

Legal and socio-psychological means to address child delinquency and ensure their rights in criminal proceedings

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Abstract. The study addresses an urgent dilemma, as the rates of child delinquency are not decreasing, and traditional reactive methods are losing their effectiveness. On the one hand, proactive measures are needed to prevent the criminalisation of children, and on the other hand, there is no comprehensive mechanism to ensure the rights of children who are already in conflict with the law, as the existing one is showing signs of cracking. The study aimed to critically analyse the evaluative concepts regarding the risks of violating children's rights, which are outlined in Section 38 of the Criminal Procedure Code of Ukraine. For this purpose, the comparative approach employed the case study method, dogmatic and legal hermeneutics, and terminological methods. The study established that the use of the term "minor" in Ukrainian legislation does not comply with the Convention provisions. The study confirmed that the path of returning a child in conflict with the law to normal coexistence within society does not lie using isolation measures. The study proved that no single institution could implement proactive models to prevent the criminalisation of children. Only joint project activities (programmes to replace aggression, form common unifying goals, social development, and crime prevention) and multidisciplinary teamwork (such as the Barnahus model), based on experimental data from studies of intra-group and inter-group relations, will succeed. The study argued that in a theoretical and legal construct such as a mechanism for protecting the rights of a child, the evaluative concepts used in criminal procedure legislation equally carry both

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risks and progress. At the same time, it is harmful to deprive the law of evaluative concepts. The study argued that it is necessary to improve the professionalism of juvenile investigators, detectives, prosecutors, and judges, for whom it will not be a problem to move away from a template approach to law enforcement and move to the stage of their own objective assessment of facts and circumstances, using standardised evaluative concepts. The practical value of the study is determined by the possibility for law enforcement officers to seek the problem of evaluative concepts not from the negative side, but as part of the mechanism for ensuring the rights of children in criminal proceedings

Keywords: child protection mechanism; pre-trial investigation and trial; re-criminalisation; stigmatisation; discrimination; legal certainty; evaluative concepts

Introduction

Current practice is characterised by a profound departure from reactive models of responding to children's deviance and the choice of a proactive approach. The search for a comprehensive mechanism that would combine legal and socio-psychological means to respect the rights of children who are already in conflict and in contact (witnesses, victims) with the law is becoming more relevant. Academic platforms on this issue are necessary because the principle of respecting the interests of the child requires a rethinking of the existing institution of bringing children to legal responsibility.

S. Baidawi and R. Ball (2023) call for a system that ensures "importance of proposed frameworks for defining the heterogeneous pathways of dual system youth, and the need for targeted and collaborative strategies across court and youth justice systems to address such children's unique needs". In Ukraine, there are shifts towards conducting criminal proceedings in the best interests of children and with respect for the rights of the child (child-friendly criminal proceedings) (Butyrin, 2021). M.V. Chervinko (2023) has already defended a dissertation on this issue, which includes the development of a training course of the same name.

With this progress, violations of children's rights still occur, such as deprivation of liberty in violation of reasonable time limits and without proper grounds for such a severe measure of coercion; in the absence of proof of the real risk of flight, other evasion or obstruction of investigation and trial; the right to defence and legal representation is negated, as was in the Case of Selçuk v. Turkey (2006), Case of Ichin and others v. Ukraine (2010), Case of Korneykova v. Ukraine (2012), Case of Budan v. Ukraine (2016), Judgment of the Court of Justice in Case No. C-603/22 (2024). These problems are urgent and not unique to Ukraine.

There is also a national problem with Chapter 38 of the Criminal Procedure Code of Ukraine (2012), which regulates the rules of criminal proceedings against children. It is oversaturated with evaluative concepts that are applied unequally. Legal certainty is causally related to those evaluative concepts that the legislator has overly provided for in the Criminal Procedure Code of Ukraine (2012). However, an absolute imperative does not result in perfect law enforcement. There are a significant number of situations where the discretion of the law enforcement officer is required in order not to turn the intellectual activity, which is criminal procedure, into a robotic one, unable to sense real needs and respond adequately. Following such beliefs that the use of evaluative concepts by the legislator provides for the maximum involvement of intellectual resources, and to some extent protects against a template approach by law enforcement, which is one of the keys to a balanced approach to respecting children's rights. The evaluative concepts used in Chapter 38 of the Criminal Procedure Code of Ukraine (2012), which belong to the theoretical and legal

construct that is the mechanism of child protection, entail not only the above-mentioned benefits, but also risks, which will be discussed in more detail later.

Regarding the adequate proactive components of preventive activities, one should also consider the fact that researchers have described the so-called "resilience model". For example, J.J. Navarro-Pérez *et al.* (2023) identified the above model as a parallel one. In this model, protective factors are conceptualised as assets that can be used to promote resilience in children at risk. In their review, they identified that a positive family environment and supportive relationships seem to be associated with resilience development.

There is also an opposing theory that predisposition to violent, criminal behaviour can be developed in the family, school, informal environment, within the community or through the media. Accordingly, relevant measures need to be included in the prevention of criminal behaviour of children and to prevent the criminalisation of children. These are also part of the mechanism for changing the situation with child delinquency. There should also be proactive programmes, as well as those that promote the socialisation of children in conflict with the law to avoid stigmatisation. C. Trull-Oliva and P. Soler-Masó (2021) noted that intervention programmes cover psychoeducational and/or behavioural aspects. They aim to redirect and consolidate best practices for education, relationships and coexistence free from any kind of violence, and aim to involve both the child and the family in the process of rehabilitation and social inclusion reintegration. Regarding judicial measures for children who have committed criminal acts, C. Trull-Oliva and P. Soler-Masó (2021) recommended an effective 6–9-month programme that would include training, sports and recreational activities, according to age and needs, educational tutoring and psychological therapy. Another unacceptable way is to perceive a child who has conflicted with the law as a potential criminal and stigmatise instead of socialisation. A. Gayapersad *et al.* (2023), having considered the problem of street children, noted the labelling and deep stigmatisation that led to discrimination. Otherness and devalued status limit children's access to public resources and violate their human rights. As horrifying as it is for our time, stigma and discrimination can be legitimised and promoted in the media, expressed "through imbalances and injustices inherent in social structures, political decisions and legal norms" (Gayapersad *et al.*, 2023). Targeted programmes to counteract such phenomena are needed.

In the above-mentioned studies, the authors did not combine legal and socio-psychological means in the mechanism of ensuring the rights of children in conflict and in contact with the law. Therefore, this study aims to address the issue of existing risks of violating the rights of children in conflict and in contact with the law through the prism of

Ukrainian realities: existing evaluative concepts, which are overloaded in Section 38 of the Criminal Procedure Code of Ukraine (2012), and the experience of international justice.

Materials and methods

The legal comparative approach has stated that the problem of juvenile delinquency is not exclusively Ukrainian, and there are grounds to implement some of the already effective and proven prevention measures. The applied problem analysis studied the possibilities for changing approaches from reactive ones, such as detention and prosecution, to proactive ones, such as proper prevention, development of long-term programmes aimed to redirect, involve both the child and family in the process of rehabilitation and provide social support reintegration, etc. The dogmatic method also concluded that the components of the mechanism for changing the situation with child delinquency and gradually removing them from the sphere of criminalisation should be ensured at the present stage through a proactive approach. The method of comparing existing modern best practices of “communication” with children (who are in conflict with the law and/or who have been abused and/or are involved in criminal proceedings as witnesses), inviting those participants who can create a child-friendly environment and are included in a multidisciplinary team (such as Barnahus), the choice of successful location and interior solutions allowed by the criminal procedure legislation (such as the Green Rooms already implemented in Ukraine), etc., identified relevant components of child-friendly criminal proceedings and the theoretical and legal construction of the mechanism for protecting children’s rights.

The method of legal hermeneutics and the terminological method determined the place and significance of value concepts in this mechanism. The study formulated conclusions regarding the process and consequences of the legislator’s use of evaluative concepts through the prism of observance of children’s rights. The problematic analysis made it possible to classify certain evaluative concepts of Chapter 38 of the Criminal Procedure Code of Ukraine (2012) as “unambiguous” and “especially unambiguous”, which leads to problems of their law enforcement and predictable violations of children’s rights.

The case study method identified those violations of children’s rights that were determined by the ECtHR from a representative sample of ECtHR judgments. In particular, in the course of Ukrainian criminal proceedings, there are violations such as: arbitrary deprivation of liberty of children, as in the case of *Budan v. Ukraine* (2016); disproportionality of the chosen measure of coercion and its duration in the case of *Korneykova v. Ukraine* (2012); violation of Article 5 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (the right to liberty and security of person) was stated in the case of *Ichin and others v. Ukraine* (2010), etc. The rights provided for in international documents may not be fully integrated into national legislation, and the rights of the child (the right to a defence counsel, legal representative, summons through parents or other legal representatives, etc.) may be generally levelled out in the course of criminal proceedings, which is unacceptable (Judgment of the Court of Justice of the EU in Case No. C-603/22, 2024). This selection of ECtHR and Court of Justice judgments demonstrates the undeniable fact of existing violations of the rights of children, both those in

conflict with the law and those who are witnesses and/or victims, despite the measures already taken to implement child-friendly criminal proceedings and elements of proactive methods, which in fact remain partly reactive in practice.

Results and Discussion

The debate on the use of the term “children” or “minors” takes place in general in the national legal and, in particular, criminal procedural doctrine. According to Article 32(1) of the Civil Code of Ukraine (2003), a minor is a natural person aged between fourteen and eighteen years. However, this approach does not comply with Article 1 of the ratified Convention on the Rights of the Child (1989), which stipulates that a child is any human being under the age of 18.

O.G. Lytvynenko (2023) addressed the issue of word use from the perspective of “minor” and “suspect”. The study formulated a rather controversial conclusion that “child” as an international legal term and “minor” as a national term are synonymous. Referring to foreign sources and analysing modern approaches, it is not possible to accept this author’s approach. The term juveniles used in the Ukrainian criminal (Criminal Code of Ukraine, 2001) and procedural legislation (Criminal Procedural Code of Ukraine, 2012), Civil Code of Ukraine (2003) should correlate with the international legal description, in particular the Declaration on the Rights of the Child (1959), the European Convention on the Rights of the Child (1996), the Convention on the Rights of the Child (1989), the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010), etc. Therefore, it is worthwhile to stick to the use of words such as “child”, “child in contact with the law” and “child in conflict with the law”. This should be the beginning not only of a fragmentary implementation, which is partly devoid of practical content and essence, but also of a departure from the provisions of the Criminal Procedure Code of Ukraine (1960), which lack a view to future positive changes in the behavioural aspects of the child through the formation of common unifying goals, positive socialisation and avoidance of revictimisation, recriminalisation, discrimination and stigmatisation.

Legal and socio-psychological approaches to address juvenile crime and ensure the rights of children. The problem of child delinquency in Ukraine is one of the phenomena that requires not only active public attention and publicity, but also competent proactive actions on the part of lawmakers and law enforcement. Even though, since 2005, official statistics show a significant decrease in the number of convicted children (a particularly sharp jump from 17556 in 2005 to 2406 in 2019 (Statistics, n.d.)), researchers say that the actual rates of deviance among children are not decreasing, only the approaches to accounting and reporting have changed (Syzyonenko, 2021; 2022). Recidivism among children accounts for 12-17% of crimes. As for children who were victims, in 2023, out of the total number of victims of crime, minors accounted for 1.6 thousand against 1.3 thousand in the previous reporting period, including 682 girls (Supreme Court, 2023). Therefore, O.I. Derenko (2023) highlighted that the increase in juvenile delinquency is present and is caused by factors such as the devaluation of values and the loss of moral guidelines. The ongoing war and re-socialisation in the wake of the COVID-19 pandemic have also contributed to this. They do not have a negative impact alone, but in combination with the cultural, social

and economic factors that determine them. Moreover, there are new challenges associated with the large-scale invasion of Ukraine. This concerns the situation with the outflow of children outside Ukraine for various reasons, such as seeking refuge from the war or illegal displacement by the aggressor country, Russia, which is committing against our children, and the exact numbers of forcibly displaced children are unknown (Basysta & Savyuk, 2025). In both cases, the number of Ukrainian children on Ukrainian territory has sharply decreased and is decreasing, which has a direct impact on the relevant statistics of crimes committed against children and by children in Ukraine. However, the deviant behaviour of Ukrainian children is included in crime statistics in other countries. For example, according to data published by the German Ministry of the Interior, “children and adolescents from Ukraine under the age of 18 are suspected in Germany of committing 4,294 crimes in 2022 (including violations of migration law). In 2021, this number was 441” (Sotnikov, 2023). This tenfold increase in crime is attributed to the traumatic experience of Ukrainian children.

Nevertheless, the problem of crime among and against children is not unique to Ukraine. For example, the results of a study by L. Contreras and M.d.C. Cano Lozano (2016) show that, for example, violence by a child against parents is associated with a previous history of violence in the family environment. Exposure to violence at home was significantly correlated with hostile social perceptions of adolescents. In England, Wales, and Australia, despite the existence of a deterrent system, there is still a trend towards the criminalisation of children. Researchers have shown that the trauma of residential care has a direct impact on a child's subsequent tendency to commit crimes: “15% of children appearing before the criminal division of the Children's Court had experienced at least one OOHC placement, with 68% of these children spending some time in residential care. Similar patterns are reported in NSW and South Australia” (Patterson-Young *et al.*, 2024).

Due to their age and psychological characteristics, lack of moral and value orientations, children are more susceptible to repeated criminalisation (Buldakova & Fedchenko, 2019). H. Haas and M. Cusson (2015), after conducting several clinical studies, found that individual theories are not as effective as interdisciplinary ones in predicting, among other things, violent criminal behaviour. These studies argued that, of course, a variety of biographical, medical and social factors influence human behaviour, including that of children, but ultimately, the chosen behavioural pattern depends on individual free will. No one is a hopeless case and is capable of socialising and avoiding criminal behaviour. It is necessary to use this in the process of rehabilitating an offender.

Along with the above, other authors substantiated that the criminalisation of children is also facilitated by the antisocial environment in which children who have already committed a criminal offence find themselves. Bringing a child to criminal responsibility should not be defined as a way to return to normal coexistence within society. Especially regarding sanctions such as restriction or deprivation of liberty. When serving such sentences, children are placed in a complex hierarchical system that can often have influences that are the opposite of correction and proper socialisation. Children who do not have life experience, achievements and established authority are often guided by the desire for self-assertion in the easiest way, and therefore, criminal

authorities become role models (Rohatynska & Voitiuk, 2023). Statistical data confirm, and the authors scientifically substantiate, the above hypotheses, which have been unchanged for decades. For instance, more than 60% of convicts with multiple convictions committed their first offence when they were underage (Zakaliuk, 2017). Tracing the dynamics from 2016 to 2020, then, respectively, by year, 424, 112, 53, 60, 54 children committed crimes again with unspent and unexpunged convictions (Syzyonenko, 2022).

Under such conditions, it is necessary to change approaches from reactive ones, such as detention and prosecution, to proactive ones, such as proper prevention, timely application of correctional programmes by a psychologist, awareness of the legal consequences of illegal behaviour, the ability to conduct dialogue, etc. For this purpose, Ukraine is implementing, among other things, the project “Educational Security Service”, which was announced by the Educational Ombudsman of Ukraine in 2024 (School security police officer..., 2024). No state body alone can actively implement proactive models to prevent the criminalisation of children. This is proved by the experience that has already been summarised by researchers. Cooperation with local governments and non-government organisations is required to create safety models. Such joint project activities are essential for the effectiveness of preventive measures. Regional and local programmes (such as mentoring, school conflict resolution services with peer mediators, etc.) are notable (Moroz, 2008).

I.A. Fedchak (2024) provides an in-depth professional summary of the existing scientific and practical progress in this area and states that Community policing, i.e. a model of law enforcement that is primarily focused on the needs of communities, involves the active involvement of community representatives in preventive activities, including the prevention of deviant behaviour of children. It has also been proven that the Broken Windows prevention model is able to prevent serious crimes by stopping lesser offences, such as alcohol abuse, petty hooliganism, etc. In conclusion, to improve the protection of human and civil rights and freedoms, introduce an effective system for the resocialisation of individuals who have come into conflict with the law, etc., I.A. Fedchak (2024), based on a decade of national experience and long-term international best practices (based on Intelligence-Led Policing (ILP) intelligence analytics; Predictive Policing (PredPol) forecasts, DDACTS data, criminal analysis (Teresina Robbins, 2020), etc.), proposed a Strategy for the Development of Proactive Activities for 2025-2027 in Ukraine.

Concerning personalities, researchers have already summarised that the period of early childhood is the most favourable for early prevention programmes, which should be based on a multifactorial approach: emphasis not on the individual (aggressive behaviour, stress, etc.) but on the unfavourable characteristics of the immediate family and social environment. As a result, children's social competence is improved through programme activities that include parent education, joint parent-child learning combined with home visits and school activities. The goal is to improve the child's social functioning in society (in educational institutions, outside of them, etc.). Programme activities (such as those aimed to replace aggression, form common unifying goals, social development, prevent cruelty and offences, etc.) should be planned in such a way that they are supported by a group that is a reference point for the adolescent (Moroz, 2008; Yushkevych, 2021). The positive impact of

such measures on reducing child crime has been confirmed (Yushkevych, 2021), as illustrated by the experience of countries such as New Zealand (“Family Group Conferences”) (Umbreit, 2000), the United States (“Life Skills for Kids”, “Teen REACH programme”), England and Wales (“Technical and Vocational Education Initiatives”). Similar initiatives to implement programmes have also taken place in Ukraine, such as “School of Life Creativity” (Dnipro and region), “Useful Skills” (Kharkiv, Odessa), as well as life skills development programmes for “at-risk groups” (Kucherenosov, 2015; Yeligulashvili *et al.*, 2021; Andreenkova *et al.*, 2023).

The effectiveness of such programmes should be based on experimental data from studies of intra-group and inter-group relations. Following N.Yu. Volanyuk *et al.* (2019), as early as 1954, M. Sheriff, studying intergroup relations in an American camp for teenagers, was one of the first to formulate the conditions of competition, neutrality or cooperation of intergroup interaction. The individualisation of a child's social environment, their identification with specific social categories, and their commitment to their group social affiliation can, when taken together, positively socialise the child and prevent deviant behaviour. These are all components of the mechanism for changing the situation with juvenile crime, gradually removing children from the sphere of criminalisation and promoting socialisation and proper maturation (Andreyenkova *et al.*, 2018; Andreenkova *et al.*, 2020). It is worth noting that children are the driving force behind this mechanism. Since 2015, the Ministry of Education of Ukraine (MEU) has been implementing the educational programme “Basic Mediator Skills in Educational Institutions and Communities”, and subsequently, based on the programme developed and approved by the MEU, a club called “Peaceful Conflict Resolution” was launched in educational institutions in Ukraine. Basic mediation skills. Positive results in favour of changing the situation with crime among children are stated in the relevant preambles (Andreyenkova *et al.*, 2018). Children strive for healthy relationships with the adult world and constantly signal this. For instance, among the most radical initiatives, in the #teens_rights guide, children themselves compiled ten rights that need to be recognised, such as the right to physical integrity, to emotions, to mistakes and to personal space (Kishinevskiy, 2024).

Following the aforementioned, there are also social deviations that violate the norms accepted in society. Some of them fall under the qualification of the Criminal Code of Ukraine (2001), i.e. children commit criminal offences. The procedural framework for investigations is provided by the Criminal Procedure Code of Ukraine (2012). To ensure that the criminal procedural rights of children are protected, the Criminal Procedure Code of Ukraine (2012) provides for a separate Chapter 38 on criminal proceedings against children. Other articles of the Criminal Procedure Code of Ukraine (2012) also highlight the specifics of criminal proceedings involving children as witnesses or victims. Of course, the legislation, particularly the Criminal Procedure Code of Ukraine (2012), should be at least partially proactive, not reactive. After all, the laws regulate the relevant rights, including those of children. In turn, the Criminal Procedure Code of Ukraine (2012) provides for the procedural rights of children as participants in criminal proceedings (in the procedural status of witnesses, victims, suspects). The Criminal Procedure Code of Ukraine (2012) also contains several procedural features that relate exclusively to

proceedings against children and with their participation, the failure to comply with which results in violations of children's procedural rights and the cancellation of court decisions on appeal and cassation. These violations, which may also be referred to as “conventional” violations, also serve as grounds for review by the ECtHR. Therefore, it is believed that legislation is also part of the mechanism for observing children's rights, and not just a declaration of such rights. This legislation, along with the existing judicial practice, which is a litmus test of the problems it contains, demonstrates the degree of regularity and effectiveness of the declared changes in the situation with child delinquency and the observance (or non-observance) of children's rights.

Notably, the European Court of Human Rights (ECHR) has found that Ukrainian criminal proceedings are subject to violations such as the arbitrary deprivation of liberty of children, as the formal requirements of criminal procedural law are not sufficient to take a child into custody, this measure to ensure the proceedings must be proportionate and required by specific circumstances (Case of Budan v. Ukraine, 2016); the disproportionate nature of the coercive measure chosen and its duration the detention of children is considered a radical measure and is applied for the minimum necessary period (Korneykova v. Ukraine (2012); a violation of Article 5 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (right to liberty and security) was found in the Case of Ichin and others v. Ukraine (2010), etc.

Therefore, the implementation of the tasks of criminal proceedings is reflected in such a theoretical and legal construct as a mechanism for the protection of rights. Usually, such a mechanism is perceived as a set of certain interconnected elements that serve to perform work or achieve a result. Each element of the mechanism should be in a defined place and be responsible for performing its function. Considering the elements of the criminal procedural mechanism for the protection of rights, V.M. Baranyak and O.D. Nesimko (2019) argue that the consequences of criminal proceedings depend primarily on the internally coordinated structure of the relevant bodies, institutions and officials (their personal factor) involved in it. This mechanism primarily pursues a three-pronged goal, namely: restoration of the violated right; inadmissibility of its violation in the future; and development of appropriate guarantees for this. It is advisable to summarise the characteristics that are found in the definitions of researchers and form the mechanism of rights protection, namely: 1) the requirement to have a coherent structure of bodies, officials and institutions; 2) the requirement to protect constitutional human and civil rights.

O.P. Kuchynska (2013) provided a slightly different vision of the mechanism of rights protection from the already analysed ones, which includes: means that facilitate the restoration of rights violated by unlawful actions, as well as the onset of liability of the person who violated the protected right. In other words, the mechanism of rights protection does not focus on the relevant authorities and their structure, but on ways to restore rights and bring to justice those who have violated them.

Thus, in the legal sphere, the mechanism for ensuring rights, including the rights of children in criminal proceedings, functions in a similar way. It consists of several specific interconnected elements, ensuring a fair process and effective protection of rights. These elements may include

legal framework, judiciary and law enforcement agencies, international standards and treaties, oversight and monitoring mechanisms, and legal aid system, among others. Each component has a specific role in the overall mechanism. For example, legislation defines the basic principles and rules that should guide courts and law enforcement agencies. Judges and law enforcement officers, in turn, are responsible for the fair and lawful application of these rules. And monitoring bodies ensure that the rights of minors are respected. Notably, a mechanism for the effective protection of the rights of minors cannot function without proper coordination between its elements. For instance, law enforcement agencies must interact with social services, psychologists and other professionals to ensure comprehensive protection of children in the judicial process. International standards are also a substantial component, with which national legislation needs to be harmonised, and certain steps have already been taken (Letter of the Supreme Court of Ukraine No. 223-66/0/4-17, 2017; Unified standards for specialist training..., 2021). The Criminal Procedure Code of Ukraine (2012) obliges to ensure that pre-trial investigations are conducted by professional investigators, inquirers, and that cases are heard by judges authorised to hear such cases, and that juvenile prosecutors provide procedural guidance in such proceedings and, if there are grounds, ensure that an indictment is sent to court, including in situations where children are victims of their parents' unlawful acts (Criminal Ukraine, 2025). These international standards are contained both in the above-mentioned Declarations and Conventions (Declaration of the Rights of the Child, 1959; Convention on the Rights of the Child, 1989; European Convention on the Rights of the Child, 1996;), as well as in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), "Riyadh Guidelines" (1990), "Beijing Rules" (1985), Vienna Guidelines (1996), Recommendations of the Committee of Ministers of the Council of Europe (2018), Directive of the European Parliament and of the Council No. 2016/800 (2016), Principles of conducting (2021), etc. Researchers such as A. Omarova and S. Vlasenko (2022) proposed an algorithm for such authors' harmonisation with international juvenile justice standards. And M.V. Chervinko (2021) proposed the Ukrainian state of affairs regarding compliance with international standards of such justice, which could be called "child-friendly" in the context of one of the regions. In general, basic comments and recommendations can be found in the UN guidelines (2013) for different countries on justice reform, the development of appropriate legislation that meets international standards in the field of protection of the rights of children in conflict with the law and in contact with the law.

Each element of this mechanism should be clear and coordinated, as this determines how effectively the rights of children in conflict and in contact with the law (witnesses, victims) are protected. If at least one element fails, this can lead to serious violations of children's rights. Therefore, it is necessary not only to create such a mechanism, but also to constantly improve it, analyse it, correct its shortcomings and adapt it to new challenges and changes in society.

The mechanism of rights protection under consideration has an axiological focus on the protection of the rights of children who belong to the subcategory of persons with increased vulnerability. Accordingly, it is inappropriate to apply to them the measures applied to adults, to implement a

general mechanism for the protection of rights within criminal proceedings, and it will not contribute to the achievement of the purpose of such a mechanism. Therefore, it is necessary to adhere to the peculiarities of the proceedings already defined by the current Criminal Procedure Code of Ukraine (2012) and the innovative and reasoned ideas that permeate the doctrinal developments, in particular, V.O. Kaplina *et al.* (2021), suggesting how to interview young and underage children who are witnesses without causing them psychological trauma and avoiding violation of their rights. O. Nadybska *et al.* (2020) noted the issues of why the presence of a children's rights ombudsman is relevant in legislation and in the practice of respecting children's rights, and what arguments from positive foreign experience confirm this satisfaction. The authors conclude that a comparative study of the experience of Norway, Croatia, Chile, and others has established that, in contrast to these countries, Ukraine has two such Children's Rights Ombudsmen: The Ukrainian Parliamentary Commissioner for Human Rights and the Commissioner for Children's Rights under the President of Ukraine. However, the latter's powers embody the activities of the entire structural unit of the Presidential Administration of Ukraine, which threatens the independence and impartiality of the Children's Rights Ombudsman (Nadybska *et al.*, 2020). This is one of the key problems of the Ukrainian child protection mechanism. G.V. Savchenko *et al.* (2020) provided recommendations on how to communicate with children of different age groups in a psychologically and tactically correct manner, as these authors addressed the establishment of psychological contact and the inviolability of children's rights during criminal proceedings. The authors in comprehensive methodological recommendations addressed how these and other recommendations can be applied during investigative (search) activities and the importance of involving specialists such as psychologists, educators, and doctors (Sirenko *et al.*, 2018).

In general, all the above recommendations, as well as others, fall within the scope of "child-friendly criminal proceedings". Following S. Baidawi and R. Ball (2023) and M.V. Chervinko (2023), it is necessary to continue implementing mechanisms for conducting criminal proceedings within the interests of children and with respect for children's rights (child-friendly criminal proceedings). Such criminal proceedings are primarily aimed to create additional guarantees for the observance of children's rights, prevent and avoid revictimisation, re-criminalisation, discrimination and stigmatisation of children. It also addresses the issue of multidisciplinary team of specially trained professionals (Kohut, 2020; Draft Law of Ukraine No. 5617, 2021), such as doctors, teachers, representatives of children's services, psychologists (Order of the Office of the Prosecutor General of the Ministry of Internal Affairs of Ukraine Ministry of Justice of Ukraine Ministry of Social Policy of Ukraine No. 150/445/2077/5/187, 2023; Order of the Ministry of Justice of Ukraine No. 1326/5, 2023), police officers (Order of the Ministry of Internal Affairs of Ukraine No. 855, 2022), investigators, inquirers, prosecutors, judges, social workers, representatives of free legal aid centres (Order of the Ministry of Justice of Ukraine, the Ministry of Internal Affairs of Ukraine, the Prosecutor General's Office No. 493/5/67/32, 2022), etc. in an equipped and adapted room for working with children, such as a "green room" (Methodological recommendations, 2021) and according to

the Barnahus Model (Barnahus Model and its implementation, 2022). All this was discussed at length in 2021 in the draft Law on Child-Friendly Justice (Draft Law of Ukraine No. 5617, 2021).

For the mechanism of child protection to be implemented effectively, the requirements for the structure of the bodies responsible for bringing children to justice and the professionalism of the authorised persons belonging to these bodies must be met. As the research team of L. Forde and U. Kilkelly (2024) rightly notes, it is necessary to involve professional specialists in procedural actions with children. This provides a feeling of safety, which mitigates the negative impact on both the child and the outcome of the proceedings. At the same time, the law enforcement agencies, as correctly emphasised by scholars such as D. Ospanova *et al.* (2024), should be guided by the rights of the child, since the child's future depends on their observance at the time of the proceedings. In turn, the state system as a whole should prioritise the welfare of any child who has received the procedural status of a suspect or accused (Abdullah & Ferdousi, 2024).

Conventional provisions also require that cases involving minors be dealt with more expeditiously, avoiding unjustified delays; the transfer of children to adult courts, if juvenile courts exist; the detention and imprisonment of children (Convention on the Rights of the Child, 1989), except in cases specified by national legislation. In such proceedings, the issue of compliance with the presumption of innocence is particularly acute; the right to use the services of a defence lawyer, who may be officially appointed and whose services are covered by the state; the right to the presence of parents or other legal representatives, who must be informed from the very beginning of the process, etc. One of the constitutional goals enshrined in part 2 of Article 3 of the Constitution of Ukraine (1996) depends on the effectiveness of the mechanism of protection of rights in criminal proceedings: the content and direction of the state's activities are determined by human rights and freedoms and their guarantees. Court practice shows that these rights may not be fully integrated into national legislation, and children's rights may be levelled in the course of criminal proceedings. For example, in the analysed case, the suspect was under the age of 18 but was summoned for questioning. Parents were not informed in advance. They were not informed of the right to have a lawyer present, and one was not appointed. The mother arrived at the place of interrogation but was not allowed to be present during the interrogation (Judgment of the Court of Justice in Case No. C-603/22, 2024).

Thus, legal and socio-psychological means are dominant in the mechanism of changing the situation with child delinquency and ensuring their rights, including criminal procedural rights. It is necessary that legal means are clear and unambiguously contribute to legal certainty, which is problematic due to the use of several evaluative concepts in the articles of the Criminal Procedure Code. However, the question of whether this is harmful remains relevant.

Evaluative concepts in the mechanism of child protection. Researchers such as I.V. Svetlichny (2020) and K.O. Yusupova (2022) argue that in the context of the mechanism for protecting the rights, including those of children, there is a complex problem of using "evaluative concepts". The issue of the essence and positive or negative value of evaluative concepts does not have a single denominator, as in the general theory of law, and the same applies to sectoral

disciplines. There is no unity in the use of the term "evaluative concepts", because scholars call them as follows: evaluative (evaluative, evaluative). The authors argue that the use of the word "evaluative" is unacceptable, as it is a Russian copycat that does not comply with the rules of Ukrainian language formation (Zelenko, 2021). The notion of "concepts" is not always central, but the authors characterise them as signs, categories or terms (Yusupova, 2022).

A separate aspect of the problem under study is that some of the evaluative concepts can reflect not only a few phenomena, but a number of them, and this is not always a negative, even for legislation. For example, K. Orobets (2021) argues that in the Criminal Code of Ukraine (2001), there are cases when it is not possible to formally enshrine all the features of a certain concept or an exhaustive list of manifestations of a phenomenon, and then evaluative concepts can help. Continuing the above position, the study emphasised that this also applies to the Criminal Procedure Code of Ukraine (2012), which will be discussed in more detail in this section later.

To summarise the above definitions, it is possible to state that evaluative concepts are a certain legal gap caused by the impossibility of regulatory and legal regulation of all possible aspects of social relations, which provides for possible variability of actions of authorised bodies and legal consequences, based on the specific circumstances of the case, the characteristics of the person in respect of whom they are used and on whom they have an impact, etc. Evaluative concepts are an integral part of legislation, inextricably linked to the natural concept of law and a departure from legal positivism, the main idea of which is that law is what is provided for in the law.

At the same time, the literature criticises the existence of evaluative concepts, and the authors emphasise that due to such uncertainty of terminology, there are problems of practical application, and there is a difficulty in perceiving and awareness their nature (Zelenko, 2021). There are also problems in the context of the discretion of law enforcement agencies, but in general, it is well known that legal certainty is causally related to evaluative concepts. It is necessary for participants in legal relations, in this case, children and their parents (legal representatives in proceedings), to determine the possible consequences of their actions. It should also be clarified that the components of the European principle of legal certainty are foreseeability, proportionality, enforceability, coherence and consistency, clarity, etc. At the same time, only at first glance, the evaluative concepts seem to contradict this set. Further analysis shows that these concepts should not be opposed, since it is not about their mutual exclusivity or problems with the technique of rulemaking (Vlasenko, 2024), which are present in large numbers, but about the adaptation of legal norms to circumstances, their (norms') flexibility in situations where the legislator is unable to act "comprehensively". Only when and where discretion makes no sense or is not permissible, the need to improve the legal technique of the legislator are relevant, when evaluative concepts are used.

There is also a not unfounded doctrinal belief that, first, the protection of children's rights should be determined by an unambiguous imperative (Goshovska, 2016). However, it is difficult to agree with the author's thesis. After all, the problem of using evaluative concepts lies in the complexity of their law enforcement, granting discretion to the body or

official responsible for certain decisions or actions. A valuation concept can be applied at the discretion of the subject of the valuation, and thus directly or indirectly affect the legal status of the person in respect of whom it is applied. This complexity in the application of valuation concepts, of course, creates risks of legal uncertainty and uneven decisions. On the one hand, evaluative concepts ensure flexible adaptation of legal norms to specific circumstances of a case, which is especially necessary in complex situations where clear rules may be insufficient. On the other hand, however, such an application creates opportunities for abuse, subjectivity, or even violations of the rights of children.

The discretion provided by the evaluative concept enable authorities or officials to make decisions based on a personal assessment of the facts and circumstances. This can be both an advantage and a risk, as the outcome of law enforcement depends on the level of competence, objectivity and impartiality of the subject. In the absence of sufficiently developed criteria or verification mechanisms, such decisions may affect the legal status of a person unfairly or disproportionately. Another problem is that evaluative concepts can be applied differently in similar situations by different actors, leading to inequality in legal protection. This is particularly critical in matters relating to the rights of children and other vulnerable groups, where even minor deviations in interpretation can have a significant impact on a person's fate.

With all of the above, the law cannot be deprived of all evaluative concepts, because it would be wrong to turn it into an instruction containing clear rules of action that can be applied to each practical situation algorithmically. Articles of a legislative act are primarily a way of formalising the rules of law, fixing and consolidating them in a certain document. Nevertheless, legal norms are a much broader and more comprehensive concept than an article of law, but there is a plurality of opinions on the interpretation of relevant legal structures due to different authorial approaches and methodologies used (Pidhorodskyi, 2022; 2024).

Given the regulation of procedural actions defined by the Criminal Procedure Code of Ukraine (2012) and based on the requirements to ensure the rights, freedoms and legitimate interests of the subjects of criminal proceedings, the need to unify approaches to the application of evaluative concepts by authorised subjects is notable. The requirements that should be applied to criminal procedural rules can be partially applied to criminal law rules, namely, their proper fixation, clarity of wording (Panov, 2020). However, regarding formal certainty, the situation is somewhat more complicated and requires a separate argument.

Evaluative concepts are an integral part of the legal framework, as they provide flexibility and incorporates the individual circumstances of each case involving children. However, this flexibility can become a tool for manipulation by both the prosecution and the defence. Therefore, a structured approach to law enforcement is needed, which consists of the consistent use of legal categories that require assessment to ensure effective protection of children's rights in criminal proceedings. This approach includes the following stages (elements): 1) recording of factual circumstances; 2) analysis of the factual circumstances of criminal proceedings; 3) search for a rule of law applicable to a particular case; 4) analysis and interpretation of the rule of law; 5) correlation of the found rule with the basic principles of law enshrined in the Criminal Procedure Code 6) correlation of

the rule of law and the actual circumstances of the case; 7) analysis of the correlation of the rule and the facts in terms of protecting the rights of the child (in the context of Chapter 38 of the Criminal Procedure Code of Ukraine (2012), the Constitution of Ukraine (1996) and international treaties ratified by the Verkhovna Rada of Ukraine).

In applying the proposed approach, several guidelines should be used and considered. The vulnerability of children is the first of these, as children are physically, psychologically and emotionally more vulnerable than adults. They are not always aware of their rights and may not have the capacity or knowledge to protect them. For this reason, they need special treatment and additional guarantees. The psychological development of children should also be addressed, as they have not yet reached full psychological maturity, which affects their ability to assess the consequences of their actions or the circumstances of the proceedings. For this reason, it is necessary to incorporate the child's developmental characteristics in order not to harm mental health. The best interests of the child must also be respected. Ukrainian legislation, as well as international treaties, state that the best interests of children should be paramount in all decisions concerning them. This means that in criminal proceedings, all decisions should be made to minimise the negative impact on the child.

Children in conflict with the law need not only legal protection but also rehabilitation. They need to be guided on the path of correction and social reintegration to enable them to return to normal life. It is also necessary to ensure equal opportunities for children to access justice through appropriate criminal procedural guarantees. The use of excessive coercion is unacceptable. By applying legal hermeneutics, judges must balance social and legal justice so that the best interests of children can be served and reintegrated (Muchtar *et al.*, 2024). The specific international standards discussed above, as well as the European Convention on the Rights of the Child (1996), impose an obligation on states to protect children in all legal contexts. This includes both children in conflict with the law and those in contact with the law (witnesses, victims).

Regarding the legal system of Ukraine, it is worth noting the fact that Ukraine, following Article 1 of the Constitution of Ukraine (1996), is a state governed by the rule of law, where, based on Article 8(1), the principle of the rule of law is recognised and applied. Valuation concepts are part of the law, which should be applied primarily and only with the notion that it is based on law. Accordingly, it cannot be agreed that evaluative concepts should be ousted from the law or replaced by imperative concepts that would not provide freedom of interpretation and law enforcement. The arguments that such "pluralism" in relation to value concepts is exclusively harmful are insufficient (Zelenko, 2021).

Regarding the conciseness and compactness of the criminal procedure law, two opposing positions can be cited: on the one hand, proper detailing of the law is a guarantee of its unambiguous application, and, as a result, it is an easy way to legal certainty. On the other hand, it significantly complicates the criminal procedural legislation, necessitates constant monitoring of compliance of the actual circumstances of the case with the law, creates a pattern that threatens the rights of participants in criminal proceedings, and provokes the lack of need for in-depth intellectual work to establish the truth, identify the causes and conditions that contributed to the commission of a criminal offence and eliminate them.

Analysing Chapter 38 of the Criminal Procedural Code of Ukraine (2012), more than a dozen evaluative concepts can be identified, those contained in Part 2 of Article 484, Paragraphs 1 and 3 of Part 1 of Article 485, Paragraphs 1, 2 and 3 of Part 1 of Article 487, Part 3 of Article 488, and Part 2 of Article 496. An analysis of each of the terms contained in the aforementioned articles and their paragraphs and sections of the Criminal Procedural Code of Ukraine (2012) noted several observations. The wording of Part 2 of Article 484 of the Criminal Procedural Code of Ukraine (2012), “causes the least disruption to the normal life of the minor,” can be interpreted in various ways. From the point of view of a child who leads an antisocial lifestyle, a normal and acceptable way of life can be manifested in the daily use of alcohol or tobacco products, communication with a social group that meets their interests and shares common views. Often, the “usual way of life” does not include attendance at educational institutions, development, socialisation, reading literature, or communication with parents or relatives. These children may lack social responsibility towards their family members or teachers. Any change in the paradigm of their behaviour, even one applied by a law enforcement agency in the framework of criminal proceedings, may be perceived by them as a gross interference with their personal space and the destruction of their usual way of life. From the point of view of the law enforcement agency, the usual way of life can be interpreted as the daily performance of duties related to the need to obtain education, communication with parents and relatives, a circle of friends and acquaintances who do not have a destructive influence.

The phrase “corresponds to the minor’s age and psychological characteristics”, contained in Part 2 of Article 484 of the Criminal Procedural Code of Ukraine (2012), may be perceived by the minor in a manner opposed to how it is viewed by law enforcement agencies, psychologists and educators. In this context, different views may also arise with the parents or guardians of the minor, who consider that drinking alcohol, smoking tobacco products or electronic cigarettes, using profanity or engaging in early sexual activity are normal. The difficulty of defining this evaluative concept is compounded by the fact that, due to rapid technological development, typical ideas about the age and social needs of children are becoming blurred. Two children of the same age may be at completely different levels of development and require radically different conditions. It is worth mentioning the position of H. Marshall (2024), highlighting that children, due to their different way of thinking compared to adults, may not share information about their characteristics for fear of adults or the criminal justice system.

The notion of “measures aimed to avoid negative influence on a minor” is complicated because negative influence on a child can be defined in different ways. For instance, a source of negative influence may be the need to communicate with parents or guardians who lead an antisocial lifestyle, or attendance at an educational institution where, as part of a violation of academic discipline and educational standards, destructive social groups are formed among children who unite based on common illegal ideas and intentions. Depending on the child’s psychological characteristics, the negative impact may be caused by activities that are common to most children of their age.

The “State of health and level of development”. Both characteristics of a child listed in Article 485(1)(1) of the

Criminal Procedure Code of Ukraine (2012) must be determined by relevant specialists. For example, doctors who can conduct a comprehensive expert assessment of the child’s health can identify pathologies or causes that may contribute to a deterioration in health in the future. Developmental assessments can be conducted by professional psychologists and educators who can use educational tests and complexes to identify the main features that characterise a child’s intellectual and emotional development through a conversation with the child. To check the state of health, it is also advisable to involve a physical education specialist who can check the minor for compliance with age-appropriate standards of exercise and load. At the same time, as part of such checks, a minor may try to underestimate or overestimate physical condition and developmental level. Speaking about the level of development of a minor, it is worth referring to modern research in the field of cognitive sciences. Australian scientists M. Tuomi and D. Moritz (2024) highlighted that the age of 14, as the age of criminal liability, often does not correspond to the child’s developmental level, which is influenced by individual characteristics, childhood trauma, and problems in relationships with parents. In turn, the ECHR judgement states that children aged ten and over are mature enough to distinguish right from wrong. At the same time, English law imposes criminal liability on children aged ten to fourteen, provided that at the time of the offence the child understood that behaviour was wrong, not just naughty: “was wrong as distinct from merely naughty” (Case of *V. v. The United Kingdom* (1999)). Ukrainian researchers O.M. Krukevych (2017) and O.G. Lytvynenko (2023) argue that the Criminal Procedure Code of Ukraine (2012) should regulate the obligation for investigators, coroners, and judges to order a comprehensive psychological and psychiatric examination and refer a child for it.

The “Other socio-psychological traits of a person” in the context of the evaluative concepts contained in Article 485(1)(1) of the Criminal Procedure Code of Ukraine (2012) is ambiguous, as it implies a broad possibility for the law enforcement agency to use it at its discretion. It may cover the fact that a child who leads an antisocial lifestyle may show a positive attitude towards animals. Another example is excellent academic performance in the educational process. In such circumstances, criminal justice actors, despite their often-excessive workload (Cherniei & Cherniavskiy, 2019), need to analyse in detail certain aspects of the child’s personality. Such aspects may include, in particular, the child’s neurodiversity, which entails the need to conduct procedural actions in writing without the child’s involvement (Day *et al.*, 2024), if this is permissible under the rules of criminal proceedings.

The problem of interpreting and assessing the “moral and living conditions of the family” quoted from Article 487(1)(1) of the Criminal Procedure Code of Ukraine (2012) may be caused by the fact that a child growing up in conditions sufficient for a proper quality of life, provided with everything necessary for everyday life, may face pressure, moral influence, condemnation and humiliation from parents and guardians. An appropriate, proper assessment in this context requires the competent authorities to go beyond a visual assessment of the family and the child to a deeper and more comprehensive analysis of their living conditions. Analysing the moral and living conditions of the family through the prism of practice in the United States of America, S. Wakefield *et al.* (2024) highlighted that the

criminal behaviour of a child may be influenced by the criminal prosecution of parents or siblings. Economic status is a common factor (Purnamawati *et al.*, 2024).

Within the framework of the interpretation of the evaluative concept contained in paragraph 2 of part 1 of Article 487 of the Criminal Procedure Code of Ukraine (2012), namely “the nature and effectiveness of the educational measures previously applied to a child”, the criminal proceedings authority needs to comprehensively consider and analyse all educational measures applied to the child, such as special measures aimed to restrict the circle of communication, consultations and visits to a psychologist, etc. It is necessary to consider and evaluate all measures applied, the impact of each of them individually and all of them together. In the study of the role of child protection agencies in Australia, U. Athanassiou *et al.* (2024) came to the empirically confirmed conclusion that the risk of criminalisation of a child depends on the fact and timing of the professional start of behavioural correction.

The “Connections and behaviour of a minor outside the home”, which are quoted from Article 487(1)(3) of the Criminal Procedure Code of Ukraine (2012), are difficult to track. First, it is necessary to determine the circle of communication outside the home, to determine who is included in the list of friends and classmates. It is worth analysing the hobbies of the child’s immediate environment and involvement. Children often hide their true hobbies and social circle. Accordingly, the authorities conducting criminal proceedings face a difficult but solvable task.

The “Harm to the interests of a minor”, as provided for in part 3 of Article 488 of the Criminal Procedure Code of Ukraine (2012), can have a rather variable meaning in the context of the fact that the child’s main interest may be to maintain stable social ties with a social circle that has a destructive impact on them, such as joint consumption of alcoholic beverages, cigarette smoking, etc. The state views the interests of the child through the prism of guarantees to protect rights and freedoms, and the need to fulfil the obligations assumed under international agreements and declarations. The state’s goal is to make children a full-fledged part of society. In contrast, investigating authorities and courts commit violations such as holding a minor in pre-trial detention for unreasonable periods of time, as in the case of *Selçuk v. Turkey* (2006), where the ECtHR found a violation of Article 5 § 3 ECHR (1950). There is another side to this issue when it comes to children in contact with the law (witnesses, victims). Their interests can also be harmed by the investigation, especially when it comes to child victims of violence. Procedural rules should protect their testimony, and the adoption of such rules is the duty of the state (Case of *R.B. v. Estonia* (2021)).

The concept of “proper behaviour” contained in Article 493(2) of the Criminal Procedure Code of Ukraine (2012) requires the establishment of the definition of proper and improper behaviour. Subjective mistakes may be made. For instance, behaviour that may be perceived by some as fully compliant with the category of propriety may be interpreted by others as not complying with established norms and rules of morality. Accordingly, there is a need to determine what constitutes proper behaviour.

The notion of “circumstances that may adversely affect”, as provided for in Part 1 of Article 495 of the Criminal Procedure Code of Ukraine (2012), is inextricably linked to

the specifics of criminal proceedings against a child. This is determined by the fact that criminal proceedings in themselves are a circumstance that causes stress in an incompletely formed personality associated with the use of coercion. Accordingly, this evaluative concept serves as a kind of guideline and is used to limit possible negative consequences caused by the actions of law enforcement agencies.

The concept of “the most appropriate measures in relation to the accused for the purpose of re-education” in Article 496(2) of the Criminal Procedure Code of Ukraine (2012) emphasises that when choosing from possible measures that will contribute to the re-education of a child, it is necessary to proceed from the fact that they are the most appropriate. The requirement of appropriateness means that the educational measures applied must correspond to the offender’s personality, moral and psychological qualities and the need for influence. In this regard, there are violations of the ECHR (1950) already established by the ECtHR, such as the lack of educational influence on children during their detention in a reception centre for children, which restricted their right to liberty and security of person (Judgment of the European Court of Human Rights in Cases Nos. 28189/04 and 28192/04, 2010).

The analysis of the above evaluative concepts concluded that they create an wide variety of possible further actions in criminal proceedings. This raises the issue of professionalism and the maturity of the law enforcement officer. A mechanical and algorithmic application of the provisions of the law is unacceptable. A balanced intellectual assessment of each situation is relevant. It may require the assistance of various specialists, professionals, and experts. In general, all of the above is an obstacle to a template approach of law enforcement, which is one of the keys to respecting the rights of children who are both in conflict with the law and in contact with it (witnesses, victims). The use of restorative approaches (Svetlichny, 2020) and the socialisation of children in conflict with the law are prospects for real redirection of deviant behaviour and, as a result, a real reduction in crime.

Conclusions

The study stated that the term “juveniles”, which migrated from the Criminal Procedure Code of 1960 to the current Criminal Procedure Code of Ukraine, is not consistent with the accepted approaches of age psychology or with the provisions of the Convention on the Rights of the Child. It is proven that the use of the words “child”, “child in contact with the law” and “child in conflict with the law” is correct for this study and for national legislation. Using a legal comparative approach, the author establishes that the problem of juvenile delinquency is not exclusively Ukrainian. It is proven that due to the lack of moral and value orientations, children are more exposed to both criminalisation and its repeated cycle. The applied problem analysis confirmed the belief that it is necessary to change approaches from reactive ones, such as detention and prosecution, to proactive ones, such as proper prevention, timely application of correctional programmes by a psychologist, etc. The methods of legal hermeneutics and the terminological method were used to determine the place and significance of evaluative concepts in the mechanism of observance of children’s rights.

The study substantiated the belief that the realisation of the tasks of criminal proceedings is manifested in such a theoretical and legal construct as a mechanism for the

protection of rights, including those of children. The study stated that, among other things, legislation is a component of this mechanism. The author identifies all other components of this mechanism and proves that they should not exist and operate separately. Law enforcement agencies should cooperate with social services, psychologists and other professionals to ensure comprehensive protection of the child in the judicial process. The study proved that international standards of juvenile justice are also a substantial component, to which national legislation still needs to be harmonised (investigations are already conducted by professional investigators, inquirers, and cases are considered by judges authorised to hear such cases; procedural guidance and support of prosecution by juvenile prosecutors is provided in these proceedings; the Barnahus model is being implemented).

The study stated a complex problem of the application of evaluative concepts in the context of the mechanism of protection of the rights of children in conflict with the law. The study proved that the use of evaluative concepts by the legislator involves the use of intellectual resources and protects against a template approach of law enforcement, which is one of the effective guarantees of children's rights. At the same time, due to the complexity of applying evaluative concepts, of course, there are risks of legal uncertainty and uneven decisions, which are a prerequisite for abuse. In order to prevent them, the author argues that certain evaluative concepts from Chapter 38 of the current Criminal Procedure Code of Ukraine should be interpreted. The conclusions from

the ECHR judgments and modern foreign doctrinal developments are used as a guide, among which the proposal to conduct procedural actions in writing without involving a child when establishing neurodiversity deserves relevance. At the end of the analysis of evaluative concepts from Chapter 38 of the current Criminal Procedure Code of Ukraine, the study noted about thirteen legislative formulations which are not unambiguous for perception. As a result, the study argued that the use of evaluative concepts where discretion is not appropriate or permissible is an indicator of the need to improve the legislator's legal technique.

Prospects for further research are to develop recommendations for the continued implementation of international standards of child-friendly criminal proceedings, and to increase the diversity of proactive practices to reduce the level of criminalisation of children and their involvement in criminal activities. The goal is a theoretical and legal construct called "Effective mechanism for the protection of children's rights", in which all its elements interact precisely and which can adapt to new challenges and changes in society.

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Правові та соціально-психологічні засоби для зміни ситуації зі злочинністю дітей та забезпечення їх прав у перебігу кримінального провадження

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Анотація. Дослідження присвячене актуальній дилемі, адже показники злочинності дітей не зменшуються, а традиційні реактивні методи вечерпують свою дієвість. З однієї сторони необхідні проактивні заходи на випередження криміналізації дітей, а з іншої – відсутній комплексний механізм із дотримання прав дітей, які вже перебувають у конфлікті із законом, бо наявний дає свої тріщини. Метою дослідження був критичний аналіз оцінних понять щодо ризиків порушення прав дітей, якими перенасичений Розділ 38 Кримінального процесуального кодексу України. Для цього, в межах компаративістського підходу було використано метод case study, догматичний, юридичної герменевтики та термінологічний методи. Встановлено, що вживання в українському законодавстві терміну «неповнолітній» не відповідає конвенційним положенням. Підтверджено, що шлях повернення дитини, яка перебуває у конфлікті із законом, до нормального співіснування в рамках соціуму, не пролягає через застосування ізоляційних заходів. Доведено, що жодна інституція не здатна самотужки впровадити проактивні моделі задля упередження криміналізації дітей. Лише спільна проєктна діяльність (програми заміщення агресії, формування спільних об'єднаних цілей, соціального розвитку, профілактики правопорушень) та мультидисциплінарна командна робота (на кшталт моделі «Барнахус»), які виходитимуть із експериментальних даних досліджень внутрішньо-групових та міжгрупових відносин, матимуть успіх. Аргументовано, що у теоретико-правовій конструкції, як от механізм захисту прав дитини, оцінні поняття, які використовуються у кримінальному процесуальному законодавстві, у рівній мірі несуть, як ризики, так і поступ. При цьому є шкідливим позбавити закон оцінних понять. Обґрунтовано, що радше варто удосконалювати фаховість ювенальних слідчих, дізнавачів, прокурорів, суддів, для яких не складатиме проблеми відхід від шаблонного підходу у правозастосуванні та перехід на щабель власної об'єктивної оцінки фактів і обставин, послуговуючись унормованими оцінними поняттями. Практична цінність роботи полягає у можливості для правозастосовувачів поглянути на проблему оцінних понять не з негативної сторони, а у складі механізму забезпечення прав дітей у перебігу кримінального провадження

Ключові слова: механізм захисту прав дітей; досудове розслідування та судовий розгляд; повторна криміналізація; стигматизація; дискримінація; правова визначеність; оцінні поняття