

Ключевые слова: Уголовный процессуальный кодекс Украины, временный доступ к вещам и документам, обыск, арест имущества, ходатайство, следственный судья.

Rudenko M. Temporary Access to the Things and Documents: Legal Regulation of Production According to the New Code of Criminal Procedure. The article considers the legal regulation of the procedure of temporary access to the things and documents, determines problem aspects and gives suggestions for their resolving on the basis of the scientific analysis of the provisions of the new Criminal Procedural Code of Ukraine. The procedure of the implementation of the temporary access to the things and documents is a positive step made by national legislator to the approximation of the legal regulation of criminal procedure to the international standards. The author considers it is advisable to simplify the procedure of the temporary access to things and documents in the case when the owner has no objection to the temporary withdrawal and gives a written permission. In this case, it should be allowed a temporary access to things and documents without determining the investigating judge.

The author also offers to legalize the provision that grants the right of the investigating judge, the court to consider a request of the side of the criminal proceedings for the temporary access to things and documents in case of absence of the person that owns the things and documents under condition of granting such person written permission..

Key words: Criminal Procedural Code of Ukraine, the temporary access to property and documents, seizure, arrest of property, petition, the investigating judge.

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The Current Status of Violent Criminality of Minors in Ukraine

The author of the article analyzes the current status of minors criminality in Ukraine. The author defines terms which are used for explaining the existence of the criminality of minors. Criminological characteristics of juvenile criminality in Ukraine are presented in the article. The author examines the indicators of juvenile criminality and analyses the crimes the subjects of which are minors.

Key words: criminality of minors, crime rates, violent criminality group of minors, determinants of criminal, subjects of crimes.

Formulation of Scientific Problem and its Meaning. Having analyzed the sources of criminal executive and criminal law, we can state that criminality of minors is a component of criminality in general, but we can state that it has specific features that allows us to explore it as an independent object of study in criminology. We also know that criminality of minors and criminality of adults are closely connected. At the same time criminality of minors has its own peculiarities of quantitative and qualitative characteristics.

The Aim and Tasks of the Article. The *aim* of the article is to examine the current state of juvenile criminality in Ukraine. The *tasks* of the article is to determine: what terms and terminological phrases are used by scientists to explain the existence of criminality; criminological characteristics of juvenile delinquency in Ukraine; rates of juvenile delinquency; analyze crimes where the minors are the main subjects.

The Basic Material and Justification of the Results of the Study. It should be emphasized that the experience of criminological research convincingly proves that «the organization of effective prevention of minors criminality is possible only after scientific analysis of its status, dynamics and structure, taking into account trends in social-economic and political development, which are characteristic both for the whole state and for particular regions» [24, p. 1]. Such analysis of criminality of minors will give the possibility to determine the main directions of deeper study of its determinants and preconditions for successful rehabilitation of juvenile criminals.

We can state that the current criminogenic situation in Ukraine is qualitatively new phenomenon as after the scales of criminal displays so after a degree of their destructive influence on the vital functions of the society, on providing the rights and freedoms of citizens. It is stated that the crime rates, including minors' crimes, as any great system forming, have rather constant parameters. It should be remembered while analyzing statistics.

We found that in explaining the existence of crime, scientists use a variety of terms and terminological phrases: causes and conditions, factors, circumstances, determinants, motive, reason, etc. In this regard,

O. V. Golovkin notes that a terminological phrase «causes and conditions of criminality» has been the most common in the countries of the former Soviet Union. It is understood as a system of negative social phenomena for the corresponding social-economic structure and the state, that determine crime as a consequence [6, p. 51]. However, analysis of the literature shows that in this understanding there is a number of controversial points too. M. O. Lunyak indicates that «... some theories consider social factors to be the main cause of the crime, they determine morally-psychological qualities only as conditions; while others keep to completely opposite points» [15, p. 49]. K. E. Igoshev claims that necessary conditions of any phenomenon can be considered, «without their fulfillment this phenomenon can not exist», and related conditions, on which the first depend by chance, but which «create a common background of existence and manifestation of these traits» [8, p. 26]. M. Vermesh, considering sexual violence, says that the personality traits of the offender can be related to the conditions of committing sexual crimes, and the causes of their formation as the causes of crime as such, are mainly from the sphere of social determinants. However, the researcher identifies two categories of conditions of crime: «totality of internal subjective conditions» and «external objective conditions» [4, p. 175]. It's not clear what allows the author to distinguish causes from conditions. Modern law science of Ukraine talks about the causes of criminality too [21, p. 144].

However, it should be noted that the concept of criminological determinants is a part of a fundamental criminological notion «determination». In using it one means common conditionality, interaction of all phenomena, objects, processes [18, p. 203]. One should look up the essence of the concept «determination» in philosophy, where determinism is considered as a doctrine about general causal conditionality of all phenomena [18, p. 534]. Accordingly in criminology determination is defined as objectively existing conditionality of things, processes, since any phenomenon does not occur by itself, without the surrounding reality, but connected with it, generated by definite factors and circumstances [6, p. 52]. Criminological determination is a type of social determination, which can be considered within the broader system of determination of events and natural phenomena and society. And criminological determination system includes certain determinants, among which the causes and conditions are marked out. In our opinion there is a close interaction between causes and conditions, and deterministic approach allows considering criminality as the result of a complex, multifaceted determination. Therefore, when determining the determination of crime one should be guided by the concept «determinants of criminality», which can be defined as a system of phenomena and processes that lead to a crime as a consequence.

Statistics shows that one of the criminological peculiarities of juvenile delinquency in Ukraine is its relatively smooth growth over a long period of time [2, p. 147–149; 5, p. 97; 13, p. 57]. However, at first view, the analysis of several data shows that the number of crimes committed by juveniles decreased.

However, these data can be explained by humanization of judicial system concerning this category of offenders rather than by decrease of the number and severity of criminal acts committed by them. Besides, one should take into account the fact that the level of fertility decreased, and therefore the overall percentage of juveniles in the population of Ukraine. In general, the percentage of increase in juvenile delinquency in 3–4 times increases juvenile population for the last 25 years [1, p. 39]. The number of adolescent population has decreased by 17 %. So, in our opinion, we can not do such conclusion only according the number of crimes.

However, last year there were registered by 15,6 % more criminal manifestations among minors in comparison with 2011. The number of criminals was 3.5 % more than in 2011. Every fourth teenager committed crimes again, every fifth committed them in a group, every seventh while intoxicated.

The highest rates of juvenile delinquency is found in industrial areas such as Donetsk, Dnipropetrovsk, Lugansk, Zaporizhzhya, Kharkiv and Odessa. Moreover, the number of crimes committed by juveniles there, is sometimes twice and three times higher than the corresponding rate in other regions.

Analyzing the trends in juvenile delinquency, one should pay attention to the fact that growing of juvenile delinquency of female is a specific problem. Despite its relatively low prevalence in general, this phenomenon is of great public danger. In particular, according to M. O. Lunyak the level of female criminality is growing rapidly, outpacing the growth rate of male criminality [15, p. 82]. In addition, some researchers emphasize that illegal assault of female juvenile offenders are often «unconventional», exceptionally daring and dangerous nature, are very brutal [10, p. 341].

The recurrent juvenile delinquency is a matter of special concern, as it is the element which supports the following of criminal norms and traditions. After all, minor has to «catch» to commit at least two intentional crimes in a very short period of time (4 years – from 14 to 18) to become a recidivist.

Among juveniles sentenced to imprisonment, there is relatively stable percentage of persons who were exempt from criminal responsibility by applying coercive educational measures.

Small but growing latency is also a peculiar feature of violent juvenile crimes. Some researchers say that this rate is to some extent affected by the peculiarities of legal status and physical state of minors, their personal characteristics, and a large «regulating by investigative and judicial practice of statistics» [14, p.13; 16, p. 236–237]. This latency is characteristic primarily for sexual crimes. In particular, according to S. Starovich it is 1 to 60 in cases of rape [20, p. 84], and according to B. L. Gulman only 1 of 8 of committed sexual crimes is registered [7, p. 11].

Structural characteristics of juvenile delinquency have also greatly changed. Thus, if 10 years ago selfish and selfish-violent crimes dominated and accounted for about 2/3 of all crimes and were committed by theft or robbery [3, p. 17; 11, p. 1]. Moreover, the structure of juvenile delinquency has been characterized for a long time by more narrow range of committed crimes and by smaller share of felonies among them (53 % – theft) [10, p. 342]. So now, according to the Interior Ministry and the Ministry of Internal Affairs of Ukraine, «criminal professionalism» of juveniles increased, children gradually «master» new types of violent crimes that were once considered «adult» – extortion, fraud, kidnapping, etc. The number of violent crimes committed by juveniles with weapons, hypnotic agents increased almost 15 % for the last 10 years [12, p. 133–135].

Criminological exploration allowed us to make some generalizations about this. Comparing the criminological situation in Ukraine with other countries, we can say that such a complex situation exists in the USA too, where juveniles commit one in five violent crimes and the percentage of murderers among adolescent offenders exceeds that of adult offenders [22]. Proportion of calculated murders committed by juveniles remains relatively stable concerning the total number of juvenile crimes (0,8 %), as well as concerning the total number of intentional homicides (5,3 %). The same trend is observed in the analysis of intended bodily harm committed by minors: 1,4 % – in the total number of crimes committed by minors [12, p. 15].

As we can see, about 55 % of juveniles serving sentences for crimes, are of violent direction. Besides, the fact draws attention: the number of juveniles sentenced for the following crimes is slowly but gradually increasing: murder (by 1,8 %), rape (by 0,7 %), robbery (by 1,5 %), willful and especially malicious hooliganism by 10 % in a year.

Thus, summarizing the structural characteristics of juvenile delinquency, we can agree with the opinion of Police Captain I. V. Naumova that «social dangerousness of actions has a strong periodicity of slight annual fluctuations concerning increasing or decreasing of certain types of crimes» [17, p. 1].

The juvenile delinquency is distinguished by special territorial prevalence. However, the conducted criminological research shows greater differentiation of this fact: regional towns are predominant (25 %), followed by district towns (21.1 %); while about 30 % of violent crimes are committed by juveniles in the countryside.

It should be noted that the study of committing a violent crime and the time of committing allows us to observe close relationship. First, our data of criminological research show that a significant percentage of crimes (35,1 %) is being committed by juveniles in the period from 20.00 till 24.00. In our opinion, this is due both to the fact that the offender thus reduces the risk of exposing himself and the risk of resistance of others, and that this is the time of «top leisure activity» of many antisocial companies.

However, 21,1 % of violent crimes falls on educational time and 29,3 % falls on working time, particularly in the process of the uncontrolled minors' leavings schools and offices, or directly at the place of work and study. In our opinion, this fact requires more serious attention from people and services involved in providing educational and labor discipline, as well as prevention of negative phenomena among young people. The situation in Kryviy Rig can be considered indicative, when 208 «unreliable» 14–15 year-old pupils were sent down from school during one academic year [19, p. 32].

The number of juvenile crimes also increases on weekends and holidays, and during vacations. In particular, juveniles commit approximately 42,7 % of violent crimes at weekends that is twice as much than on week-days. As for seasonal distribution, violent crimes mainly can be considered «winter crimes» – 40,2 %. Moreover, as it is noted by S. M. Koretskiy, in recent years due to the deterioration of the summer holidays (especially in big cities) there is also a growing level of crimes among minors in this period [9, p. 141–142]. According to our data, this rate is 30,4 % in summer.

As it was mentioned above stable feature of violent juvenile crime is its mostly group character. Thus, according to our criminological research, this index is 61,2 %, very often with the accompliceship of adults (36,1 %). It should be noted, that the highest specific gravity of gang offences is committed by fourteen-year-old children, the lowest is committed by seventeen-year-old people, that is connected with their age-

related characteristics. It is found that disfunctions of social institutions in most cases determine the fixation of illegal behaviour with teenagers not directly, but causing their susceptibility to other negative influences of the social environment. Among the determinants of violent juvenile criminality family takes the special place, it fulfills a leading role in shaping the personality of minors.

A special link of group violent criminality of minors with the influence of mass media, unhappy leisure, alcohol and drugs, involvement them in crime and antisocial activity by adults, the influence of the big city, is found. It is stated that it occurs only in combination with psychological instability, low overall level of motivation, undeveloped sense of justice and legal culture of minors.

It is first highlighted the weakness of legal mechanisms of social interaction regulation as a complex determinant including: lack of legal regulation of defending of personality of juvenile; loss of the support of police on the broad masses of the population in the prevention of violence; lack of coordination in the activities of bodies and services responsible for the prophylactic activity among children; ineffective work of many state bodies, including legal bodies which do not provide citizens with affordable, fast and effective means of protection of their rights and interests; state position concerning the legal education of young generation; impunity of minors who commit offences and crimes, weaknesses and mistakes in the activity of police to prevent juvenile recidivism.

Conclusions and Perspectives for Further Researchs. It is found on the base of scientific analysis of contemporary juvenile delinquency that its level is characterized by a relatively smooth growth over a long period of time, especially among female juveniles, conforming the feasibility of gender equality in terms of criminal responsibility and punishment of female and male offenders; the percentage of recidivism and crimes and their latency especially in relation to sexual offences (1:8) increased. Younger age of minor criminology is retraced: the proportion of minors who actually committed crimes (14,5 %) is higher than in the inmates (9 %), and the more those who are sentenced to prison (6 %).

The increase in the number of violent crimes committed by juveniles in comparison with crimes for profit (55 %) particularly among persons with criminal records (60,3 %) is stated. Mainly group character of violent juvenile criminality is defined as its stable peculiarity. It is founded that violent crimes are committed by juveniles mainly in winter (40,2 %), at weekends (42,7 %), in a period between 20,00 till 24,00 (35,1 %).

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Гусак А. Сучасний стан злочинності неповнолітніх в Україні. У статті проаналізовано сучасний стан злочинності неповнолітніх в Україні. Визначено терміни, які використовуються для пояснення існування злочинності. Виділено кримінологічні особливості злочинності неповнолітніх в Україні. Вивчаються показники злочинності неповнолітніх, проводиться аналіз злочинів, суб'єктами яких виступають неповнолітні. Виявлено, що дисфункції соціальних інститутів в більшості випадків детермінують закріплення в підлітка протиправної поведінки не безпосередньо, а зумовлюючи його піддатливість іншим негативним впливам соціального середовища. Серед детермінантів насильницької злочинності неповнолітніх відзначено особливе місце впливу родини, яка виконує провідну роль у формуванні особистості неповнолітніх.

Ключові слова: злочинність неповнолітніх, показники злочинності, групова насильницька злочинність неповнолітніх, детермінанти злочинності, суб'єкти злочинів.

Гусак А. Современное состояние преступности несовершеннолетних в Украине. В статье анализируется современное состояние преступности несовершеннолетних в Украине. Определяются термины, используемые для объяснения существования преступности. Выделяются криминологические особенности преступности несовершеннолетних в Украине. Изучаются показатели преступности несовершеннолетних, проводится анализ преступлений, субъектами которых выступают несовершеннолетние. Установлено, что дисфункции социальных институтов в большинстве случаев детерминируют закрепление у подростка противоправного поведения не непосредственно, а предопределяя его податливость другим негативным воздействиям социальной среды. Среди детерминантов насильственной преступности несовершеннолетних отмечено особое место воздействия семьи, которая выполняет ведущую роль в формировании личности несовершеннолетних.

Ключевые слова: преступность несовершеннолетних, показатели преступности, групповая насильственная преступность несовершеннолетних, детерминанты преступности, субъекты преступлений.