

UDC 341

DOI 10.31733/2786-491X-2022-1-189-198



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THE SPECIFICS OF POLICE INTERROGATION (EXAMINATION) OF CHILDREN IN THE SLOVAK REPUBLIC

Abstract. In the paper, the authors analyse the situation in the Slovak Republic concerning child interrogation or examination independence on the fact, whether a child is a criminal offender or a victim. They focus on legal regulation of this issue in the legal system of the Slovak Republic, and on specifics of this procedure from the tactical and psychological point of view.

The interrogation (or the examination) of the child is a very specific criminalistics method that is used in criminal proceedings. The particularities of this procedure are determined by the age, mental and emotional degree of child's development, social status, suggestibility (ability to influence). These circumstances should be respected under every conduction of the interrogation (examination) of the child by the prosecutor, the investigator of the Police Force, or the authorized officer of the Police Force. The main aspects of this procedure are:

To use psychologists or other experts before and during conduction of the procedure;

Not to repeat the procedure in further criminal proceedings;

To use special devices for recording or transmission of the sounds and voices;

The instruction before interrogation (examination) should be adapted to the child (understandable, respectful, etc.);

The procedure should be conducted in a good atmosphere and good conditions (psychological approaches; special interrogation rooms), etc.

Keywords: *a child, children, youth, interrogation, examination, criminal proceedings, a*

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Introduction. “No matter their story or circumstance, all children have the right to be protected from violence, exploitation, and abuse. Child protection systems help children access vital social services and fair justice systems – starting at birth. They reach out to the most vulnerable children, including those with disabilities; girls and boys who have been placed in alternative care; children uprooted by conflict, poverty, and disaster; or those who may become victims of child labour or trafficking, or recruited into armed groups. Child protection systems prioritize children’s physical, mental, and psychosocial needs to safeguard their lives and futures” (Unicef, 2020)

In the Slovak Republic, according to the Act No 300/2005 Coll. Criminal Code (under Section 127) “a child” is defined as person under eighteen years of age unless he has reached the legal age earlier (e.g. marriage status). On the other hand, the person who has not reached the age of fourteen at the time of the commission of the criminal offense is not to be held criminally liable. The only exception is sexual abuse. The legal age limit for criminal liability for this crime is the age of fifteen at the time of its commission (under Section 201 of this Act). When speaking about the position of a child in criminal proceedings, there are two possibilities, a child as a victim (an injured or aggrieved person) or a child as a criminal offender. However, a perpetrator under the age of fourteen is not criminally liable, because it is “a circumstance excluding criminal liability” as well as insanity. Apart from that, there are certain circumstances excluding unlawfulness of an act, e.g. extreme necessity, necessary self-defence, authorized use of a weapon, permissible risk, exercising rights and performing duties, consent of the injured party, and acting as an agent.

Formulation of the main material.

1 The police interrogation (examination) of children

1.1 Analysis of legal regulation in the Slovak Republic

Under Section 121 of the Act No 301/2005 Coll. Code of Criminal Procedure, interrogation of the accused is conducted only by a body involved in criminal proceedings (police and prosecutor) or by a court. The main aim is to obtain a complete and clear picture of facts relevant for criminal proceedings (to the extent possible). During interrogation the human integrity of the accused shall be respected which means that he shall not be coerced in any way to make the statement or some kind of confession. Prior to the interrogation, the investigator, the prosecutor, or the judge should advise the accused.

Actually, the accused should know that he:

Has the right to make a statement or to remain silent;

Must not be coerced in any way to confess;

Has the right to elect his defence counsel (if he cannot afford to pay the defence costs, will have the right to a free counsel);

Has the right to ask to be interrogated in the presence of your counsel, otherwise may remain silent.

Apart from that, the accused should have an opportunity to make a detailed comment on the charges and, in particular, to provide a coherent description of the facts that he is charged with, to present the circumstances, which attenuate or reverse the charges, and to submit evidence supporting his

statement. (Section 122 par. 2 of the Act No 301/2005 Coll. Code of Criminal Procedure)

The task of the interrogation is to ask questions aimed at supplementing statement or eliminating incompleteness, ambiguities and contradictions of the accused.

The statement of the accused ought to be taken down on the record, as a rule, dictated by the interrogator using direct speech and verbatim as far as possible.

If the person interrogated as the accused is under 18 years of age, the body involved in criminal proceedings uses technical devices for the transmission of sound or images. The technical means should be used if the requirements prescribed by law are met. It is appropriate to examine the circumstances of the case, mainly if there are reasonable grounds to doubt whether this person can understand the content of interrogation. It is obvious that special care should be taken to preserve the interests of children and juveniles. The only exception is serious technical problems, but the body involved in criminal proceedings should refer to these facts in the report.

Moreover, a person under 18 years of age might be examined in the position of a witness or an aggrieved person (the injured). In the Slovak Republic, there is a formal obligation to testify (to give a witness testimony) about his knowledge of the crime and the offender, or of the circumstances relevant for criminal proceedings. It means that every person is obliged to appear when summoned by the bodies involved in criminal proceedings and to give a witness testimony. If the witness (duly summoned) fails to appear without a valid excuse, the bodies involved in criminal proceedings may bring him in. Analogically, the attendance of a witness in the court hearing is securable upon the resolution by the court. (Section 127, 128, and 129 of the Code of Criminal Procedure)

Before the examination of the witness, it is necessary to identify certain circumstances. Mainly we should establish his identity and his relation to the accused. The witness is usually advised of the importance of witness testimony but of course, he has the right to refuse the testimony. In certain cases, the examination can be ban. The witness is always advised of his duty to tell the truth and not to withhold any evidence, and of criminal consequences of perjury. Prior to the examination during the main hearing or open hearing, a witness shall be required to take an oath. (Section 131 of the Code of Criminal Procedure)

During the examination of the witness, it is inevitable to follow certain rules:

A witness may be examined to the necessary extent for criminal proceedings.

He may be asked questions aimed at supplementing his statement or eliminating incompleteness, ambiguities, and contradictions.

The questions should be formulated clearly and intelligibly.

He may never be asked leading questions suggesting the answer, deceptive questions, and the questions containing the facts that should be ascertained from his testimony.

The questions should not cause an unwarranted invasion of privacy of the witness, apart from ascertaining the motive of the accused, in particular when examining a sick witness or a witness injured by the crime against human dignity.

The child is considered to be “the most vulnerable victim” according to Act No 274/2017 Coll. on the Victims of Crimes. Anyway, the examination ought to be conducted with special care. Taking this kind of evidence repeatedly in subsequent proceedings is not allowed. Besides other things, it is recommended that the examination in pre-trial proceedings should be performed only by a person of the same sex and the attendance of the expert on child whereas juvenile psychology has an obligatory character.

Similarly, under Section 135 of the Code of the Criminal Procedure, if the witness is under 18 years of age, and the examination concerns matters whose recollection could have a negative influence on his development (mental and moral) or can cause a risk of secondary victimization or it is a crime against human dignity such a process should be conducted with utmost consideration (given the witnesses’ age, his relation to the criminal offender, his dependence on the perpetrator, the facts and the circumstances of the case, etc.). Generally, it is recommended not to repeat the examination in subsequent proceedings and to engage a psychologist or an expert in juvenile education, or a social worker (instead of a guardian) with their expertise or advice to the proper conduct of the examination. In certain cases, an education specialist and a statutory representative may be summoned, but it depends on the fact whether his presence could contribute to the proper conduct of the examination. The child should be examined repeatedly only exceptionally and if it proves to be necessary for further proceedings. For instance, in/during pre-trial proceedings the examination should be conducted only upon the prior consent given by a prosecutor. In/during judicial proceedings the evidence may be secured only by reading the record of the examination (in these cases, the court is responsible for the decision-making process). The accuracy and completeness of the record; the manner in which the examination was conducted; and the way in which such person was testified, etc. can be proved by interviewing the experts. Nevertheless, the court may rule about the current need of taking this evidence.

Before examining a witness, the body involved in criminal proceedings can consult the way of the proper conduct of the examination with the psychologist, expert, social worker, or the statutory representative. The purpose is to prevent secondary victimization of the child witness and juvenile witness.

When this category of person is examined as a witness in respect of the criminal offense committed against a next of kin or a person entrusted into care, or when is clear according the circumstances of the case that a repeated testimony could be influenced by other subjects, or when there are reasonable grounds to believe that the examination could affect his mental and moral development the examination should be conducted with technical devices for the transmission of sound and images. As was emphasized above, the repeated examination of a child in further proceedings (including court hearing) is required on an exceptional basis only. In these cases, it is necessary to secure the prior consent given by his statutory representative or by his legal guardian. If the body involved in criminal proceedings does not know the real age of a victim and if there is a possibility to assume that he is under 18 years of age until the complete opposite is not be proved, the examined is considered to be a child.

It is clear from the presented information that the position of the child and juvenile in criminal proceedings is very delicate because of their age, physical,

mental, social, emotional, language level of their development. (Hullová, 2015)

1.2 Psychological and tactical aspects of the police interrogation (examination) of children

Victimology is a branch of criminology that scientifically focuses on the character of a victim (among other things). In criminology and criminal law, a victim of a crime is a person who was harmed by the perpetrator.

Childhood is the time between 0 and 14 years of age. It is the most important period of human age when a human being goes through remarkable changes. Cognitive abilities, human personality, including sociability and character are created have a significant impact on legal awareness. (Heretik, 2010)

Every crime committed against a human being may have negative consequences and is generally considered that violence between two people is the most traumatic. The way to go through or cope with a traumatic situation is individually determined by many internal or external environmental factors.

Typical psychical and physical reactions of the victims are (Matoušková, 2013):

Psychical problems – loss of self-confidence, self-blame, fear, anxiety, feeling of unreality,

Psychical changes (several hours, days after a crime, long-term, permanent) –memory decline, mental skills, deterioration of thinking, the distraction of attention, moodiness, increased need to take care or to be thoughtful of somebody,

Physical reactions – faintness, heart problems, stomach problems, headache, tearfulness, stupefaction, etc.

A term “Extremely traumatized person” is used for the victim, the witness, or bereaved person who has a strong psychical reaction after an incident where human health or life was endangered. It is not the role of a police officer to recognize the degree of traumatization of the person. It is important to realize that everyone can react to a traumatic situation differently. It is a natural reaction to unexpected or atypical situations that can cause urgent or long-term, negative psychical, physical, and social consequences. The natural recovery of an organism can take approximately four and six weeks. After this period, the life of an individual tends to normalize. However, if the problems persist, is recommended to contact an expert in the medical area. The traumatized person needs to have feelings to be safe, respected, and time.

Child interrogation (examination) is a very difficult process because everyone is unique and different. The most important idea in crime investigation is to respect the particularities of the examined and his current period of human life (degree of development). Especially young children have their own vocabulary, which the investigator (a police officer) needs to discover. During communication, he needs to show respect and correctly use their vocabulary comparing with the terminology (e.g. a term for sexual parts of the body).

In the Slovak Republic, in selected regions, the special interrogation rooms are established. They are able to fulfil the requirements (standards) of other developed countries. Nowadays, special training for the investigators is being performed at the Academy of the Police Force in Bratislava. Moreover, special methodics have been prepared for the police practitioners (“Methodics

for work with the victims of crimes in the special interrogation rooms”).

The interrogation (examination) of the child should lead to securing as much as possible relevant information while simultaneously preventing the traumatization of the child. It is necessary to take into consideration the short attention span of the examined (interviewed) child, thus an appropriate support should be provided by the investigator (not giving the orders such as: “Pay attention!”).

Certain factors which can have influence on effectiveness of the interrogation (examination):

Who accompanied the child? – quality of the relationship between them, trustworthiness, proximity, etc.

When will the interrogation be conducted? (In the morning, at lunchtime, in the evening) – has a direct impact on the attention span of the interviewed,

Furnishings and other equipment of the interrogation room – practically and aesthetically equipped,

Beware of the number of toys – plenty of toys can distract the attention of the child,

Other things on the desk – it is good to have a glass of water, handkerchief (but no sweets on the desk),

Duration of the interrogation (examination) – should be adapted to the physiological needs of the child (e.g. to remind them to go to the toilet),

Number of people in the interrogation room – reduce it,

The presence of the parents during questioning – take into consideration whether it is necessary,

Position of the interviewed and the investigator in the interrogation room – the child should be placed where there are good conditions for video recording and the investigator should be in such a place where all needed things are accessible (e.g. demonstrative dolls, drawing stuff).

All materials (files, records, papers, etc.) – should be cleaned after reading,

Notes should be written by hand, not by computer – eye contact should be maintained,

Stress – minimization or ideally complete elimination,

Making contact with the child – prerequisite for successful interrogation.

The way to make contact with the child depends on the age (contact with a teenager is absolutely different from contact with five years old child).

With no concern for the age of the child, the interrogated person should be advised of the fundament of each procedure in criminal proceedings (e.g. “Where will the particular procedure be performed? What kind of procedure will be performed? By whom will the procedure be performed? Who is the accused? What are the rights of the interviewed? In general, is recommended to have a calming oral expression, to maintain appropriate eye contact, to use as much as possible opened and non-conflicted questions, active listening, and understanding the content of the testimony.

The investigator should be the one leading the interview (interrogation, examination). It is necessary to follow the basic principles of politeness, which can help to create trustworthiness and credibility of the police officer and vice versa distrust.

Using the polite form of addressing is generally required. Such the interviewed should not be with (concerning the personality of the child;

inadequate familiarity can cause and escalate disrespectful reactions, especially from the point of view of the teenagers, the usage of diminutives in oral speech is not desirable).

The investigator should be aware of the character of his behaviour because it can have an impact on the child (verbally and nonverbally). Proper contact with the child can be made by the good manner of gesticulation, the correct posture of the body, maintaining of eye contact, frequency of breathing, tempo, intonation, and melody of the voice or speech, and simultaneously to control the child reactions and emotional behaviour during interrogation (examination). If the verbal expression is in contradiction to nonverbal expression there is a possible escalation of stress, anxiety, or distrust towards the investigator.

During the phase of making contact with the child, is suitable to use introductory questions such as “Do you know, why you are here?” or the statement like that “It is something that happens to other children like you.” Subsequently, the investigator should watch (observe) the signals of the child and positive evaluation to start with the main part of the interrogation. The child should be advised in an appropriate manner. The child must have a feeling of control over the situation and it is convenient to explain to the child what is/will be going on. In certain cases (e.g. very serious cases of sexual abuse), is possibility to make an agreement which can help the child understand. Actually, this agreement is about “good and bad questions”. The child can decide to answer good ones and to refuse to reply to bad ones. The most frequent problems (mistakes) during interrogation are inadequate vocabulary and difficult terminology. Thus, is required to maintain legibility of the instruction before interrogation (respect age, mental state, and mental degree of development, etc.).

At the beginning of the interrogation, common questions are recommended because they can have a calming or reassuring character. For instance, “Do you go to school?” “Do you know how to write? Could you sign here?” These types of questions can help us deduce what is the mental state, abilities, or orientation in space and the time, in the family relationships and relationships among the persons of the same age, etc.

The interrogator should summarize continuously what was provided in a statement (or given in a witness testimony). In parallel, it is necessary to focus on psychical and emotional reactions of the asked (suspect or witness), e.g. psychomotor agitation, restlessness, nervousness, fluctuation of attention, neurotic symptoms (bite the nails, tics, etc.) – when and in which intensity did they occur or manifest.

On the other hand, the child does not have to accept physical contact (touching, stroking, encouraging, etc.) naturally. It is possible to ask him for permission to do that because sometimes can be difficult to predict his reaction to physical contact. In general, is known that communication should be adapted to the speech and vocabulary of the child. Moreover, can be counterproductive to expect that the child will act (behave) according to the cognitive scheme of the adults. Therefore, is not appropriate to insist on accurate data, such as time, number, months, distance, etc. The child can know hours, days, months, etc. but he cannot use it. Analogically, the children can have problems with

understanding the meaning of terms “before” and “after”. That is why it is better to use questions such as “What did happen in the beginning?”, “How did it start?”

The child has a higher tendency to accept uncritically, automatically, and spontaneously the opinions of others and has a higher tendency of adaptation on his behaviour and emotion of others. The suggestibility of the child decreases with rising age, although children tend to be more influence able than adults are. Children try to estimate fulfil the expectations of the investigator, they want to please him with the answers. The child proceeds to state what the investigator wishes to hear. Therefore, the investigator should formulate his questions attentively, so there is no room for suggestions. The leader of the investigation should continuously verify, whether spontaneous suggestive influence may have unintentionally affected him. It means that he uses unequivocally verbal or nonverbal signals to the child that he can interpret.

The child victims must cope with their trauma, otherwise, they are liable to develop posttraumatic stress disorder (PTSD). According to Slovak national law, the confrontation between the child victim and the perpetrator is strictly prohibited and from the psychological point of view, the confrontation with the perpetrator due to the over-defensive reactions of the mind which can cause insomnia, enuresis, attention span malfunction, self-destructive tendencies, etc. Subsequent contact with the criminal offender (even indirect – video recording, photo documentation of the crime scene, etc.) may lead to further (secondary) traumatization.

From this point of view, the requirements for separation of the victim and the criminal offender in criminal proceedings conducted by the courts and investigation bodies are legitimate. (Voňková, & Spoustová, 2016).

Conclusions. Youth-related crime and crime committed on youth is a very serious problem, which all the countries over the world are encountering. In 2019, in the Slovak Republic 58 829 of crimes were committed and 40 339 of persons were accused, whilst 3 208 (almost 8 % of them) were children and youth. On the other hand, the Police Force in the same year identified 9 266 of the victims, where 1 182 were children and youth (almost 13 % of them). From this statistic data is clear that there is a social need (requirement) to deal with the issue and try to solve it (eliminate or minimalize) in near future.

The interrogation (examination) of the child during criminal proceedings is a very difficult criminalistics method. In the Slovak Republic, this procedure should be conducted by the court and by the body involved in criminal proceedings, i.e. (the investigator of the Police Force, the authorized officer of the Police Force or by the prosecutor). The main problem is that the child is a vulnerable victim due to his age, mental and moral development is at risk of secondary victimization, and therefore work with this category of victims requires special abilities and knowledge in child and juvenile psychology. On that account, professional help (engagement) the psychologist before and during interrogation is inevitable. He shall contribute to the proper conduct of the examination. Apart from that, the examination should be conducted by using technical devices for the transmission of sound and voice in order to not have to repeat this procedure.

As mentioned above, nowadays in the Slovak Republic, the special

interrogation rooms are implemented into police practice. The purpose is to eliminate the stress and repeated traumatization of the vulnerable victim during interrogation. The Academy of the Police Force in Bratislava participates in the training process and from our feedback from the investigators who were taking part in the course, is clear that this step is very important for the quality of the investigation where are children involved.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Моніка ХУЛЛОВА, Андреа ПАСТУХОВА НЕЙМАННОВА

ОСОБЛИВОСТІ ДОПИТУ (ЕКСПЕРТИЗИ) ПОЛІЦІЄЮ ДІТЕЙ У СЛОВАЦЬКІЙ РЕСПУБЛІЦІ

Анотація. У роботі автори аналізують ситуацію в Словачській Республіці щодо незалежності допиту чи експертизи дитини від того, чи є дитина злочинцем чи потерпілим. Вони зосереджені на правовому регулюванні цього питання в правовій системі Словачької Республіки, а також на особливостях цієї процедури з тактичної та психологічної точки зору.

Допит (або огляд) дитини є досить специфічним криміналістичним методом, який використовується в кримінальному процесі. Особливості цієї процедури визначаються віком, психоемоційним ступенем розвитку дитини, соціальним статусом, сугестивністю (здатністю впливати). Ці обставини повинні враховуватися під час кожного проведення допиту (опиту) дитини прокурором, слідчим міліції або уповноваженим працівником міліції. Основні аспектами цієї процедури :

- залучати психологів або інших експертів до та під час проведення процедури;
- не повторювати процедуру в подальшому кримінальному провадженні;
- використовувати спеціальні пристрої для запису або передачі звуків і голосів;
- інструкція перед допитом (опитом) повинна бути адаптована до дитини (зрозуміла, поважна тощо);

Процедура повинна проходити в хорошій атмосфері та хороших умовах

(психологічні підходи; спеціальні кімнати для допитів) тощо.

Ключові слова: дитина, діти, молодь, допит, експертиза, кримінальне провадження, орган кримінального провадження, суд, обвинувачений, потерпілий, свідок, показання, спеціальні кімнати для допитів

Submitted: 26.11.2021

Revised: 14.02.2022

Accepted: 19.03.2022

UDC 341

DOI 10.31733/2786-491X-2022-1-198-206



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ORGANIZATION AND PLANNING OF THE PROCESS OF INVESTIGATION OF ROAD ACCIDENTS IN THE REPUBLIC OF MOLDOVA

Abstract. The objectives of this study are determined by the social relations that appear in connection with the performance by specialized bodies in the investigation of road accidents. Thus, the general object of the research is the national and international doctrine in the criminal-procedure and forensic aspect of road accident investigation and especially the organization and planning of these processes.

Keywords: investigation, road accident, responsibility, social relations, organization, planning, vehicle

Introduction. Considered as the main tactical tool in the detection and investigation of crimes, the organization of criminal prosecution serves to achieve the goal of the criminal process: the protection of the individual, society, and the state from a criminal offense that should be punished according to his guilt and no innocent person can be held criminally liable by determining the directions and scope of the investigation necessary to clarify all the facts incriminated by law.

Formulation of the main material. According to A. Larin, “the organization of an investigation means rational selection, preparation of the means available to the criminal prosecution officer, creation and use of optimal conditions for ensuring and achieving the trial’s goals”.

E. Ishchenko (2006, p. 127) emphasizes that the planning of a criminal investigation is a process consisting of several stages, which include obtaining

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