

LEGAL BASIS FOR FORENSIC PSYCHOLOGICAL EXAMINATIONS OF CHILDREN IN CONTACT WITH THE LAW

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Annotation. An analysis of international and national law provisions has been conducted from the perspective of the legal grounds for conducting forensic psychological examinations of children who are in contact with the law. It is shown that the norms of international law and, to a lesser extent, national norms indicate psychological facts that may be of legal significance for law enforcement practitioners in establishing the qualifying grounds for a crime, assessing children's testimony, and contain guidelines and recommendations for organising investigations in such a way as to create optimal conditions for restoring appropriate conditions for the development of a child in conflict with the law, overcoming the negative consequences of unlawful events of which the child has been a victim or witness. The regulations mainly refer to the quality and duration of investigations, avoiding the psychotraumatic impact on the child of the investigation and court proceedings, reducing the number of interviews and giving due attention to children's testimony.

Key words: children, forensic psychological examination, justice, child-friendly.

1. Introduction.

Since the beginning of 2023, despite the extraordinary difficulties of wartime, the principles of child-friendly justice have been implemented in Ukraine [1]. The increase in chronic mental stress among Ukrainians as a result of successive crises caused by the COVID-19 pandemic, the full-scale invasion of Ukraine by the Russian Federation, and the resulting disruption of the social situation of children and adults, the destruction of family structures due to mobilisation, the deaths of thousands of people, forced displacement, etc., has led to an increase in violence both against children and by children. Investigators, mastering the techniques of child-friendly justice, must ensure a balance between the priority interests of the child, the interests of the investigation and other participants in the process during the investigation of criminal proceedings, and must create a sufficient evidence base for the court to render a fair decision.

A forensic psychological examination is a procedural action during which psychological facts can be established that will serve as an important basis for the court to make a fair decision. The appointment and conduct of forensic psychological examination of children is governed by the same rules as any other forensic examination, but must also comply with the principles of child-friendly justice. This is a necessary condition for the expert's conclusion to be considered valid evidence.

2. Analysis of scientific publications.

Legal, methodological, and methodological foundations of forensic examinations, in particular forensic psychological examinations, have been the subject of scientific research by a number of scholars: N. Klymenko, M. Shcherbakovsky, V. Saltevsky, M. Kostytsky, E. Simakova-Yefremyan, M. Segay, V. Shepitko and others. In recent years, scientists, in particular forensic experts, have been actively involved in developing methods for conducting forensic psychological examinations of children [2]. In Ukraine, child-friendly justice standards are being introduced [3], [4], and national strategies for reforming the justice system for children are being developed [5], [6]. Changes in law enforcement practice are giving rise to new tasks that investigators and courts are asking forensic

psychologists to tackle. At the same time, there is still a lack of systematic scientific generalisations and methodological recommendations regarding the regulatory framework for conducting forensic psychological examinations of children who are in contact with the law.

3. Purpose of the work.

Assessment of international and domestic regulations for the formulation of legal grounds for conducting forensic psychological examinations of children.

4. Overview and discussion.

Society is interested in children being well-adjusted and developing socially acceptable behaviour patterns. For this reason, the state's influence on minors who have broken the law should include measures aimed at changing their behaviour towards socially acceptable behaviour, and investigations in cases where children are victims or witnesses of crime should be conducted in such a way as to minimise the psychological trauma of the event on the mental well-being of the child.

The legal grounds for forensic psychological examination regulate the order and procedure for conducting forensic psychological examination as a procedural action and indicate the circumstances of a psychological nature that may be used by the pre-trial investigation body or the court to establish the circumstances provided for by the norms of substantive or procedural law for the qualification of a crime, the individualisation of punishment or the assessment of the testimony of participants in criminal proceedings.

The legal basis for conducting forensic psychological examinations in criminal proceedings in Ukraine is the Constitution of Ukraine [7], the Criminal Procedural Code (hereinafter referred to as the CPC of Ukraine) [8], the Law of Ukraine 'On Forensic Examination' [9], and regulatory acts governing the organisation of the appointment and conduct of examinations, the certification of experts, and the control of the legality of their activities. The author will not dwell on these norms in detail here, given that they are described quite extensively in scientific publications. The subject of this study is the norms that determine the specifics of appointing examinations in the course of criminal proceedings specifically involving children.

The content of a number of international and national legal norms provides for the conduct of investigations in proceedings involving children in the most effective manner, within an optimal time frame and in such a way as to ensure conditions that will promote the best interests of children. The best interests of the child are a fundamental principle of international and national law.

International legal acts relating to the norms of 'soft' law [10] contain recommendations that are important for the formation of the national regulatory framework and shape the principles that authorised bodies should follow when conducting investigations and court proceedings. A number of these norms are applicable to the regulation of forensic psychological examination as one of the procedural actions.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice [11] proclaim that juvenile justice should be aimed at ensuring social justice for all juveniles, promoting the protection of young people and supporting peaceful order in society. The juvenile justice system should be primarily aimed at ensuring the well-being of the juvenile and that any measures taken against juvenile offenders are always proportionate to the circumstances of the offence and the personality of the offender. The latter can be established in the course of a forensic psychological examination.

The United Nations Guidelines for the Prevention of Juvenile Delinquency state, among other things, that law enforcement officials and other relevant workers, regardless of gender, should be prepared to take into account the special needs of young people in their work [12]. An essential basis for establishing these needs is an understanding of the age and individual characteristics of the child and the conditions of their development, which may be the subject of forensic psychological examination.

The Guidelines on the Protection of Children in the Criminal Justice System (the Vienna Guidelines, ECOSOC Resolution No. 1996/13, 1996) [13] aim to protect not only children in conflict with the law, but also children who are victims or witnesses of offences. This document proclaims the need for state authorities to take measures to ensure that children in contact with the law are provided with adequate access to justice, fair treatment, compassion and respect for their dignity, children and their legal representatives must have relevant information, child witnesses of crimes must be protected from direct contact with the offender during the investigation and trial, and their testimony, recorded on film, must be officially recognised as evidence in court. Police officers, prosecutors and judges must take into account the interests of the child during police operations and interviews with child witnesses, provide information about their role, the subject matter, timing and progress of the proceedings, and the procedure for interacting with the child.

The Council of Europe Committee of Ministers' guidelines on child-friendly justice [14] contain a number of important provisions relating, in particular, to the organisation of proceedings, the creation of a child-friendly environment and the use of understandable language. A number of these recommendations are relevant to the organisation and conduct of expert examinations of children and are consistent with the scientific principles of psychodiagnostics and developmental psychology. In particular, this document refers to the need to treat children with consideration for their age, level of maturity and understanding, needs, and possible difficulties in communication; in conditions that are not intimidating and are aimed at creating maximum comfort; adult participants in procedural actions must have special training, familiarise children with the premises, the people working with them and their functions; when communicating with children, language that is understandable to them should be used, and dialogue should be conducted at a pace and for a duration that is acceptable to the child; specialists should treat children with respect and sensitivity, protecting them as much as possible from information that could cause them further trauma; children should be allowed to be accompanied by their parents or a representative.

Separately, we can highlight a number of recommendations in this document regarding recording children's testimony on video and audio, which should subsequently be considered as admissible evidence, instructions on limiting the number of interviews children, permission for the court not to allow a child to testify in court, and an indication that the significance of a child's testimony should not be diminished due to less strict rules for its provision and the age of the child. These recommendations are a source of tasks that can be set for a forensic psychologist regarding the psychological assessment of a child's account to an adult, which can be used by law enforcement practitioners to make a decision.

Sources of 'hard', i.e. mandatory, law, ratified in Ukraine, contain requirements for the administration of justice that is child-friendly and, according to Parts 4 and 5 of the Criminal Procedure Code of Ukraine [8], take precedence over national law in the event of a conflict between the two.

In accordance with paragraph 4 of Article 14 of the International Covenant on Civil and Political Rights [15], proceedings involving children must take into account their age and be aimed at re-education. In accordance with the UN Convention on the Rights of the Child [16], in all actions concerning children, regardless of who carries them out, priority is given to ensuring the best interests of the child and their well-being. To this end, all appropriate legislative and administrative measures must be taken. The child shall be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, by parents, legal guardians or any other person who has the care of the child.

Article 30 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse [17] establishes the basic principles for investigating and prosecuting crimes against sexual integrity: priority, best interests and respect for the rights of the child, implementing a protective approach to victims, preventing the investigation and criminal proceedings from exacerbating the trauma suffered by the child, and providing assistance where possible and appropriate. Countries that have ratified the convention must take the necessary measures to ensure that interviews with children are conducted without undue delay, in a specially equipped or adapted room; by a person, if possible, specially trained for this purpose, with the possibility of the child being accompanied by their legal representative or an adult of their own choice, unless a reasoned decision to the contrary has been made in respect of that person.

According to Article 28 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, aggravating circumstances when determining punishment for

offences committed against sexual integrity include causing serious harm to the physical or mental health of the victim, and committing a crime against a particularly vulnerable victim. Determining the presence or absence of psychological trauma inflicted on a child by an offence may be the task of a forensic psychological examination.

Therefore, with regard to conducting psychological expert examinations, international standards governing legal procedures involving children are applicable in terms of: the priority organisation of examinations, the procedure for conducting examinations in conditions and according to procedures that comply with the standards child-friendly justice, solving tasks related to providing law enforcement practitioners with scientifically sound information about the child's age characteristics and level of development; providing practitioners with information about the psychological characteristics of a child's testimony, establishing the harm caused by the crime to the child's mental well-being.

In Ukraine, child protection is recognised as a strategic national priority, and the system of measures for child protection includes legal, economic, organisational, cultural and social measures. The implementation of measures to protect the rights of children who come into contact with the legal system, to ensure their rights, freedoms and legitimate interests, including the opportunity for socialisation or resocialisation, as referred to in international documents, is to a certain extent governed by the provisions of a number of Ukrainian regulatory acts: the Criminal Code of Ukraine (hereinafter referred to as the CC of Ukraine), the CPC of Ukraine, the Law of Ukraine 'On the Protection of Children', Resolution of the Plenum of the Supreme Court of Ukraine dated 16 April 2004 No. 5 "On the practice of application by the courts of Ukraine of legislation on juvenile offences", Resolution of the Plenum of the Plenum of the Supreme Court of Ukraine dated 15 May 2006 No. 2 "On the practice of application cases concerning the application of compulsory educational measures by courts", letter from the High Specialised Court of Ukraine for Civil and Criminal Cases "On certain issues of criminal proceedings against minors", Methodological recommendations 'Features of pre-trial investigation in criminal proceedings involving children', approved 02.11.2023 by the Prosecutor General of Ukraine, [4, 8, 18, 19, 20, 21].

If a child is a suspect or accused the tasks assigned to the forensic expert are derived from the provisions contained in Chapter 38 of the Criminal Procedure Code of Ukraine. According to Article 485 of this Code, evidence must be provided, in addition to the circumstances provided for in Article 91 of the Criminal Procedure Code of Ukraine, of the level of development of the child and other socio-psychological characteristics that must be taken into account when individualising responsibility or choosing an educational measure [8]. If there is evidence of mental retardation in a minor that is not related to mental illness, it must also be determined whether he or she was fully aware of the significance of his or her actions and to what extent he or she was able to control them.

Article 486 of the Criminal Code of Ukraine regulates the conduct of comprehensive psychological and psychiatric examinations of juvenile suspects or defendants. According to this article, if it is necessary to determine whether a minor suspect or accused has a mental illness or mental retardation and their ability to fully or partially understand the significance of their actions and control them in a specific situation, a comprehensive psychological and psychiatric examination shall be appointed' with the aim of 'ascertaining the level of development and other socio-psychological characteristics of the minor suspect or accused, which must be taken into account when imposing punishment and selecting educational measures, a psychological examination may be appointed".

The above provisions give rise to expert tasks that are consistent with those arising from international law and can be resolved in the course of forensic psychological examination of children who are in conflict with the law. These tasks concern the individual psychological and age-related characteristics of the child and the impact of these characteristics on the specifics of their understanding of legally significant situations and the specifics of their behaviour in these situations.

If a child is a victim of a crime, the legal basis for conducting a forensic psychological examination of the child is also provided by the relevant articles of substantive law under which criminal proceedings have been initiated. Children can be victims of the same crimes as adults, but the Criminal Code of Ukraine contains a number of articles that refer to offences in which children of Ukraine contains a number of articles that refer to offences in which children may be victims, or in which, in order to establish qualifying or aggravating circumstances, the presence or absence of a violation of the child's mental development as a result of mental trauma caused by the circumstances under investigation must be established.

This refers to Article 166 of the Criminal Code of Ukraine [18], where one of the qualifying characteristics is the occurrence of serious consequences for the victim. According to the position of scientists and judicial practice, one of the main direct objects of this crime is the comprehensive physical, mental and social development of the child. Psychological trauma is one of the serious consequences, as it results in a violation of psychological development [22, 23]. During a forensic psychological examination, it is possible to establish the presence of psychological trauma in a child, deviations in mental development, and the presence or absence of a causal link between such phenomena in the child's psyche and the parenting tactics of the parents. This can become a psychological basis for establishing a legal criterion for the occurrence of serious consequences for the child.

In accordance with child-friendly justice standards, minors and young children who come into contact with the law have the right to be heard, and their testimony cannot be disregarded solely on the basis of their age. At the same time, children's accounts are often questioned by suspects and their defence lawyers, as well as law enforcement practitioners. Their arguments are based on children's tendency to fantasise and the possibility that children may provide false information under the influence of resentment towards the suspect, while the suspects themselves often deny their involvement in the offence and refuse to testify. The investigator and the court are faced with the task of assessing the child's testimony, which is often key evidence in the proceedings. During a forensic psychological examination, it is possible to provide a scientific assessment of the child's ability to record and reproduce information about the event and the specific characteristics of the child's reproduction of information, in particular about events that have left a distinct emotional mark on the child's psyche. The conclusions of the forensic psychological examination provide law enforcement practitioners with psychological facts that are significant for evaluating the child's testimony.

5. Conclusions.

The legal basis for conducting forensic psychological examinations of children in contact with the law is provided by international and national regulations. These regulate the procedure for appointing and conducting examinations, serve as sources of tasks that may be assigned to forensic experts, and set standards for conducting expert examinations of children.

The requirements for conducting forensic psychological examinations, which stem from international and national law, are: priority examination, a procedure for conducting research in a child-friendly environment, interaction with the child with respect for their dignity, taking into account age characteristics, and avoiding re-traumatisation. The tasks that can be solved in the course of conducting a forensic psychological examination of a minor or juvenile are providing law enforcement practitioners with scientifically based information on the age and individual psychological characteristics of the child, their level of development and the impact of these characteristics on their specific understanding of a legally significant situation and specific behaviour in this situation, establishing the harm caused to the child's mental well-being by the crime committed; the child's ability to record and reproduce information about the event, the specific features of the child's reproduction of information, as well as the psychological characteristics of the child's testimony.

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