2020: Order of the Cabinet of Ministers of Ukraine No. 743-r, dated October 18, 2017. [Electronic resource]. Access mode: <http://zakon0.rada.gov.ua/laws/show/743-2017-%D1%80>.

On the Concept of the development of the criminal justice for minors in Ukraine: Decree of the President of Ukraine No. 597/2011, dated May 24, 2011 // Official Bulletin of Ukraine. 2011. No. 41. Art. 1663.

On the National program of legal education of the population: Approved by the Decree of the President of Ukraine No. 992/2001, October 18, 2001. [Electronic resource]. Access mode: <http://zakon3.rada.gov.ua/laws/show/992/2001>.

On Approval of the Concept of the State social program "National Action Plan for the implementation of the UN Convention on the Rights of the Child" for the period up to 2021: Order of the Cabinet of Ministers of Ukraine No. 230-r, dated 04.05.2017. <http://zakon0.rada.gov.ua/laws/show/230-2017-%D1%80>.

State Drug Policy Strategy for the period up to 2020: Approved by the order of the Cabinet of Ministers of Ukraine No. 735-r, dated August 28, 2013. [Electronic resource]. Access mode: <http://zakon2.rada.gov.ua/laws/show/735-2013-%D1%80>.

### **Judicial power enactments**

On certain issues for conduct of criminal proceedings with respect to juveniles: Letter of the Superior Specialized Court of Ukraine for Civil and Criminal Cases No. 223-1134 / 0 / 4-13, dated July 18, 2013 [Electronic Resource]. Access mode: <http://zakon4.rada.gov.ua/laws/show/v1134740-13>.

On the practice of application of the laws on de-institutionalization by the courts of Ukraine: Resolution by the Plenum of the Supreme Court of Ukraine No. 12, dated December 23, 2005. [Electronic resource]. Access mode: <http://zakon5.rada.gov.ua/laws/show/v0012700-05>.

On the practice of application of the juvenile delinquency laws by the courts of Ukraine: Resolution by the Plenum of the Supreme Court of Ukraine No. 5, dated April 16, 2004. [Electronic resource]. Access mode: <http://zakon4.rada.gov.ua/laws/show/va005700-04>.

On the practice of conduct of criminal proceedings with respect to juveniles: Letter of the Superior Specialized Court of Ukraine for Civil and Criminal Cases No. 223-66/0/4-17, dated January 16, 2017. [Electronic resource]. Access mode: [http://zib.com.ua/ua/print/127476-list\\_vssu\\_vid\\_16012017\\_223-6604-17\\_pro\\_praktiku\\_zdiysnennya\\_.html](http://zib.com.ua/ua/print/127476-list_vssu_vid_16012017_223-6604-17_pro_praktiku_zdiysnennya_.html).

On the practice of choosing a pre-trial restriction measure for minors in the form of custodial detention and ensuring the first-priority consideration of criminal proceedings with respect to this category of persons: Letter of the Superior Specialized Court of Ukraine for Civil and Criminal Cases No. 223-1346/0/4-17, dated July 18, 2017. [Electronic resource]. Access mode: <http://sc.gov.ua/uploads/tinymce/files/%D0%9B%D0%B8%D1%81%D1%82%20%D0%BF%D1%80%D0%BE%20%D0%BF%D1%80%D0%B0%D0%BA%D1%82%D0%B8%D0%BA%D1%83%20%D0%BE%D0%B1%D1%80%D0%B0%D0%BD%D0%BD%D1%8F%20%D0%BD%D0%B5%D0%BF%D0%BE%D0%B2%D0%BD%D0%BE%D0%BB%D1%96%D1%82%D0%BD%D1%96%D0%BC%20%D0%B7%D0%B0%D0%BF%D0%BE%D0%B1%D1%96%D0%B6%D0%BD%D0%BE%D0%B3%D0%BE%20%D0%B7%D0%B0%D1%85%D0%BE%D0%B4%D1%83%20%D1%83%20%D0%B2%D0%B8%D0%B3%D0%BB%D1%8F%D0%B4%D1%96%20%D1%82%D1%80%D0%B8%D0%BC%D0%B0%D0%BD%D0%BD%D1%8F%20%D0%BF%D1%96%D0%B4%20%D0%B2%D0%B0%D1%80%D1%82%D0%BE%D1%8E...pdf>.

On the practice of judicial consideration of cases on the use of coercive measures of an educational nature: Resolution by the Plenum of the Supreme Court of Ukraine No. 2, dated May 15, 2006. [Electronic resource]. Access mode: <http://zakon2.rada.gov.ua/laws/show/v0002700-06>.

Generalization of the judicial practice of the Supreme Court of Ukraine in cases of juvenile delinquency and their involvement in criminal activities, dated August 29, 2003. [Electronic resource]. Access mode: <http://zakon4.rada.gov.ua/laws/show/n0082700-03>.

Generalization of the judicial practice of consideration criminal proceedings concerning crimes, committed by minors, in 2013 and the first half of 2014: Kyiv City Court of Appeal / I. Palenik, V. Vikhrenko. 33 p. [Electronic resource]. Access mode: [www.apcourtkiev.gov.ua/wp-content/uploads/2015/07/palenik1.doc](http://www.apcourtkiev.gov.ua/wp-content/uploads/2015/07/palenik1.doc).

### Scientific literature

Y.M. Gidulianova. Types of proceedings concerning minors under the new criminal procedure legislation of Ukraine. Published in: Legal Life of Modern Ukraine: Abstracts from the speeches at the International Scientific Conference (May 16-17, 2013, Odessa). Odessa: Phoenix, 2013. Vol. 2. pp. 439-441.

L.M. Grindey, O.M. Bodnaruk. Problems of the use of coercive measures of a medical nature with respect to juveniles. Scientific Bulletin of Uzhhorod National University. 2014. The "Law" series. Issue 27. Vol. 3. pp. 93-96.

G.V. Didkivska. Peculiarities of criminal proceedings on crimes committed by minors from socially disadvantaged families [monograph]. Kyiv: Center for Educational Literature, 2016. 216 p.

Defense in the criminal proceedings under the new Criminal Procedure Code of Ukraine: practical guide / edited by Yu.I. Rusnak. Kyiv: Center for Educational Literature, 2013.

Ya.P. Zeykan. Defense counsellor: criminal cases: methodological advice in two volumes. Kyiv: Dakor, 2012. 728 p.

S.M. Zelensky. Procedural order for consideration of cases on socially dangerous acts of persons under the age of criminal liability: author's abstract from the PhD in Law Thesis: 12.00.09. Kyiv, 2007. 20 p.

A.V. Kanishchev. Major disadvantages in the appointment of a comprehensive judicial psycho-psychiatric examination in criminal proceedings. Archive of psychiatry. 2012. Vol. 18, No. 1. pp. 105-106.

N.M. Krestovska. Academic discipline "Juvenile Justice" in the system of training of law enforcement officers. Problems of the legal science and law enforcement activities. 2016. No. 2. pp. 196-198.

O.M. Krukevich. Juvenile victims as participants in the criminal proceedings. Historical and legal magazine. 2015. No. 2 (6). [Electronic resource]. Access mode: [http://historylaw.eenu.edu.ua/publ/2015\\_92\\_2\\_6/rozdil\\_6\\_tribuna\\_molodikh\\_uchenikh/o\\_krukevich\\_nepovnolitni\\_poterpili\\_jak\\_uchasniki\\_kriminalnogo\\_procesu/37-1-0-189](http://historylaw.eenu.edu.ua/publ/2015_92_2_6/rozdil_6_tribuna_molodikh_uchenikh/o_krukevich_nepovnolitni_poterpili_jak_uchasniki_kriminalnogo_procesu/37-1-0-189).

O.M. Krukevich. Participation of a juvenile witness in the criminal proceedings. Historical and legal magazine. 2016. No. 2. pp. 152-159.

L.M. Loboyko. Criminal proceedings: the textbook. Kyiv: Istyna, 2014. 432 p.

V.M. Lushpiyenko. Peculiarities of participation of minors as witnesses in the criminal proceedings of Ukraine. Actual problems of the state and law: collection of research papers / edited by V.V. Zavalnyuk (editor-in-charge) [and others]. Odessa: Publishing House "Helvetica", 2017. Issue 78. pp. 92-97.

N. Miroshnichenko. Certain suggestions to improve the legislation with respect to the criminal justice measures regarding juveniles. Published in: Legal influence on the unlawful behavior: actual thresholds (monograph), edited by Prof. O.V. Kozachenko, Prof. E.L. Streltsova. Mykolayiv: Ilion, 2016, pp. 189-206.

E.S. Nazimko. Institute for Punishment of Juveniles in the Criminal Law of Ukraine. Genesis, international and European standards, juvenile penology: monograph. Kyiv, Yurinkom Inter, 2016, 384 p.

S.V. Overchyuk. Development of the juvenile justice in Ukraine in the context of implementation of the court specialization principle. The Journal of the National University "Ostroh Academy", Law series. 2014. No. 2 (10): [Electronic resource]. - Access mode: <http://lj.oa.edu.ua/articles/2014/n2/14osvpss.pdf>.

Peculiarities of administration of criminal proceedings with respect to minors: guidance manual / Recommended by the Superior specialized court of Ukraine for civil and criminal cases. Kyiv, 2017. 238 p.

Pilipenko I. Individual problems of application of the legislation on participation of minors in the criminal proceedings. Public law. 2013. No. 3 (11). pp. 110-118.

V.V. Romanyuk. Criminal proceedings with respect to minors: monograph. Kharkiv: "Madrid Publishing House", 2016. 252 p.

T. Slutska. Juvenile delinquency: what does the statistics say? Judicial and legal newspaper: blog. 2018, April 26. [Electronic resource]. Access mode: <https://sud.ua/ru/news/blog/117843-zlochyni-nepovnolitnikh-pro-scho-govorit-statistika>.

A.V. Stolitniy. System and structure of actors of criminal proceedings. Comparative and analytical law. 2015. No. 6. pp. 314-317.

L.D. Udalova. Provision of the legal aid to a witness in criminal proceedings. Kyiv: KNT, 2014. 160 p.

O.V. Us. Criminal justice measures: essence and content. Published in: Current Issues of Criminal Responsibility: Materials of the International Research to Practice Conference, October 10-11, 2013. Kharkiv, 2013. pp. 213-217.

D.V. Shilova. Protection of the rights and legitimate interests of participants in a criminal proceeding at the time of its closure at the pre-trial investigation stage. Kharkiv, 2014. 228 p.

N.S. Yuzikova. Juvenile delinquency: peculiarities, modern trends, and measures of prevention and counteraction to it: monograph. Dnipro: K.O. Bila, 2016. 510 p.

O.G. Yanovska. Peculiarities of criminal proceedings in the form of a private prosecution under the new Criminal Procedure Code of Ukraine / O.G. Yanovska // Journal of the Kyiv University of Law. - 2013. - №1. - pp. 242 - 245.

O.B. Yanchyuk. Current status and priority tasks for reformation of the probation service. [Electronic resource] Access mode: <http://kvs.gov.ua/zmi/SuchasnyyStanPytannya08082014.pdf>.