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## **ДОПИТ МАЛОЛІТНІХ ТА НЕПОВНОЛІТНІХ СВІДКІВ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ: АКТУАЛЬНИЙ СТАН ТА ПЕРСПЕКТИВИ УДОСКОНАЛЕННЯ**

**Анотація.** *Актуальність дослідження зумовлюється необхідністю удосконалення процедури отримання відомостей, які надаються під час допиту малолітніми та неповнолітніми свідками щодо відомих їм обставин у кримінальному провадженні під час судового розгляду, із забезпеченням якнайкращого дотримання інтересів дітей. При проведенні дослідження авторами використовувались філософські, загальнонаукові та спеціально-наукові методи пізнання, які дали можливість провести детальний аналіз процедури допиту малолітніх та неповнолітніх свідків на стадії судового розгляду. З метою розроблення наукових пропозицій щодо удосконалення законодавчого врегулювання проведення допиту малолітніх та неповнолітніх свідків під час судового розгляду визначено принципи правосуддя дружнього до дитини, що повинні бути дотримані під час проведення такої процесуальної дії, а також гарантії, визначені у КПК України та спрямовані на реалізацію міжнародних стандартів забезпечення прав неповнолітніх осіб у кримінальному провадженні. Констатовано, що визначення на законодавчому рівні вимог, які ставляться окремо до педагога, психолога та лікаря, що беруть участь у допиті малолітніх або неповнолітніх свідків, а також порядку залучення таких осіб судом та органом досудового розслідування, значно б покращило якість надання необхідної допомоги неповнолітнім свідкам та відповідає б міжнародним стандартам. Проведено аналіз міжнародного досвіду в частині запровадження інституту представництва під час судового розгляду попередньо записаних показань малолітніх та неповнолітніх свідків. Встановлено, що запровадження такого інституту є абсолютно виправданим та таким, що матиме виключно позитивний ефект як для малолітніх та неповнолітніх свідків, так і для процесу доказування, і може бути імплементованим у національне законодавство. Розроблено наукові пропозиції щодо удосконалення законодавчого врегулювання проведення допиту малолітніх та неповнолітніх свідків під час судового розгляду*

**Ключові слова:** *кримінальне провадження, судовий розгляд, малолітні та неповнолітні свідки, допит, представництво інтересів, міжнародні стандарти*

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## **INTERROGATION OF MINOR AND JUVENILE WITNESSES IN CRIMINAL PROCEEDINGS: CURRENT STATE AND PROSPECTS FOR IMPROVEMENT**

**Abstract.** *The relevance of the study is determined by the need to improve the procedure for obtaining information provided by minors and juvenile witnesses during interrogation regarding the circumstances known to them in criminal proceedings at the litigation stage, while ensuring the best respect for the children's interests. The authors employed philosophical, general scientific, and special scientific methods of cognition, which allowed conducting a detailed analysis of the procedure for interrogating minor and juvenile witnesses at the litigation stage. To develop scientific proposals for improving the legislative regulation of the interrogation of minor and juvenile witnesses during the litigation, the study defined the principles of child-friendly justice that must be observed during this procedural action, as well as the guarantees stipulated by the Criminal Procedural Code of Ukraine and aimed at implementing international standards for ensuring the rights of minors in criminal proceedings. The authors of this study state that the legislative definition of requirements imposed separately on the teacher, psychologist, and doctor involved in the interrogation of minor or juvenile witnesses, as well as the procedure for involving such persons by the court and the pre-trial investigation body, would considerably improve the quality of the required aid to minor witnesses and would meet international standards. The study analyses the international practices concerning the introduction of the institution of representation in the litigation of pre-recorded testimony of minors and juvenile witnesses. The authors established that the introduction of such an institution is absolutely justified and will have an exceptionally positive effect both for minor and juvenile witnesses, as well as for the process of proof, and can be implemented in Ukrainian legislation. Scientific proposals have been developed to improve the legislative regulation of the interrogation of minor and juvenile witnesses during court proceedings*

**Keywords:** *criminal proceedings, litigation, minor and juvenile witnesses, interrogation, representation of interests, international standards*

### **INTRODUCTION**

Conventional practices of delivering justice involving minors are based on the adaptation of adult criminal justice to the principles of child-friendly justice, which is frequently ineffective against minors and juveniles due to their special development trajectory. The Law of Ukraine "On Child Protection" defines child protection in Ukraine as a strategic national priority, which is important for ensuring the national security of Ukraine, the effectiveness of the internal policy of the state, and the realisation of the rights of the child to life, health, education, social protection, comprehensive development and upbringing in the family environment establishes the fundamental principles of national policy in this area, based on ensuring the best interests of the child [1]. This approach of the legislator is conditioned upon the fact that children, due to their age characteristics, are the most unprotected and vulnerable, easily influenced and suggestible, and are subject to trauma, including repeated one [2]. Ensuring the best interests of the child entails actions and decisions aimed at meeting the individual needs of the child in accordance with his or her age, gender, health status, developmental specifics, life experience, family, cultural and ethnic identity, as well as consideration of a child's opinion when they reach an age and development level that enable them to express it.

In the context of the participation of minors and juveniles in criminal proceedings, the key is to better ensure the interests of the child and consider their opinion by minimising the negative consequences that can take the form of influencing the emotional intelligence of the child, their social activity, comprehensive healthy development, and upbringing. Researchers and practitioners note that the adolescent brain is at a stage where emotional intelligence is actively developing, social adaptation occurs, and the process of associating decisions and behaviour with long-term consequences occurs [3, p. 52]. In adolescence, there are changes in cognitive processes that play an important role in the development of emotional intelligence, with features of the cognitive and emotional sphere that primary school children do not possess. A high level of emotional intelligence contributes to success in various areas of a person's life. An essential difference in the development of emotional abilities in adolescence in comparison with the period of childhood in the scientific literature is a substantial expansion of the spheres of social activity of a person and a change in their significance for this person [3, p. 52]. Notably, the best way to ensure the interests of a child in criminal proceedings affects not only a particular participant in criminal procedural relations, but also the course of criminal proceedings themselves. The purpose of the criminal proceedings is to ensure a swift, complete, and impartial investigation and litigation, effectively holding everyone who has committed a criminal offence accountable to the extent of their guilt, ensuring that no innocent person has been charged or convicted, no person has been subjected to unjustified procedural coercion, and that appropriate legal procedure is applied to every participant in the criminal proceedings. Therefore, the issue of striking a balance in criminal proceedings is critical when it comes to contributing to the best possible protection of the child's interests upon performing the above set task.

The provisions of the current Criminal Procedural Code of Ukraine (hereinafter referred to as “the CPCU”) in terms of protecting the rights and interests of suspected or accused minors improving the litigation procedure involving such participants in criminal proceedings, the institution of their representation, the procedure for conducting separate procedural actions both at the stage of pre-trial investigation and litigation with their involvement, indicate the orientation of the legislator to minimise the adverse impact of criminal proceedings on the psyche of minors, bringing Ukrainian legislation in line with the requirements of international law in the field of protecting the rights of minor participants in criminal procedural relations. As for other minor participants in criminal proceedings, in particular witnesses, the current legislation needs to be improved, because when children come into contact with the law as victims, witnesses, civil plaintiffs, or as offenders, it is equally important that they encounter a system that understands and respects their rights disregarding their procedural status [4, p. 153]. In previous studies, the authors proposed to improve the current criminal procedural legislation concerning the involvement of minor witnesses in criminal proceedings, namely arguing the need for the introduction of mandatory presence of a legal representative, teacher, or psychologist, and if necessary – a doctor upon interrogating all minor witnesses in court proceedings; the implementation of interrogation, in case of detecting negative influence from legal representatives on the process of a procedural action, using a specially equipped office using a two-way mirror in combination with the possibility of remote litigation; the introduction of mandatory appointment of a minor witness representative, who can serve as a defender in criminal proceedings – a lawyer; the improvement of the interrogation procedure for minor witnesses by introducing mandatory recording of this procedural action by technical means [5].

Despite the fact that Ukraine currently experiences a stable trend towards a decrease in the number of crimes committed, and in 2020 the crime rate on all counts decreased by 25-30%, which is associated with the establishment of quarantine and the introduction of enhanced anti-epidemic measures in the territory with a considerable spread of acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus [6, p. 40], Ukraine, according to the Numbeo service, has risen to the first place in the ranking of countries with the highest crime rate in Europe. The crime index of Ukraine is 48.84. Sweden ranks second (47.43), and France ranks third (47.37). They are followed by Moldova, Ireland, Belgium, the United Kingdom, and Italy. Therefore, the issue of interrogating minor witnesses in criminal proceedings for information regarding the circumstances known to them, while ensuring the best respect for the interests of children, remains topical and requires further research to develop proposals for improving this procedural action. The purpose of the present study is to conduct a detailed analysis of the procedure for interrogating minor and juvenile witnesses at the stage of litigation and develop proposals for improving the legislative regulation of this procedural action.

## 1. MATERIALS AND METHODS

The statutory framework for this study included the provisions of the Constitution of Ukraine, international regulations governing international norms and standards for the protection of human and civil rights and ensuring the rights of minors in criminal proceedings, a codified regulation governing the criminal procedural relations – the CPCU [7], regulations governing the issues of child protection (the Law of Ukraine “On Child

Protection” [1] and the Law of Scotland “On Vulnerable Witnesses (Witness Statements in Criminal Cases)” [8]). The study employed philosophical, general scientific, and special scientific methods of cognition. The dialectical method allowed covering the content of basic guarantees during litigation upon interrogating minor witnesses, aimed at implementing the principles of child-friendly justice.

Aristotelian methods (analysis, synthesis, abstraction, generalisation, analogy, induction and deduction) were used to investigate individual features (signs, characteristics) of representation of the interests of minor and juvenile witnesses in criminal proceedings. The leading Aristotelian method is analysis, which was used to study the specific features of involving a legal representative, teacher, psychologist, doctor in the interrogation of minor and juvenile witnesses. Thus, as a result, the study analysed the specific features of involving a teacher, psychologist, and doctor in the interrogation of minor and juvenile witnesses and their role in criminal proceedings, and determined the requirements that such participants in the relevant procedural action must meet. The authors of the present study analysed the institution of representation during the litigation of pre-recorded testimony of minor witnesses and considered the possibility of its application in Ukraine. The synthesis method allowed determining the guarantees aimed at implementing international standards for ensuring the rights of minors in criminal proceedings at the stage of litigation, namely upon interrogating minor witnesses. The method of abstraction allowed formulating the conclusions of the study, while deduction and induction – to search for initial ideas (regulatory prescriptions and corresponding doctrinal provisions). Consequently, induction and deduction were used to search for the necessary material for summarising and developing proposals in terms of improving the statutory regulation of the interrogation of minor and juvenile witnesses and the possibility of implementing provisions on the representation of pre-recorded testimony of minor and juvenile witnesses during litigation in national legislation.

The formal legal (dogmatic or legal-technical) method was used to study and interpret the norms of the CPCU, as well as to describe and systematise them. The comparative legal method was used in the study of the implementation of international standards for ensuring the rights of minors in criminal proceedings and the introduction of the institution of representation in court proceedings of pre-recorded testimony of minors and juvenile witnesses considering international practice. The hermeneutical method was used in the interpretation of scientific concepts of the theory of law and legal norms, which allowed covering the content of the legal context of the mechanism for conducting interrogations of minor and juvenile witnesses. Special legal methods were also used, namely specific sociological and system-structural methods. The specific sociological method allowed examining the judicial practice and conclude on the effectiveness of implementing the guarantees stipulated by the CPCU for minor and juvenile witnesses, as well as the need to improve the current legislation. The system-structural method was used in the development and research of the terminology of this study, namely when explaining the content of the categories “principles of child-friendly justice”, “international standards for ensuring the rights of minors in criminal proceedings”. The method of generalisation provided an opportunity to consistently bring individual facts into a single whole and formulate reasonable conclusions aimed at improving the legislative regulation of the issues under study, namely concerning the legislative determination of the requirements to the teacher, psychologist, and doctor, as well as the procedure for involving such persons by the court and the pre-trial investigation body in the interrogation of children, and the introduction of the institution of representation during the litigation of pre-recorded testimony of minors and juvenile witnesses.

## 2. RESULTS AND DISCUSSION

The procedure for conducting an interrogation, as well as any other procedural action involving a child in criminal proceedings during a litigation, must comply with the principles of child-friendly justice as defined in the Guidelines on Child-Friendly Justice adopted by the Committee of Ministers of the Council of Europe [9], namely in the following part:

- 1) ensuring the protection of children from harm, including intimidation and secondary victimisation in all court and out-of-court proceedings;
- 2) application of special measures if the suspect is one of the child's parents, family member or primary guardian;
- 3) the need to treat children according to their age, special needs, maturity, and level of understanding, as well as consider any communication difficulties that they may have;
- 4) ensure that children are protected from viewing images or information that may be harmful to their well-being;
- 5) determine the conditions for conducting a survey and collecting applications of children, considering the age, maturity, and level of comprehension, as well as any difficulties that they may have;

6) use of children's audiovisual statements who have been victims or witnesses, while respecting the rights of other parties to challenge the content of such statements;

7) facilitating the avoidance of direct contact, confrontation, or communication between the child victim or the child witness with the suspect to the extent possible, unless such child demands otherwise;

8) ensuring the possibility for children to testify in criminal proceedings in the absence of a suspect.

Article 354 of the CPCU stipulates the following guarantees aimed at implementing the above-mentioned international standards for ensuring the rights of minors upon interrogating minor witnesses at the litigation stage in criminal proceedings:

1) a minor witness and, at the discretion of the court, a juvenile witness is interrogated in the presence of a legal representative, teacher, or psychologist, and, if necessary – a doctor;

2) the presiding judge explains the obligation to give truthful testimony to a witness who has not reached the age of sixteen;

3) a witness who has not reached the age of sixteen is not warned about criminal liability for refusing to testify and for deliberately false testimony, and is not sworn in;

4) prior to the start of the interrogation, the legal representative, teacher, psychologist, or doctor is informed about their obligation to be present during the interrogation, as well as the right to protest against questions and ask questions;

5) the presiding judge has the right to assign a question posed to a minor or juvenile witness;

6) the possibility of applying remote litigation in cases where it is necessary for objective clarification of the circumstances and/or protection of the rights of a minor or juvenile witness.

Given the analysis of the criminal procedural law, the authors of the present study are forced to admit that for many years the interests of a witness, in particular a minor, were not the subject of legal protection, and the bodies of pre-trial investigation, prosecutor's office, and court often nihilistically and dismissively treated the requirements of criminal procedural legislation to ensure the rights, legitimate interests, and safety of witnesses [10, p. 298]. The purpose of questioning minor witnesses is to obtain reliable information about facts and circumstances relevant to criminal proceedings and subject to proof. For this, the presiding judge must create a favourable atmosphere and ensure such mutual understanding that the communication with the child on quite important and sometimes unpleasant things and events is their common task, which must be performed [11, p. 80]. The key elements that will help achieve this purpose and establish a contact with the interviewee are as follows:

1) consideration of the level of development and capabilities of the child;

2) flexibility of the interrogation procedure and flexibility as a characteristic of the interrogator;

3) objectivity, manifested in the impartiality of all persons involved in the interrogation;

4) emotional empathy, which will allow understanding what the interrogated child thinks and feels.

In this regard, the consideration of the child's level of development and capabilities is required to notice information about his or her communicative abilities, knowledge about the world around them and the circumstances of proceedings, memory, thinking, and emotional maturity and use such information in contact with this child. Questions addressed to the child should correspond to language capabilities, as well as knowledge and experience [11, p. 80]. In general, when interrogating adults and children, the type of question most affects the accuracy of testimony, which is a reproduction of the memory of witnesses. Thus, open questions contribute to more correct indications than closed questions [11, p. 80]. And if upon interrogating an adult in criminal proceedings it is sufficient to formulate clear questions about the circumstances known to them, then upon interrogating minor witnesses to obtain such information, it is necessary to establish an emotional connection and trusting relationship [2], which will contribute to the development of a safe attachment and relaxedness of the child [12], thereby considerably increasing the amount of information that needs to be obtained from the interviewee, namely information regarding the situation and the initiating/preceding event, people's intentions in the event, emotions and goals of people, as well as the interviewee, the action that occurred during the event and the consequences that occurred after the event [13].

### *2.1. Participation of a legal representative, teacher, psychologist, or doctor during the child's interrogation*

The CPCU defines the circle of persons to be present during the interrogation of a child: a legal representative, a teacher, a psychologist, a doctor. However, the presence of these persons is an optional condition in the case of questioning a minor witness who is not a minor, and depends on the subjective opinion of the interrogator, in this case – the presiding judge. The legislator does not explicitly specify the list of persons who may be legal representatives of juvenile witnesses. Considering the fact that Article 354 of the CPCU concerns issues of interrogation of witnesses and victims, by analogy, we the legal representatives of juvenile witnesses can be persons defined in Part 2, Article 44 of the CPCU, namely parents (adoptive parents), and in their absence –

guardians or custodians of the person, other adult close relatives or family members, as well as representatives of guardianship and custodianship authorities, institutions and organisations under whose guardianship or custodianship the minor is held [7]. The participation of a legal representative during the interrogation of minors and, if necessary, juvenile witnesses is conditioned upon the need to provide such persons with general psychological and emotional support. The CPCU gives the legal representative a majority of the procedural rights of the minor whose interests they represent, which allows compensating for the inability of minors to be active subjects of criminal procedural relations due to their psychophysiological immaturity and a certain socio-psychological maladaptation to fully independently exercise and defend their rights and interests [5, p. 130].

Upon interrogating a child witness, it should be considered that, as a rule, he or she is more easily suggestible than an adult, prone to fantasising, which may be the result of a misunderstanding of the procedural action and the influence on this child of both legal representatives and other persons involved in the interrogation [14, p. 384]. Therefore, the interrogator should consider the influence of those present during the interrogation, including those close to the child, on the interrogation. In addition, this procedural action frequently involves other persons who are strangers to the child, but also influence the content and form of this child's statements. In such cases, it is necessary that they are positioned as far away from the child as possible, are not in front of his or her eyes and behave passively, without expressing any emotions. The optimal scenario is when they are positioned in another room with the possibility of monitoring the progress of the procedural action through one-sided glass or using audio equipment [11, p. 81]. I. Bandurka notes that the task of a teacher or psychologist, as well as, if necessary, a doctor, is to help the person conducting the interrogation establish psychological contact, develop the correct tactics for conducting the interrogation, formulate questions considering the child's psyche or individual characteristics of the minor's psyche [15, p. 167]. In court proceedings, a teacher, psychologist, or doctor is to be involved based on a court order. The legislator also does not define the requirements that certain subjects must meet. In previous studies, the authors have proposed a system of such requirements and proposed to divide them into two groups depending on the functional purpose of these persons during the interrogation of minor or juvenile witnesses:

- mandatory (higher education in the speciality; no less than 5 years of professional experience; no less than 3 years of experience in working with children);
- optional (the teacher should be engaged in the upbringing and training of minors or juveniles of the same age as the interrogee child, be positively described at the place of work and have special skills in interrogating minors involved in criminal proceedings; the psychologist should be a specialist in the field of child and juvenile psychology, considering the characteristics of the minor's personality, given that such a person can receive psychological help for the first time, despite possible psychological health issues and a history of trauma [16]; the doctor should have the necessary knowledge and skills to work with children to correctly recognise and respond to physiological changes in the body of a particular child).

Most frequently, in their decisions, courts approach the education departments of local self-government bodies to ensure the participation of a teacher in court proceedings, which is certainly a correct and motivated decision. However, it is not uncommon for judges to fail to specify in the court decision which teacher, psychologist, or doctor should be involved, and from what institution. Such an approach cannot be considered positive; therefore, it is appropriate to define the procedure for attracting these persons in the CPCU, including the list of institutions that the court or pre-trial investigation body can approach. Legislative definition of the specific requirements for a teacher, psychologist, and doctor, as well as the procedure for involving such persons by a court and a pre-trial investigation body, would considerably improve the quality of providing the necessary aid to minor witnesses involved in interrogation and would meet international standards for ensuring the rights of minors in criminal proceedings.

## *2.2. Pre-recorded testimony of minor or juvenile witnesses*

Admittedly, a positive step for bringing the Ukrainian legislation closer to international standards for ensuring the rights of minors in criminal proceedings is the possibility to apply remote litigation in cases where it is necessary for objective clarification of circumstances and/or protection of the rights of a minor or juvenile witness, which is stipulated by the CPCU. Thus, a minor or juvenile witness, by a court order, may be interrogated outside the courtroom in another room using a video conference. However, in some cases, such a measure will not be sufficient to properly protect children from the adverse impact that may occur during the litigation. For a child who has witnessed the commission of a particularly grave crime or a crime involving this child's inner circle, any mention of what they saw and experienced already causes repeated trauma. Children who witness such crimes, especially those relating to domestic violence, have an increased risk of school development delays, cognitive delays, emotional and behavioural issues, individual symptoms of psychological trauma, and mental health disorders in childhood [17]. Participation in a court session via

videoconference cannot fully protect the child from repeated injury, and does not guarantee that the child will not see the accused and hear their remarks and questions. An innovation in the field of protecting the rights and interests of juvenile witnesses in international law is the introduction of the institution of representation during the litigation of pre-recorded testimony of such persons in Scotland. The corresponding Law of Scotland “On Vulnerable Witnesses (Witness Statements in Criminal Cases)” [8] was unanimously adopted on May 9, 2019, and received royal approval on June 13, 2019.

Such innovations in the legislation of Scotland provide that child witnesses can now present their evidence pre-recorded in some High Court cases, which will ultimately prevent further child's trauma, which is frequently the case when they appear in court during the litigation. Kate Wallace, Chief Executive Officer of Victim Support Scotland, commented: “attending a court hearing and testifying can be traumatic for anyone, and for vulnerable witnesses, including children, it is even more relevant. It is therefore important that child witnesses are given the right support to protect them from this. Therefore, we welcome this new law as an important step forward in protecting and supporting children and families involved in violent crimes” [18]. According to the provisions of the CPCU, the use of such a mechanism in Ukraine remains impossible. Thus, the Supreme Court, in its decision of November 19, 2019 in case No. 750/5745/15-k, ruled that the testimony during the previous litigation is similar in its legal properties and consequences to those procured in accordance with Article 225 of the CPCU. Article 225 of the CPCU makes provision for the possibility in certain cases (the existence of a danger to the life and health of a witness or victim, their serious illness, the presence of other circumstances that may render their interrogation in court impossible or affect the completeness or reliability of testimony) to conduct a judicial interrogation of a person during a pre-trial investigation, and such testimony is permissible, provided that the procedure stipulated by this provision is observed. The most essential components of this procedure are the performance of interrogation before a judge in a court session, the participation of the parties and compliance with the rules of interrogation provided for in litigation. The Supreme Court also points that Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not establish any rules on the admissibility of evidence, which are primarily subject to regulation by national law. Therefore, the practice of the ECHR, which recognises the use of testimony provided to the police or prosecutor's office during litigation, cannot be applied in Ukraine [19].

The authors of the present study believe that the introduction of the institution of representation during the litigation of pre-recorded testimony of child witnesses is absolutely justified and will have an exceptionally positive effect on both young and juvenile witnesses, as well as on the process of proof, and can be implemented in Ukrainian legislation. Minor witnesses, being surrounded by a limited circle of persons, namely a person authorised to conduct an interrogation, a legal representative, a teacher, a psychologist, and, if necessary, a doctor, will feel more comfortable and safer. The absence of contact with the prosecution and defence parties will ensure the procurement of clear answers to the questions posed, without emotional content, outside influence, and with minimal trauma to the psyche of the interrogee child. The evidence obtained can be demonstrated during the court session, and in case of additional questions, the court will be able to order an additional interrogation of the minor using the same procedure. The authors of the study consider it appropriate to introduce such an institution for certain categories of criminal acts mandatorily, namely in criminal proceedings concerning grave and particularly grave crimes. In criminal proceedings concerning minor crimes, the use of such a measure should be applied by a court decision during preparatory proceedings if the relevant request is submitted by the parties to the proceedings. When choosing such a measure, the court must allow all statements to be provided to the minor witness prior to the litigation, unless the court is sure that the application of such a measure will have an adverse impact on the examination of evidence during the litigation. To minimise the number of evaluative concepts in the criminal procedural legislation the authors of the present paper also propose to make provision for cases when the court may refuse to apply such a measure, namely if:

- 1) the provision of all statements of a minor or juvenile witness prior to the commencement of the litigation would entail a serious risk of jeopardising a fair litigation or otherwise affecting the interests of the parties to the criminal proceedings;
- 2) such risk considerably exceeds any risk of causing harm to the interests of a minor or juvenile witness in case they testify at a court session;
- 3) the age of the child to be interrogated at the court session is 12 years and older as of the date of initiation of criminal proceedings;
- 4) a minor or juvenile witness expresses a desire to testify in a court session that meets their interests.

If the court concludes that the application of such a measure is inappropriate, the court must make an appropriate ruling, providing the reasoning for its decision with reference to the above grounds.

## CONCLUSIONS

Analysis of the procedural situation of minor witnesses in criminal proceedings at the stage of litigation indicates the existence of complex and debatable issues, mainly due to shortcomings in the legislative regulation, for the elimination of which it is necessary to amend the current criminal procedural legislation in terms of improving the procedure for conducting the interrogation of minor and juvenile witnesses during the litigation, namely the legislative determination of requirements for the teacher, psychologist, and doctor involved in the interrogation of minor and juvenile witnesses, as well as the procedure for involving such persons by the court and the pre-trial investigation body. Similarly to any procedural action involving children in criminal proceedings and the activities of the court, the interrogation procedure should comply with the principles of child-friendly justice, namely every child should be provided with support and professional assistance during his or her interrogation.

To ensure the delivery of accessible and swift justice in Ukraine, which is also adapted and aimed at meeting the needs, considering the interests and ensuring the rights of the child, and during which the rights and interests of every child are respected, including the right to a fair trial, to take part and understand the litigation, to respect for private and family life, honour and dignity, it is necessary to consider the possibility of introducing the institution of representation during the litigation of pre-recorded testimony of child witnesses in criminal proceedings. The authors of the present study consider it appropriate to introduce such an institution for certain categories of criminal acts mandatorily, namely in criminal proceedings concerning grave and particularly grave crimes. In criminal proceedings concerning minor crimes, the use of such a measure should be applied by a court decision during preparatory proceedings if the relevant request is submitted by the parties to the proceedings. To minimise the number of evaluative concepts in the criminal procedural legislation, the authors propose to make provision for cases when the court may refuse to apply representation during the litigation of pre-recorded testimony of child witnesses. Such changes in legislation and increased state interest in children can bring the Ukrainian legal system closer to the established international standards in the field of protecting and ensuring children's rights in criminal proceedings, as well as contribute to the development of a healthy generation.

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