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**PROBLEM OF THE IMPROVING OF NORMATIVE AND LEGAL  
ACTS IN THE FIELD OF USE OF “GREEN ROOMS” DURING THE  
QUESTIONING OF CHILDREN**

*The international standards in the field of an observance of the rights of children-witnesses or victims of criminal trespasses are investigated. Several national regulatory acts in the field of an organization of the questioning of the children are analyzed. The necessity of an improvement of the rules of the criminal procedure in the field of “green rooms” during the questioning of the children is proved and several proposals are formulated.*

**Keywords:** *features of questioning of a minor or a young child, use of “green rooms”, technique of “green room”.*

A survey of the child that was injured from violence or witnessed the crime, is a complex process that requires providing the special conditions of the approach as well as the possession of necessary skills of the person who conducts the survey. This will facilitate the retrieval of the child the most credible and truthful testimony, and provide the opportunity to reduce the psychological injury to the child in the course of the survey. That is why in art. 35 of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, which contains the most detailed requirements to the questioning of the child – victim or a witness of crime, states: "...each State should take the necessary legislative or other measures to provide: b) interviewing a child in the specially equipped and adapted for this building; c) interviewing child is conducted by a specially prepared person; d) achievements as fewer polls, so as far as this is necessary for the purposes of criminal proceedings ...".

The main problems associated with the survey of children, have been studied by forensic scientists, such as O. Vasilyev, M. Karneyeva, V. Konovalov, M.

Kochenova, R Osipova, S. Kuznetsova, T. Kobtsova, V. Pecherskyi, S. Revtova, Y. Shepitko and others. Some issues related to the necessity of the creating specially equipped and adapted for the questioning of children, as well as the peculiarities of organization of work with children in the so-called “green rooms” were investigated by the following scientists: N. Bochkor, T. Buhtiyarova, O. Datsenko, M. Yevsukova, K. Levchenko, G. Christova, A. Tsilmak, L. Shevchenko, O. Shved, S. Yakovenko and others. Results of the works of these authors have discussed the theoretical and practical significance. At the same time they have investigated mainly the psychological features of the organization working with children in the "green room", questions about the equipment of rooms, as well as the question of regulations ensuring their functioning, etc. However, these issues, in particular, legal support, the authors examined currently, mainly, in accordance with the applicable legislation.

Research is aimed at studying the international standards in the field of observance of the rights and needs of children of risk groups, such as the Organization of the Questioning Child – witness or victims of crime, as well as matching the standards of national legislation in the field of the use of "green rooms". Among the international standards in the field of observance of the rights and needs of children of risk groups in which the details are determined by the requirements to the questioning of the child – victim of a witness or crime, is, as it is above mentioned, the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse. The Convention provides for a separate section that relates to the investigation, prosecution and procedural law. In the art. 35 of the Convention, "a survey of the child" it is stated that each State shall take the necessary legislative or other measures for the support:

Conducting of surveys of the child without an unreasonable delay immediately after the notice of facts by the competent authorities; conducting surveys of the child if it is necessary, in the specially equipped and adapted for this room; conducting surveys of children by the person, specially prepared for these purposes; conducting all the interviews with the child by the same persons, if it is possible and appropriate; conducting as fewer polls, so as far as this it is necessary for the purposes of criminal

proceedings; opportunities to the support of the child's legal representative or, where it is appropriate, an adult whom he chooses [1].

It is required to take the necessary legislative or other measures to ensure the ability to record videotaped questioning of the victim or, in the case of expediency, to witness the child and making such a video as an evidence in court in accordance with the dispositions of its domestic legislation. Creating rooms designed specifically for conducting surveys of the children, is one of the recommendations of the UN guidelines on justice in matters relating to the participation of children – victims and witnesses to crimes, approved by the Resolution 2005/20, the UN Economic and Social Council in 2005. The guidelines contain a Chapter XI concerning the right to protection in difficult situations during the administration of Justice. This section describes the optimal process and conditions survey of children-victims and (or) witnesses of crimes. In particular, in article 30 it is stated: "Experts should exhibit a sincere attitude to children – victims and witnesses to crimes with the aim of:

d) application procedures, during which it turns out to be a friendly attitude to children, including the availability of rooms for conducting surveys are specifically for children, creating in the same areas of interdisciplinary services for child victims, adaptation of premises to the interests of children-witnesses, establishing breaks in the process of giving the child's testimony, the installation of the hearings at this time of day, which corresponds to the age and degree of maturity of the child as well as the establishment of a proper system of messages that challenge the child to court only when necessary and taking other measures to facilitate the process of giving the child testimony. In article 31 it is stipulated that professionals should also apply measures in order to: a) limits the number of polls: should apply special procedures for obtaining testimony from children witnesses and victims with the aim of reducing the number of interviews, statements, and also, especially, such contacts with the process of the administration of Justice, which is not necessary, in particular, by recording video. [2].

As well as at the level of the United Nations, at the level of the Council of Europe there are documents of the recommended character, relating to the

implementation of Justice, which would be friendly to the child. The most complete document of the guidelines on child friendly justice, adopted by the Committee of Ministers of the Council of Europe on November, 17, 2010. Among the fundamental principles on which this document is based, is the maximal compliance with the interests of the child, respect for the dignity, protection from discrimination, the rule of law. Although this document is more focused on establishing standards for the treatment of children who are in the conflict with the law, the guidelines contain specific dispositions for children in contact with the law and standards dealing with children – victims of and witnesses to crimes. Thus, in particular, p. 64, section 6 «Evidence/statements of children contains dispositions that indicate the poll of children in order to generate information and evidence on the case must be carried out exclusively by a trained specialist. A survey of children must take place in favourable conditions, taking into account the age, maturity and level of understanding of the circumstances of the child, as well as any difficulties in communicating. In article 74 it is stated that it is necessary to examine the possibility of the obtaining evidence from the children-victims and child witnesses in the special rooms equipped for children, and in special, favourable conditions for children» [3]

Most of these requirements at the level of national legislation are not implemented. At the same time, there were some shifts in criminal procedural law. So, the legislator defined the features of the questioning of underage persons under investigation – art. 226 of the Criminal Procedural Code of Ukraine (hereinafter – CPC) as well as during the trial – art. 354. In particular, among the features of questioning (as investigative actions) are either minor party legislator which has determined the presence of a legal representative, pedagogue or psychologist and, by the necessity, is a doctor; the duration of the questioning to one hour (and on the whole – to two hours per day), etc. During the trial in cases where it is necessary for for the protection of the rights of a minor or the minor victim, the latter can be questioned outside the hearing room in a separate room with the use of videoconferencing (remote judicial proceedings).

According to the old version of the CPC features of questioning of underage persons referred to such participant of the process as a witness (an interrogation of a minor victim understood by analogy). Features of the proceedings concerning juvenile defendants/dock (proceedings in cases concerning crimes committed by minors) are distinguished. For illustrative comparison we can compose the appropriate table from the above mentioned dispositions of the old and new CPC.

Thus, despite some changes in criminal procedural aspect, borrowing an experience for application procedures, friendly to children, through the regulatory use of "green rooms" designed specially for conducting surveys of children, adaptations of court premises to interests of children-witnesses, etc, was not carried out. Currently, we have Instructions on the Organization of the Work of Units of the Criminal Police in Matters of Children, approved by the order of the MINISTRY OF INTERNAL AFFAIRS of Ukraine from 19.12.2012 № 1198, which used the term "methodology", "green room". This term shall be construed as a method of interviewing a child injured or witnessed the crime, under conditions that minimize and do not allow traumatizing the psyche of the child, taking into account its individually-psychological and physiological features [4]. In particular, in Chapter VIII organization providing legal and psychological assistance to children who are the victims in criminal proceedings or witnessed the crime, "notes that surveys of the child, which is an injured or witness in criminal proceedings, is carried out in specially equipped or bedroom for these purposes the premises with the use of" green room". This technique applies to children aged 4 to 14 years old, and at the discretion of the investigator or the Court, and at the age of 14 to 16 years who suffered as a result of the study of crimes against sexual freedom, and other crimes of a violent nature.

Besides these instructions, unfortunately we have not got yet other regulations or legislation that would order regulating the use of "green room", as well as ensuring their functioning and methods, and be specially adopted to the questioning of this category of children. Methodical support for issues related to the use of "green rooms", today there are few recommendations prepared on the basis of Kharkiv, Odessa and Dnipropetrovsk National University of Internal Affairs, with the participation of the public human rights organizations.

Thus, the problem of the improving criminal procedural norms in the use of "green rooms" during the interrogation of children . In accordance with the requirements of the current CPC employees in operational units, including the employees of the Children's Criminal Police who directly carry out kids' survey, can conduct investigators (special investigation) actions and unspoken investigators (special investigation) actions in criminal proceedings only for the written instructions of the investigator, the Prosecutor (art. 41 of the CCP). As of today, not every district Department has the "green room" for work of the employees of the Children's Criminal Police with victims of violent crimes, committed by children, children-witnesses and others. This, in turn, makes the employees of the Children's Criminal Police use for this common premises, and in the of the absence of special skills and knowledge – outdated methodics.

At the same time the main goal and the specifics of the special facilities are able to make audio and video recordings of the survey/interview of children who suffered or witnessed as a result of a crime, sexual violence or exploitation, other crimes, or those who are suspected of committing crimes (using special techniques, child-friendly), and the possibility of further use of the record made in the course of the investigation without the repeated questioning and, therefore, without repeated injury of the psyche of the child. Considering the above mentioned, we can state it advisable to fix in the current CPC the support or underage persons on pre-trial investigation particularly the necessity of conducting such questioning in "the green room" by supplement of the article 226 CPC with following dispositions: "Interrogation support of underage persons is carried out in the "green room" is

designed specifically to work with children who are the victims or witnesses of violent crimes, or who are suspected of committing crimes using special techniques of "green room".

Accordingly, you should predict among the features of the interrogation of a minor or a juvenile witness or a victim at the stage of the proceedings the possibility of using video recording of the previous interrogation by the amendments to article 342 CPC in this position: "in cases, where it is necessary for the protection of the rights of a minor or a juvenile witness/victim, to use as an evidence a video questioning the latter, carried out during the pre-trial investigation. In this case, the questioning of a minor or a juvenile witness/victim in court is carried out if it is necessary. In order to protect the rights and ensure the needs of at-risk children, national legislation requires a reduction in compliance with international standards in the sphere of organization of the questioning of a child-witness or victim of crime, particularly, through the clear regulation of "green rooms", using both the special facilities and special techniques, in which friendly attitude to a child was demonstrated.

#### **LIST OF USED SOURCES**

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