

## **CRIMINAL ANALYSIS OF THE LEGAL SUPPORT OF JUVENILE PREVENTION: NATIONAL, INTERNATIONAL AND FOREIGN DIMENSIONS**

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### **INTRODUCTION**

The formation of approaches to the prevention of juvenile delinquency (juvenile prevention) is in the activity's sphere of the state, and its social institutes, aimed at creating favorable environment for children, in which decent development and protection of their rights is ensured by observing the principles of democracy, equality, social justice, considering moral principles and traditional values of the Ukrainian society aimed at strengthening the family and moral health of children in Ukraine.

The attitude and reaction of the state and society to the criminally active behavior of minors and offenses since ancient times has been distinguished by a special approach. The main argument for the difference between legislative norms and peculiarities of the preventive practice regarding minors was the need to protect a child from negative consequences by using general methods of punishment, which, unlike educational measures, are more strict but less effective.

The necessity to reform the system, methods and means on preventing juvenile delinquency in Ukraine was put on the agenda already when, at the end of the 80s of the 20<sup>th</sup> century, democratic transformations in all spheres of life became irreversible in the Soviet society. In the course of lively discussions among lawyers, sociologists, political scientists, and among the general public, ideas about the role of juvenile prevention, the need to change the vectors from a predominantly punitive direction to the human rights' protection, and the restorative system have gradually changed.

After declaring the Ukraine's independence, a course to build a democratic country was adopted, which is designed to establish such a character of the government that will allow people's power to develop freely, stimulate the self-organization of economic, political, and other forces of people, and create the conditions for historical and cultural development of the country. Therefore, a new democratic system of juvenile prevention is being built and developed on the grounds of democratic transformations.

Today, the attempts to introduce a more human system of justice for minors who have committed crimes, improve the system of preventive and corrective measures aimed at stabilizing the crime rate, create a safe environment and reduce criminal offenses committed by minors do not stop.

At the same time, Ukraine can unite with other countries in the field of juvenile justice by providing an appropriate program for international cooperation.

The international policy of the treatment of minors who have committed crimes covers ensuring compliance with the rights of minors in the administration of justice to them, preferential use of measures of the educational, rather than criminal, legal nature, application of alternative measures to deprivation of liberty, imposition of punishment in the form of deprivation of liberty as a last resort and for a short period of time, refusal to impose punishment on minors in the form of the death penalty or life imprisonment.

Adherence to international norms and principles in the field of the children's rights protection requires appropriate political will and readiness to update national legislation, reform social institutions, which ensure stable development of the state, modernization of the crime prevention system and the system of the minors' rights protection in the field of criminal justice.

The main provisions laid down in international legal rules and principles make it possible to form a national system on protecting interests of the child, taking into account relevant international approaches to humane, constructive and adequate response to juvenile delinquency.

### **1. Peculiarities and trends of the indicators of juvenile delinquency**

The change of eras, laws, transformation of power structures, does not change the essence of the phenomenon of juvenile delinquency, but only modifies its manifestations, singles out the features and corresponding trends under the influence of political, legal, customary and economic conditions, according to which the attitude towards this phenomenon has also changed. Juvenile delinquency, as a social-legal phenomenon, developed cyclically, according to the law of wave-like changes, and its manifestations had different intensity, indicators, trends, and, accordingly, the attitude and reaction of the state and society in different historical eras.

The study of juvenile delinquency should take place in relation to the effectiveness and reality of the functioning of social institutions at the regional level, which create the conditions for socially-acceptable development of a minor's personality and form motivation for its acceptable behavior. Peculiarities of the criminal behavior of minors are determined by social environment, household environment, economic factors, the level of culture, the indicator of religious consciousness and political factors, which make it possible to identify and predict uneven state and dynamics of juvenile delinquency in relevant areas.

The level of juvenile delinquency during reforming social institutions of society, state formation and European integration processes is a reflection of

positive and negative trends in the development of social institutions, which should be taken into account when forming and transforming the system of crime prevention and counteraction in general and juveniles in particular. After all, recently there have been significant changes in trends and dynamics of juvenile delinquency as a result of political, economic, ideological and other processes taking place in the Ukrainian society.

The peculiarities of juvenile delinquency are directly related to the status of a minor, which differs from the status of an adult. The feature of the status of a minor has international recognition and appropriate consolidation in the national legislation in accordance with the functioning of social institutions of society.

In Ukraine, during last decade, there has been a steady trend towards a gradual decrease in the number of crimes committed by minors and, accordingly, the number of persons who committed them and are convinced of it. The State Statistics data indicate a gradual decrease in the number of population, correspondingly, the number of people who commit criminal offenses or are convicted of them, but this decrease is not only due to the decrease in the crime level. The socio-political and economic crisis of 2014, a radical reform of the law enforcement system, the lack of clear control over migration processes and proper systematic state support for forced migrants, only deepened the problem in maintaining the rule of law.

In addition, one should take into account the demographic decline, death rate and, accordingly, the number of minors that, according to official statistics, naturally affects the decline in the level of juvenile crime. Thus, the dynamic decline in the number of detected minors who committed criminal offenses in 2020 compared to 2002 is 81,2 %, and 2010 – 64,5 %, and by the previous year – 15 %. At the same time, the decline of population aged 14–17 in 2021 till 2002 is 54,9 %, till 2010 – 46,5 %, and by the previous year – 11,3 %. Over the past year, the dynamic decline in the number of permanently resident registered population in Ukraine aged 14–17 is twice as high as the number of identified minors aged 14–17 who committed criminal offenses in 2020.

The relative stability of the proportion of juvenile delinquents in relation to overall crime can be considered a feature of juvenile delinquency, which is a persistent trend. The indicator of the number of minors who commit criminal offenses in the general structure of crime is 2,95 % in 2020 (in 2019, this indicator made 3,18 %). As well, the indicator of the criminal activity of the 16–17 age group remains unchanged. Thus, according to the Prosecutor General Office, in 2020 the number of crimes who committed criminal offenses (criminal misdemeanors, crimes) under the age of 14 was 193 persons (6,4 %), 14–15 years old – 899 persons (29,8 %), aged 16–17 – 1921 persons (63,8 %). At the same time, it is necessary to note the difference in distinguishing the age groups of persons who have committed

criminal offenses and convicted persons. Thus, in the Report of the State Judicial Administration of Ukraine on the composition of convicts, 7 age categories are defined, namely: 14–16 years old, 16–18 years old, 18–25 years old, 25–30 years old, 30–50 years old, 50–65 years old, 65 years old and older. According to the General Prosecutor Office of Ukraine, the age structure of persons who have committed criminal offenses is divided into 4 types of persons: till 14 years old, 14–15 years old, 16–17 years old, 18–28 years old, 29–39 years old, 40–54 years old, 55–59 years old, 60 years old and older.

The rate of committing serious crimes by minors is serious. In 2020, the number of minors who committed particularly serious crimes was 3,5 %, serious crimes – 84,2 %, and not serious crimes – 12,3 %<sup>1</sup>.

Despite stable showing of the absolute level of juvenile delinquency, certain types of juvenile offenses and various types of deviant deviations in the juvenile environment have a threatening tendency to spread. Thus, during the meeting on June 1, 2021, I. Venediktova noted that since the beginning of 2021, the number of crimes in the field of illegal drug trafficking, which are committed by minors, has increased by 30 %, compared to the same period last year. Also, she drew attention to the complicity of adults and minors in committing criminal offenses, of which only the minors were responsible for 2/3 of the recorded acts<sup>2</sup>.

The analysis of structural indicators of the main statistical array and the location of the quantitative indicators of minors who have committed separate criminal offenses (criminal misdemeanors and crimes) allows us to determine the following. In prevalence indicators of the criminal offenses committed by minors, the ratio stability of individual elements is observed. Criminal offenses against property traditionally predominate, which have been ranked first for decades. Thus, in 2020, 2080 minors were found to have committed criminal misdemeanors and property crimes (69 % in the overall structure of juvenile crime, of which theft is 54,4 %). Next is illegal possession of a vehicle, Art. 289 of the Criminal Code of Ukraine – 272 minors (9 %) were caught. The third rank in this structure is occupied by the following offenses: hooliganism, Art. 296 of the Criminal Code of Ukraine, 106 minors were identified with the 3,5 % indicator, and criminal offenses in the field of illegal drug trafficking, 100 persons were identified, that makes 3,3 %. Intentionally bodily harm of moderate severity, Art. 122 of the Criminal Code of Ukraine – 72 persons were identified, which makes

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<sup>1</sup> Офіційний сайт Офісу Генерального прокурора України. URL: <https://old.gp.gov.ua/ua/statinfo.html>

<sup>2</sup> Нарада керівників правоохоронних органів та інших державних органів. URL: <https://strana.ua/news/336330-seksualnoe-nasilie-nad-detmi-v-ukraine-i-vovlechenie-v-prestupnost-dannye-za-2021-hod.html>

2,6 %<sup>3</sup>. The last rank is occupied by socially dangerous acts with the same indicators: intentional murders, Art. 115 of the Criminal Code of Ukraine – 21 (0,7 %) persons were identified, and rape, Art. 152 of the Criminal Code of Ukraine – 21 (0,7 %) persons were identified.

The risk that an adolescent will become involved in violent offending and/or be a victim of violence varies based on a variety of factors, including individual characteristics, family characteristics, peer and school influences, neighborhood environment, and daily activities<sup>4</sup>.

The juvenile justice field has spent much time and energy attempting to understand the causes of delinquency. Different theoretical models describe the relationship between variables and outcomes. Researchers have concluded that there is no single path to delinquency and note that the presence of several risk factors often increases a youth's chance of offending. Studies also point to the interaction of risk factors, the multiplicative effect when several risk factors are present, and how certain protective factors may work to offset risk factors<sup>5</sup>.

The peculiarity of juvenile delinquency with a relatively high percentage of self-interested crimes requires further clarification. *First*, minors' socialization is a process of the formation of the needs and interests, assimilation by minors of a certain system of social-legal norms, values and knowledge that enable the child to act as a full-fledged member of society. Socialization process is directly related to child's needs to identify himself and learn the values that correspond to society. The higher the level of functioning of social institutions of society, which form the conditions for socially acceptable development of the child, the lower the level of deformation of their development, and, correspondingly, the destructive activity of teenagers. The needs and interests of juvenile delinquents are mainly material in nature, due to insufficient formation of the value system regarding the acceptable satisfaction of the child's needs.

*Second*, the minors who have committed the crime, more than adults, are under strong influence of the criminologic factor of material independence. That is why there is a rather low rate of the imposition of this type of punishment on minors, such as a fine. And this is explained not only by the

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<sup>3</sup> Звіт про неповнолітніх засуджених (Форма 8 (річна) : затверджена Наказом Державної судової адміністрації України від 22.08.2007 № 88 за погодженням з Держкомстатом України та Верховним Судом України). URL: <http://www.court.gov.ua>

<sup>4</sup> Characteristics and Patterns of At-Risk Juveniles and Factors That Contribute to Violence Committed by or against Juveniles. *School Intervention Report*, v. 13, n. 1 Fall 1999. URL: <https://eric.ed.gov/?id=ED436610>

<sup>5</sup> Michael Shader. Risk Factors for Delinquency: An Overview. URL: [https://www.researchgate.net/publication/253512065\\_Risk\\_Factors\\_for\\_Delinquency\\_An\\_Overview](https://www.researchgate.net/publication/253512065_Risk_Factors_for_Delinquency_An_Overview)

fact that it can be assigned only from the age of 15, but also by the fact that it assigned to a person who has independent earnings or a source of income.

A peculiarity of juvenile delinquency can be considered to be a *small variety of the types of crimes* committed by minors in the total array of crimes for which criminal responsibility can be imposed (49 crimes for which criminal responsibility arises from the age of 14 and over one hundred crimes from the age of 16).

Mainly, the structure of juvenile delinquency (the main statistical array) includes more than a dozen types of crimes, the share of which is almost 92 %, namely: violent crimes, selfish crimes, hooliganism, rape, crimes in the field of illegal drug trafficking, illegal vehicle.

Another peculiarity of juvenile delinquency is its *group nature*. According to official data, every third to fifth crime is committed by minors in a group. This indicator does not change for a long period of time.

The group nature of offenses is explained as follows. Increased conflict, especially in relationships with adults, which often manifests itself in adolescence, is caused not only by organic changes, but also by the fact that the entire system of relationships of a teenager with an adult and peers changes. Trying to get rid of the influence of adults, a teenager becomes critical of his parents and teachers, begins to react sharply to their shortcomings and remarks about himself. Thus, active process of learning the skills of social behavior continues.

The teenager's need for communication and self-affirmation must be realized in a favorable environment. If, for some reason, this does not happen, self-assertion is carried out in informal teenage groups, street and yard companies in the form of antisocial manifestations (drinking, smoking, obscene swearing, vandalism, hooliganism), and can become a dangerous factor, leading to illegal, including criminal behavior.

Sources of the group crime are carelessness of the members of street companies, which leaders are more experienced self-confident teenagers of adult offenders. In this situation, the desire of minors to collectivity transforms into dangerous group egoism, inability and unwillingness to consciously weigh and evaluate private group norms and values in the light of more general social and moral criteria, irresponsible and superior attitude towards other members of society. Psychologists claim that "obeying the laws of the group, teenagers commit incredibly violent crimes to, as they think, "restore the connection between their own self and the group, which is vital for them<sup>6</sup>.

The desire of minors to join groups is explained by the need for protection, communication, understanding and the opportunity to assert

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<sup>6</sup> Кон И. С. Психология юношеского возраста: Проблемы формирования личности : учеб. пособ. для пед. ин-тов / И. С. Кон. М. : Просвещение, 1979. 175 с.

themselves. Along with meeting the above-mentioned life needs of minors within the criminal environment, the adaptation to life in the modern world is formed by planning a perspective strategy for the future. One should agree with the opinion of the British researcher S. A. Stevenson, who, based on the results of interviews with homeless minors (only children who understand Russian language were interviewed, that is, exclusively migrants, refugees from Central Asia, Moldova, Transcaucasia, etc.) notes that “for groups of teenagers, a criminal career stands out one of the reliable and affordable ways of further life”. Criminal environment attracts teenagers both with the opportunity to get rich, get dangerous sensations and adventures, and with the presence of the established society with its own rules and order<sup>7</sup>.

A peculiarity of juvenile delinquency in recent years can be considered its *virtualization*. Minors spend a lot of time playing computer games, sometimes uncontrollably using Internet resources, including those that are not recommended for viewing and use by minors. Excessive cruelty, visualization of the scenes of cruelty and violent behavior online provokes similar behavior in reality. Thus, expressing themselves in computer language, minors transfer the seen and learned information and images from the “long-term” memory to the “operational” memory, assuming their readiness for its immediate use. Along with this, some minors, who previously found solace in aggressive behavior and hooligan actions in real life, are now compensating for aggression in the virtual world.

The UNICEF estimates that a third of Internet users worldwide are children, with the proportion of Internet users likely to be higher in low-income countries where the Internet is rapidly penetrating all spheres of social life<sup>8</sup>.

Indeed, the modern generation of children and teenagers is surrounded by a digital environment, and social networks occupy a special place among the most visited Internet resources by teenagers. Today, traditional media, such as television, radio, and periodicals have been supplemented by new digital technologies that facilitate interactive and social engagement, and provide children and adolescents with instant access to entertainment, information and knowledge. Traditional media, also called broadcast media, were generally created outside of the established source of production, such as a film studio, television network, or newsroom, and made available to individuals or a wider audience for passive viewing or reading. In contrast,

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<sup>7</sup> Стивенсон С. А. Уличные дети и теневые городские сообщества. URL: <http://kiev-security.org.ua/box/13/140.shtml>

<sup>8</sup> Byrne, J., D. Kardefelt-Winther, S. Livingstone, and M. Stoilova. 2016. *Global Kids Online Research Synthesis, 2015–2016*. Florence: UNICEF Office of Research – Innocenti and London School of Economics and Political Science. URL: <https://www.unicef-irc.org/publications/869/>

new digital media, which includes social and interactive media, is a form in which the users can both consume and actively create content. For young people today, this emerging integration of passive viewing and interactive media is seamless and natural; distinctions and boundaries between traditional/linguistic and interactive/social media have become blurred or indiscernible.

It should be noted that a decisive role in the protection of the right of children and adolescents to information is played by international norms, namely the Convention on the Child's Rights, which contains separate articles on the protection of the rights of children and adolescents to information. In particular, in Article 13(1) of this Convention, the child's right to freedom of expression includes the freedom to seek, receive and impart information and ideas of any kind regardless of frontiers in oral, written or printed form, in the form of works of art, or by any other means at the choice of the child. The exercise of this right may be subject to some restrictions, but they can only be those restrictions that are provided by law and are required to: a) respect the rights and reputation of other persons; or b) protect state security, public order, or health or morals of the population (Art. 13(1), 13(2)<sup>9</sup>.

The issues of ensuring the rights of minors and youth in the creation, preparation and distribution of television and radio programs is also regulated by a number of domestic legislative acts. In particular, these are a Profile Law "On Television and Radio Broadcasting" (Article 62), the Law of Ukraine "On Protection of Public Moral", the Law of Ukraine "On Protection of Childhood". Provisions of the Civil Code of Ukraine, the Law of Ukraine "On Advertising" regarding the need of the person's consent to photograph, film, television or videotape, and the use of their names are applied, including children. Also, Article 11 of the Law of Ukraine "On Information" states that collection, storage, use and distribution of confidential information about a person without its consent is possible only in the interests of the national security, economic well-being and protection of human rights. The Ministry of Social Policy notes that the consent of children's legal representatives to the disclosure of personal information or children's participation in filming is often nominal and violates children's rights, in particular to the protection of confidential information. There are quite a few cases when the mother of a child -victim of sexual violence gives her consent to the child's participation in the filming of a television program in which the circumstances of the case are

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<sup>9</sup> Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entered into force on 2 September 1990, in accordance with article 49. URL: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

made public, the child's face is highlighted, while trials or investigations are ongoing in judicial authorities, and the release of such a program may violate the child's right to justice.

Article 9 of the Law of Ukraine "On the Protection of Childhood" stipulates that every child has the right to freely express his personal opinion, form his own views, develop his own social activity, and receive information appropriate to his age. This right includes the freedom to seek, receive, use, disseminate and preserve information in oral, written or other form, by means of works of art, literature, mass media, communication (computer, telephone network, etc.) or other means of the child's choice. It is provided with the access to information and materials from various national and international sources, especially those that contribute to healthy physical and mental development, social, spiritual, and moral well-being<sup>10</sup>.

Article 156-3 of the Code of Ukraine on Administrative Offenses provides for administrative liability for violation of the requirements established by law regarding the prohibition of advertising and sponsorship of tobacco products (Art. 156-3)<sup>11</sup>. And the criminal Code of Ukraine establishes criminal responsibility for violating the secrecy of correspondence, telephone conversations, telegraphic or other correspondence transmitted by communication means via a computer, as well as for illegal collection, storage, use, destruction, distribution of confidential information about a person or illegal change of such information (Art.163, Art.182)<sup>12</sup>.

However, at this stage of the society development, there is an obvious problem related to the regulation of the spread of harmful information on the Internet. National legislation related to the Internet is still developing.

The growth of sexual violence against children, including the actualization of child's pornography, is the problem that has become acute in recent years in Ukraine, due to the deformation of sexual education, pseudo-democracy in sexual relations. I. Venedykova (in Report dated 01.06.21), referring to the data from the Internet Watch Foundation, emphasized that Ukraine is one of top three suppliers of child's pornography. According to the General Prosecutor Office, the number of offenses against sexual freedom and integrity increased by 21 % in 2021. Of these, every fourth case is sexual violence against a child, in 60 % of cases, the victims are children younger than 14 years old.

All of the above requires the formation of modern effective approaches to the system of combating offenses and protecting the rights of a child. In

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<sup>10</sup> Про охорону дитинства : Закон України від 26 квітня 2001 р. URL: <https://zakon.rada.gov.ua/laws/show/2402-14#Text>

<sup>11</sup> Кодекс України про адміністративні правопорушення від 07.12.1984 р. URL: <https://zakon.rada.gov.ua/laws/show/80731-10#Text>

<sup>12</sup> Кримінальний кодекс України від 5.04.2001 р. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

developed countries, the task of prevention and protection of children's rights is entrusted to a special system of state and non-state bodies – juvenile justice, which is the most effective mechanism for counteracting the specified phenomena in the juvenile environment.

## **2. Legal regulation in the juvenile prevention field at the national level**

Let's analyze a number of normative legal acts and structural changes that form the basis of the state policy in the juvenile prevention field.

*The Nationwide Program “National Action Plan for the Implementation of the UN Convention on the Rights of the Child for the Period up to 2016”* (2009) serves as the legal basis for ensuring the optimal functioning of the system of the child's rights protection in Ukraine. The prevention of children's offenses, a significant reduction in the number of crimes committed by children, bringing the conditions of their detention in special institutions for children in accordance with the requirements of international standards are highlighted as a separate direction. The adoption of the State Social Program *“National Action Plan for the Implementation of the UN Convention on the Rights of the Child”* for the period up to 2021 became a logical continuation of the juvenile policy<sup>13</sup>. Within the program, gradual formation of the criminal justice system and the implementation of fair and responsible justice for minors continued.

Modern juvenile justice is a complex system that encompasses various spheres of the legal activity aimed at protecting the rights of children: a special circle of persons (children and young people) who are affected by this system; special measures of social and legal influence on them, as well as the measures of criminal and legal response; special procedural norms regulating the process of proceedings in the cases involving children and youth; specialized juvenile courts; institutions for execution of punishments and non-punitive coercive measures; state institutions and institutions of local self-government, as well as public organizations that carry out prevention of juvenile delinquency, contribute to the protection of children's rights and reintegration of children who are in conflict with the law; restorative procedures.

Today, the search for new approaches to juvenile justice and sentencing of minors is due to the crisis of the penal system. Juvenile justice requires new, effective and socially acceptable form of the influence on juvenile delinquency. That is why the doctrine of restorative justice is an alternative to punitive justice for juveniles. The priority is not punishment of

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<sup>13</sup> Постанова Кабінету Міністрів України. Від від 30 травня 2018 р. № 45. Державної соціальної програми «Національний план дій щодо реалізації Конвенції ООН про права дитини» на період до 2021 року URL: <https://zakon.rada.gov.ua/laws/show/453-2018-%D0%BF#Text>

application of criminal-legal measures against the minor, but the involvement in the process of social rehabilitation and corrective measures of influence.

According to the Ministry of Justice, since 2019, the pilot project "Rehabilitation Program for Minors who are Suspected of Committing a Crime" has been implemented in Ukraine. As practice shows, it is a successful completion of the restorative justice for minors that is a real basis for releasing them from responsibility. At the end of 2020, a court decision was made to release 84 minors from criminal responsibility. The program gives the teenagers an opportunity to be separated from their parents, relatives and loved ones, not to fall under the negative influence of persons serving sentences in prisons, continue studying in schools and other educational institutions of all levels, play sports, work and strive to become conscious and responsible citizens of Ukraine.

The UN supports the development of specialised systems for managing children in conflict with the law.

Programs on restorative justice are an effective component of juvenile justice, i.e.: they have an educational impact on a juvenile delinquent, prevention of repeated offenses, and promotion of social adaptation and reintegration of such juveniles into society.

The basic principle of restorative justice is that it promotes the concepts of reparation and rehabilitation over those of retribution and punishment. Restorative justice aims to resolve conflict and repair harm in a number of situations by encouraging those who have caused harm to acknowledge the impact of what they have done and give them an opportunity to make reparations. It also offers those who have been the victim of harm the opportunity to have harm acknowledged and amends made.

Changes in socio-political, economic and ideological conditions of the society's life in Ukraine, as well as the adoption of a number of normative acts, created the prerequisites for reforming the criminal justice system in the direction of further democratization, humanization, strengthening the protection of the rights and interests of the child in accordance with the requirements of international agreements and obligations that Ukraine took upon itself in connection with their acceptance.

In the *Concept of Criminal Justice Reform of Ukraine*<sup>14</sup> it is emphasized the need to develop special procedures of juvenile justice, which will allow taking account the rights and interests of minors, and criminal proceedings in which the accused is a minor, must be considered by a court collectively,

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<sup>14</sup> Указ Президента України Про рішення Ради національної безпеки і оборони України від 15 лютого 2008 року «Про хід реформування системи кримінальної юстиції та правоохоронних органів». URL: <https://zakon.rada.gov.ua/laws/show/311/2008#Text>

with the participation of people's assessors or juries. The goal of reforming the criminal justice system is to build it according to the principles of humanizing legislation in the criminal justice sphere, the task is to determine the content of the directions on reforming the criminal justice system, such as the humanization of criminal legislation, creation of the conditions to humanize the execution of criminal punishments sphere, development of the probation institute, and expansion of the scope of restorative procedures and reconciliation.

With the Concept adoption, the main measures were aimed at strengthening the responsibility of the family, society and state for education and development (socialization) of children, ensuring the conditions for the implementation of rights and freedoms of children who have committed offenses (crimes), by increasing the level of their legal and social protection, reducing the level of juvenile crime. The basic measures for the development of criminal justice for minors are aimed at: 1) improvement of preventive and preventative work; 2) during the administration of justice for minors who committed a crime, ensuring the observance of their rights, taking into account the age, social-psychological, psychological and other development features; 3) promoting the development of restorative justice programs for minors; 4) creating an effective system of the minors' rehabilitation for the purpose of their re-education and re-socialization.

Experts usually interpret restorative justice as a process in which all parties – participants in a specific offense – meet to collectively resolve the issue of what to do with the consequences of the offense and what conclusions should be drawn for the future<sup>15</sup>.

*UN Resolution of Economic and Social Council 2002/12* The main principles of the application of restorative justice programs in criminal justice<sup>16</sup> is a response to the discussion at the international level of the issues of restorative justice during the 10<sup>th</sup> UN Congress on Crime Prevention and Treatment of Offenders within the agenda "Offenders and Victims: Accountability and Justice in the Administration of Justice", and in accordance with the UN General Assembly Resolution 56/261 of January 31, 2002 "Action Plans for the Implementation of the Venice Declaration on Crime and Justice: Responses to Challenges of the 21<sup>st</sup> Century".

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<sup>15</sup> Marshall T. Restorative Justice: an overview. L. : Home Office Research Development and Statistics Directorate, 1999. 36 p. URL: <http://rds.homeoffice.gov.uk/rds/pdfs/occ-resjus.pdf>

<sup>16</sup> ECOSOC Resolution 2002/12 Basic principles on the use of restorative justice programmes in criminal matters. URL: <https://www.un.org/en/ecosoc/docs/2002-resolution%202002-12.pdf>

The measures of restorative justice provide an opportunity for victims to receive compensation, feel more protected; allow offenders to realize the causes and consequences of their actions, and bear real responsibility, as well as create conditions that allow the community to understand the factors that determine a crime, contribute to the improvement of the well-being of the community, and the prevention of crime.

According to the provisions of Resolution p. 12. Member States should consider establishing guidelines and standards, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should respect the basic principles set forth in the present instrument and should address, inter alia: (a) The conditions for the referral of cases to restorative justice programmes; (b) The handling of cases following a restorative process; (c) The qualifications, training and assessment of facilitators; (d) The administration of restorative justice programmes; (e) Standards of competence and rules of conduct governing the operation of restorative justice programmes. p. 13. Fundamental procedural safeguards guaranteeing fairness to the offender and the victim should be applied to restorative justice programmes and in particular to restorative processes: (a) Subject to national law, the victim and the offender should have the right to consult with legal counsel concerning the restorative process and, where necessary, to translation and/or interpretation. Minors should, in addition, have the right to the assistance of a parent or guardian; (b) Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision; (c) Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes.

The success of restitution programs and, accordingly, the stabilization of the criminogenic situation in the country depends on a comprehensive approach involving all social institutions of society. Therefore, the Resolution emphasizes that states need to consider the possibility of developing national strategies and policies aimed at the development of restorative justice, and the formation of a culture that will facilitate its enforcement by the judiciary, social bodies, and the local community.

The reform of the criminal justice system is aimed at transforming the law enforcement system from a mechanism of persecution and repression (of the past), as was emphasized in the Concept of the Criminal Justice Reform of Ukraine, to an institution of the protection and restoration of violated rights and interests of individuals (present and future). To a large extent, the protection of rights and interests of minors who have committed a crime is facilitated by an institution of the probation for minors.

According to the Law of Ukraine “*On the Probation*”<sup>17</sup>, the purpose of the probation is a complex system of supervisory and social-educational measures aimed at ensuring the society’s safety by correcting convicts, preventing them from committing repeated criminal offenses, and providing the court with information that characterize the accused, in order for the court to make a decision about an extent of their responsibility. The probation for persons aged 14–18 is carried out taking into account their age and psychological characteristics, and is aimed at ensuring their normal physical and mental development, prevention of aggressive behavior, motivation for positive personality changes and improvement of social relations.

The provisions of Art. 91, 485 of the Criminal Procedural Code of Ukraine, which specifies the circumstances to be ascertained during the pre-trial investigation and trial of criminal offenses committed by minors should be considered.

By implementing the right to a fair and professional trial, the specifics of the protection of the minors’ rights in the administration of justice at all stages of the criminal process, as well as the determination of the procedural status of a minor, play an important role in the Criminal Procedural Code of Ukraine. The specificity of the legal status of a minor consists in a special approach to his interrogation with the participation of a legal representative, a teacher, a psychologist, and, if necessary, a doctor (Article 491 of the Criminal Procedural Code of Ukraine); the exceptional nature of detention, with mandatory notification of this to parents or persons who replace them; the transfer under supervision to parents, guardians, custodians or the administration of the children’s institution, who undertake to ensure proper behavior and arrival of the minor suspect or accused before the investigator, prosecutor, investigating judge.

It is worth paying attention to the order of criminal proceedings against minors by applying criminal legal measures or coercive measures of an educational nature, which refers to the involvement of an investigator, prosecutor, investigating judge, who are obliged to carry out procedural actions in an order that least disturbs the usual way of life of a minor and corresponds to his age and psychological characteristics.

According to Art. 18 of the Law of Ukraine “On the Judiciary and the Status of Judges”<sup>18</sup>, relating to juvenile specialization of judges provides the specialization in conducting criminal procedures against minors in local and appeal general courts. A judge with at least 10 years of experience as a

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<sup>17</sup> Про пробачію : Закон України від 5 лютого 2015 р. URL: <https://zakon.rada.gov.ua/laws/show/160-19#Text>

<sup>18</sup> Про судоустрій і статус суддів : Закон України від 2 червня 2016 р. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

judge, having experience in conducting criminal proceedings in the court, being highly moral, having business and professional qualities, can be elected as a judge authorized to conduct criminal proceedings in the cases of minors.

The problem of creating specially equipped premises for justice administration for minors remains unresolved. Normative declaration of juvenile specialization and the emphasis on forming the conditions that least disturb the usual way of the minor's life and correspond to his age and psychological characteristics requires a certain isolation of the child from the general system of criminal justice, including within the premises of the court, the prosecutor's office, and the internal affairs office.

In general, procedural norms are aimed at a humane approach to the personality of the minor accused or suspect, and are associated with maximum protection from negative influence in the investigation process. Thus, there are some reasons to assert that the reformed legislation lays the foundations for criminal justice for minors based on humane, responsible and adequate justice, which correspond to international principles and standards introduced in developed and civilized countries.

According to the Order of the General Prosecutor Office of Ukraine "On the Peculiarities of the Performance of the Functions of the Prosecutor's Office in the Matters of Protecting the Interests of Children and Combating Violence", the direct performance of the functions of the Prosecutor's Office in protecting the interests of children and combating violence by juvenile prosecutors is provided for. The activities of juvenile prosecutors are based on the following principles: children receive information about their rights, ensuring children's free access to justice and the opportunity to report facts of the violation of their rights; ensuring the best interests of the child; respect for the child's dignity and protection against discrimination; protection of the child from all forms of violence, abuse, including sexual, especially by parents (guardians), or other persons who are concerned about the child, as well as its exploitation<sup>19</sup>.

Juvenile prevention in accordance with the Instructions on organizing the work of juvenile prevention units of the National Police of Ukraine<sup>20</sup> is performed by specially authorized bodies-departments, namely: Juvenile Prevention of the Central Police Administration Body; departments of Juvenile Prevention of Head Administrations of the National Police in the ARC and the city of Sevastopol, regions and the city of Kyiv; departments

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<sup>19</sup> Про особливості виконання функцій прокуратури з питань захисту інтересів дітей та протидії насильству : Наказ Офісу Генерального прокурора України від 04.11.2020 № 509. URL: <https://zakon.rada.gov.ua/laws/show/v0509905-20#Text>

<sup>20</sup> Інструкції з організації роботи підрозділів ювенальної превенції Національної поліції України. URL: <https://zakon.rada.gov.ua/laws/show/z0686-18#Text>

of Juvenile Prevention of territorial (separated) departments of Head Administrations of the National Policy.

Now the public's attention is focused on judicial and law enforcement agencies. There are many complaints to their activities, and sometimes direct accusations are made, and the public's trust to them is low. In this situation, it would be appropriate to pay attention to those trends of a general nature that directly and significantly affect the implementation of juvenile prevention by law enforcement agencies, and largely determine its content.

*First*, this is a growing role of the law enforcement agencies, particularly, the police, in public and state life. Today, effective activities to prevent juvenile delinquency can affect political, economic, legal, social, and other processes. This trend is objective and natural for a state that claims to be legal and democratic. This is confirmed, in particular, a constant increase in the number of applications, complaints and appeals to the police. On the one hand, this may indicate the growth of the citizens' trust in the police, in which activities they see an effective mechanism for protecting their rights and freedoms; on the other hand – about negative processes, which are characterized by a constant increase in the number of systematic problems in various spheres of social relations. At the same time, law enforcement agencies find themselves in a very difficult situation, since not in all cases the current legislation provides them with appropriate legal means to resolve these issues.

*Second*, this is an attempt to involve law enforcement agencies in a political confrontation, which negatively affects the system effectiveness of crime prevention measures.

*Third*, inappropriate material and technical, informational, and personnel support of the activities, insufficient objective coverage of the activities in the mass media make the Ukrainian law enforcement system very vulnerable. Overcoming negative processes occurring in various spheres of the state power, stabilization of economic and political relations will contribute to gradual implementation of the state's criminal policy in the juvenile prevention sphere.

### **3. International rules and standards of the formation of appropriate approaches, principles of humane, constructive and adequate responses of juvenile crime**

Analyzing international principles, rules, and recommendations, it is important to note that the Constitution, which has the highest legal force, has the priority in Ukraine. According to Art. 9 of the Constitution, the general priority of international law is not provided, but the priority of international treaty norms, the binding consent of which is given by the

Verkhovna Rada of Ukraine, after which international norms can be considered part of national legislation, is provided<sup>21</sup>.

The main thing by implementing international norms and standards, is the preservation of the national interests of Ukraine, which is possible under the condition of preserving the originality of the means on the protection of children's rights and freedoms in Ukraine; the measures to combat and prevent juvenile delinquency; own system of juvenile criminal justice, which reflect economic, political, ideological, religious, cultural and educational features and identity of Ukraine.

The development of norms that determine the specifics of the treatment and protection of minors who have committed a socially dangerous act is one of the global issues of our times. No state in the world can claim the role of a model by determining the rules for dealing with minors having socially unacceptable behavior.

Even the most democratic and economically developed states are characterized by an increase in juvenile delinquency, the presence of families with low standard of living, and an increase in the number of homeless children.

The need for international legal regulation of the children's treatment who broke the law arose relatively recently. The disastrous consequences of the First World war on the civilian population and the growing interest in the problem of the child's protection in most countries of Europe and North America caused the creation by the League of Nations in 1919 of the *Child's Welfare Committee*, which activities are aimed at combating the spread of the child's homelessness and child's trafficking. In the interwar period, non-governmental organizations played a significant role in the development of norms for the protection of children's rights. Thus, the International Union for Saving Children was founded, within it, a declaration was developed that contained the basic conditions that society must adhere to in order to ensure the protection of children. Geneva *Declaration on the Child's Rights* dated 1924 for the first time on the international level established the need for special protection of children as the most important population group<sup>22</sup>. However, at that time the world society did not have effective organizational structures to implement the goals declared by this document.

In 1959, the UN General Assembly adopted the *Declaration of the Children's Rights*, which became the basis for the development and opening

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<sup>21</sup> Конституція України 28 червня 1996 року. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text>

<sup>22</sup> Geneva Declaration of the Rights of the Child, 1924. URL: <https://www.humanium.org/en/geneva-declaration/>

for signing by states of the *Convention of the Child's Rights* as of 1989<sup>23</sup>. The Convention obliges to facilitate the adoption of laws, development of procedures, creation of bodies and institutions that directly affect the minors who have violated criminal law, are accused of, or are found guilty of violating it. The Convention recommends providing an extensive system of non-punitive measures to influence the minors who have violated criminal legislation (guardianship, supervision, advisory services, appointment of a probationary period of education, training programs, professional training). The recognition of the rights of every child in conflict with law to humane and responsible treatment, which contributes to their reintegration and fulfilling a useful role in society, is enshrined.

The UN Convention on the Child's Rights emphasizes that the child must be fully prepared for independent life in society and brought up in the spirit of the ideals proclaimed in the UN Charter. It is not clear why a child preparing for life in Ukraine should be brought up in the spirit of UN ideals, without taking into account moral principles and traditional values of the Ukrainian society. Therefore, we consider it correct that the National Program "National Action Plan for the Implementation of the UN Convention on the Child's Rights for the Period until 2016" begins with the words: "Ukraine, as a member of the international community, participates in the creation of the environment favorable to children, in which decent development and protection of their rights is ensured in compliance with the principles of democracy, equality, peace, social justice, taking into account moral principles and traditional values of the Ukrainian society aimed at strengthening the family and moral health of the children of Ukraine"<sup>24</sup>.

The Committee on the Child's Rights was established within the framework of the UN to ensure the main directives of the Convention. Each participating country is obliged to submit a report to the Committee on the implementation progress of the Convention once every five years. Problems of the children's rights protection are in the field of the view of the United Nations Children's Fund (UNICEF).

Within the framework of general principles, the Committee, taking into account the information presented about xenophobic and racist orientation in the activities of radical youth groups and skinhead groups, expresses concern about the increase in the number of crimes committed with the motives of racial hatred. At the same time, the Committee is concerned about the fact that, given the priority of financing state measures to support

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<sup>23</sup> Convention on the rights of the child 20.11.1989. URL: [https://zakon.rada.gov.ua/laws/show/995\\_021#text](https://zakon.rada.gov.ua/laws/show/995_021#text)

<sup>24</sup> Про Загальнодержавну програму «Національний план дій щодо реалізації Конвенції ООН про права дитини» на період до 2016 року: Закон України від 05.03.2009р. URL: <https://zakon.rada.gov.ua/laws/show/1065-17#Text>

children's and youth organizations, the issue of the "patriotic education" is a priority.

The Committee recommends as follows: replace the old penal system with the restorative juvenile justice system that encourages alternatives to imprisonment, mediation, commutation, probation, counselling, community service, and suspended sentences where possible; establish at the legislative and practical level a single minimum age of criminal responsibility, which corresponds to the observance Committee's Order № 10 (2007) on the rights of children in the administration of juvenile justice; based on the previous recommendations, consider the possibility of liquidating social rehabilitation schools, where children aged 11–14 can be kept in isolation, after finding them guilty of committing a crime, and develop alternative measures of the educational nature; request technical assistance from the United Nations, including the National Children's Fund (UNICEF), and the Office of the United Nations High Commissioner for Human Rights (OHCHR), and implement the above recommendations.

The international community, given importance to children's rights, their survival, protection and development, directing its actions in the highest interests of humanity, tries to ensure the well-being of children in the world. But efforts to ensure a socially acceptable space for the child's development and well-being have not been fully implemented. General achievements do not correspond to the national and international obligations. Based on this, the *World Declaration and Action Plan "A World Fit for Children"* (hereinafter – the Declaration and Action Plan), adopted by the Resolution S-27/2 of the UN General Assembly on May 10, 2002, is one of the important international commitments of the 90s of the last century<sup>25</sup>. The main provisions are implemented in legislation and law enforcement practice, and the implementation progress is constantly monitored. Annual reviews are conducted at the national level and progress reports are presented to the General Assembly.

In the Declaration and the Action Plan it is noted that the world fit for children is the world in which children receive the best conditions at the beginning of life, and have access to the quality basic education, including primary education, which is compulsory and free; and in which all children, including adolescents, have ample opportunities to develop their individual abilities in a safe and supportive environment. The Declaration is aimed at ensuring favorable physical, mental, spiritual, social, economic, cognitive and cultural development of the child as a priority direction of the national and global actions.

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<sup>25</sup> World Declaration and Plan of Action "A World Fit for Children". URL: <https://digitallibrary.un.org/record/464538>

*The Optional Protocol* to the Convention on the Child's Rights concerning the child's trafficking, child's prostitution and child's pornography (hereinafter referred to as the Optional Protocol) is aimed at the protection and harmonious development of the child and the implementation of modern measures that must be taken by participating states in order to guarantee the protection of the child from the practice of the child's trafficking, child's prostitution and child's pornography<sup>26</sup>.

The implementation of the main provisions of the Optional Protocol will contribute to the adoption of the optimal and universal approach that will consider the factors that determine the development of the child's trafficking, child's prostitution and child's pornography, including underdevelopment, poverty, economic disparities, unequal social-economic structure, low level of education, dysfunctional families, migration, gender discrimination, irresponsible adults' sexual behavior, armed conflicts and child's trafficking.

International norms that determine the legal status of a minor in criminal proceedings are enshrined in the *UN Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (hereinafter – the Beijing Rules)<sup>27</sup>.

The Beijing Rules take into account different national conditions and legal systems, reflect the purpose and content of juvenile justice, and recommend principles and practical measures for the administration of juvenile justice. The Beijing Rules are a reflection of the minimum conditions acceptable in the international context for the treatment of minors who have committed a crime or offense and are involved in the field of criminal justice.

The guiding idea of the Beijing Rules is to protect the rights of minors in the criminal process and take actions aimed at ensuring the well-being of a child, the adequacy of measures to influence the offender, taking into account the characteristics of a person, the nature and degree of social danger of the committed act. The emphasis is placed on the exclusive application of the minors placement in correctional institutions and for the minimum necessary term. Research of juvenile justice research, planning,

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<sup>26</sup> Факультативний протокол до Конвенції про права дитини щодо торгівлі дітьми, дитячої проституції і дитячої порнографії : ратифіковано Законом від 03.04.2003 р. URL: [https://zakon.rada.gov.ua/laws/show/995\\_b09?lang=en#Text](https://zakon.rada.gov.ua/laws/show/995_b09?lang=en#Text)

<sup>27</sup> Minimalnyie standartnyie pravila Organizatsii Ob'edinennyih Natsiy, kasayuschesya otpravleniya pravosudiya v otnoshenii nesovershennoletnih (Pekinskie pravila) : Rezolyutsiya 40/33 Generalnoy Assamblei OON ot 29 noyabrya 1985 g. [United Nations Minimum Standard Rules on the Administration of Juvenile Justice (Beijing Rules): United Nations General Assembly Resolution 40/33 of 29 November 1985], [online]. URL: [http://www.un.org/ru/documents/decl\\_conv/conventions/beijing\\_rules.shtml](http://www.un.org/ru/documents/decl_conv/conventions/beijing_rules.shtml)

development and evaluation of the preventive policy should be give significant importance.

*UN Guidelines for the Prevention of Juvenile Crime* (hereinafter: the Riyadh Principles) harmoniously combine the components on which the national policy for the prevention of crime among minors should be built: basic principles of policy-making, general directions of the prevention, institutions of the child's socialization, social policy, legal framework for the administration of juvenile justice, research direction and coordination. Standards for the prevention of juvenile delinquency have been established covering the measures to protect minors who are left without parental care, have become victims of abuse, or who are in dangerous conditions in the "risk group"<sup>28</sup>.

The Riyadh Principles define the need to eliminate the factors that negatively affect the child's development, and create appropriate conditions for their socialization. For this purpose, complex interdisciplinary measures for the motivation formation for behavior free from crimes and offenses are proposed. The emphasis is also placed on the application of early preventive measures; development of joint efforts and a positive role of social institutions of society, such as a family, education system, mass media, community and young people themselves. At the same time, the priority by the prevention of juvenile crime is determined by focusing on the needs of children.

The Riyadh Guidelines affirm the importance reducing juvenile delinquency plays on reducing crime, the necessity of implementing the guidelines according to a child-centred approach, and the communal responsibility for children's well-being from the earliest ages onward.

The purpose of the *UN Regulations for the Protection of Juveniles Deprived of Liberty*, 1990 (hereinafter – the Regulations) is to establish minimum standards for the protection of juveniles deprived of their liberty in accordance with human rights and counter the adverse effects of all forms of imprisonment<sup>29</sup>. The main idea of this document is that every child deprived of its freedom *should be guaranteed humane, respectful treatment*. All children who have committed an offense and are serving a sentence for it are equal in their rights, with the exceptions of the limitations caused by the fact of the free will restriction. The Regulations formulate the goal of

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<sup>28</sup> Керівні принципи запобігання злочинності серед неповнолітніх Організації Об'єднаних Націй (Ер-Ріядські керівні принципи). *Міжнародне та національне законодавство у сфері захисту прав дитини*. Г. Янова. Київ : ПП «Видавництво «Сучасний письменник». 2015. 704 с.

<sup>29</sup> Правила Организации Объединенных Наций, касающиеся защиты несовершеннолетних, лишенных свободы. Приняты резолюцией 45/113 Генеральной Ассамблеи от 14 декабря 1990 г. URL: [https://www.un.org/ru/documents/decl\\_conv/conventions/juveniles\\_liberty.shtml](https://www.un.org/ru/documents/decl_conv/conventions/juveniles_liberty.shtml)

the correction and social re-education, which contribute to the development of a child's sense of dignity and significance, strengthens in him respect for human rights and basic freedoms. The Regulations state that imprisonment should be used as at a last resort, for a minimum period of time and in exceptional case; deprivation of liberty should be carried out under the conditions and circumstances that ensure compliance with the rights of minors.

Particular attention should be paid to Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011 on preventing and combating trafficking of human beings and struggle against it and its victims<sup>30</sup>, and also on the replacement of the Council's Framework Decision 2002/629/JHA(8) in which it is noted that "Children are more vulnerable than adults and, therefore, at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child".

The Directive, in particular, establishes minimum standards regarding the definition of criminal offenses and sanctions in the field of human trafficking. In accordance with the provisions of Article 2 of this Directive, Member States shall take the necessary measures to ensure the criminalization of such intentional acts as the recruitment, transportation, transfer, harboring or receipt of persons, including the exchange or transfer of control over such persons, for the purpose of further exploitation. Such acts may be committed through the threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power, helplessness, or by bribing a person who has control over the abducted person.

The next international legal act related to the topic of the study is the Directive 2011/92/EU of the European Parliament and Council of December 13, 2011 on combating sexual violence and sexual exploitation of children, and the child's pornography and amendment of the Council's Framework Decision 2004/68/JHA(3)<sup>31</sup>. The Directive lays down minimum rules regarding the definition of criminal offenses and sanctions for sexual abuse and sexual exploitation of children, the child's pornography and the

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<sup>30</sup> Директива 2011/36/ЄС Європейського Парламенту та Ради ЄС від 05.04.2011 р. про попередження й боротьбу з торгівлею людьми та захист жертв, що замінює Рамкове рішення Ради 2002/629/JHA. URL: <http://old.minjust.gov.ua/file/31840>

<sup>31</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0093&from=EN>

attraction of children for sexual purposes. The document also contains provisions on strengthening measures to protect victims and prevent these crimes.

The Council's Framework Decision 2004/68/JHA of December 22, 2003 on combating sexual exploitation of children and the child's pornography (5) approximates the laws of member-states to criminalize the most serious forms of the child's sexual abuse and sexual exploitation, extend domestic jurisdiction and provide a minimum level of the assistance to victims. The Council's Framework Decision 2001/220/JHA of March 15, 2001 on the status of victims in criminal proceedings (6) sets out a set of rights for victims in criminal proceedings, including the right to defense and for the compensation. In addition, the coordination of prosecutions in cases of sexual violence, sexual exploitation of children and the child's pornography will contribute to the implementation of the Council's Framework Decision 2009/948/JHA of November 30, 2009 on the prevention and resolution of conflicts regarding the exercise of jurisdiction in criminal matters, proceedings (7) (4). In accordance with Art. 34 of the UN Convention on the Child's Rights, member-states undertake to protect children from all forms of sexual exploitation and sexual violence.

The UN Optional Protocol of 2000 to the Convention on the Child's Rights concerning the Children's Trafficking, the Child's Prostitution and the Child's Pornography and, in particular, the Convention of the EU Council of 2007 on the Protection of Children from Sexual Exploitation and Sexual Violence are extremely important steps in the strengthening international cooperation in this area (5) Serious criminal offenses, such as the child's sexual exploitation and the child's pornography require a comprehensive approach that includes prosecution of offenders, protection of a child-victim and prevention in this area of this phenomenon. The best interest of the child must be a primary consideration when taking any measures to combat these offenses in accordance with the Charter of Fundamental Rights of the European Union and the UN Convention on the Child's Rights. The Framework Decision 2004/68/JHA should be replaced by a new instrument that would provide such a comprehensive legal framework to achieve this goal.

The provisions contained in international documents are useful in the development of individual approaches to solving specific problems in the field of prevention and response to juvenile delinquency, and in assessing the effectiveness and compliance of law enforcement practices in this field.

#### **4. Foreign experience in the formation of program measures for the correction and prevention of criminal behavior of minors**

The content of program measures for the correction and prevention of criminal behavior of minors is represented by various activities of state bodies, public organizations, volunteer groups, teachers, the parents' community and individual citizens aimed at the formation of socially useful skills in adolescents of different age groups, elimination of the causes and conditions that determine the socially unacceptable behavior of the child, and prevention of the commission of a crime at various stages of the child's development.

In case of deviant deviations in the minors' behavior, program measures contribute, first, to the formation of positive, socially useful skills in children, second, to the correction of unacceptable, including socially dangerous behavior of some minors, and, third, to the elimination of the factors that determine negative activity of the child, and prevention of relapse.

Preventive programs of long-term intervention are actively used in Great Britain, Canada, Lithuania, Norway, Germany, Poland, the USA and other countries, which contributes to reducing the crime level among minors. Thus, for example, after introducing the Canadian Leadership and Resiliency Program, the number of arrests among its participants decreased by 47 %<sup>32</sup>.

Long-term intervention programs for the correction and prevention of criminal behavior of minors accumulate the activities of state bodies, public organizations, volunteer groups, teachers, the parents' community and individual citizens aimed at the formation of socially useful skills in adolescents of different age groups; elimination of the causes and conditions that determine the socially unacceptable behavior of the child, and prevention of the crime commission at various stages of the child's socialization.

Prevention programs on early intervention are aimed at timely prevention of the criminogenic phenomena in the formation of the socially acceptable space for the child's development. In addition, at this stage of prevention, significant importance is attached to the formation and training of children in the necessary skills, and the assistance in solving vital problems.

The "Fast Track" school program has become widespread in Great Britain, Australia, Canada, and the USA. The purpose of program measures is to prevent negative deviations, which were formed at home, in school environment, and in peers' environment in the children's behavior in 1–6 grades.

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<sup>32</sup> Public Safety Canada [Електронний ресурс]. *Офіційний веб-сайт Public Safety Canada*. URL: <http://www.publicsafety.gc.ca/>

The main component of the “Fast Track” is the combination of the work with parents, children and school, which contributes to the improvement of social and cognitive competence of the child; increasing the effectiveness of the parents’ educational influence; increasing connections and positive school-related experience, which is reflected in the complex on the criminological situation.

The intervention prevention focuses on the socialization agents closest to minors (family, school, recreational sphere), which shape his behavior, attitude to social norms, and the ability to observe them.

The Olweus Bullying Prevention Program (BPP) School Program is aimed at reducing and preventing violence. The BPP Program was developed and introduced in Norway, after successful testing it was distributed in Great Britain, Germany, the USA, and other countries.

For the program implementation, the state allocates approximately 200\$ per school, and additionally 65\$ per teacher, a coordinator of the program. Funds are allocated separately for compensation of individual training of the coordinator of the BPP project.

A coordinating committee of teachers, students, parents, consultants, and a local coordinator is formed for the implementation of the program course for large schools, and is partially involved from small schools. The goal of the Program is to reduce the number of incidents of bullying and violence in school environment; prevention of the development of new cases of violence and aggression, and improvement of relations between peers at school.

According to the results of studying the effectiveness of the BPP program, which was carried out in Norway with the participation of 2500 students of 4–7 grades from 42 elementary and secondary schools, a reduction of cases of violence and hooliganism, decrease in the rates of theft, vandalism and consumption of alcoholic beverages among the students participating in BPP Program was observed. A subsequent study showed not only a reduction in violence from 30 % to 70 %, but also a significant improvement in the attitude of the Program’s participants towards learning and discipline.

The restrictions on leisure time of minors who commit offenses or crimes are widely used in Ireland. These measures are implemented by special institutions and schools, where persons who have committed an offense, a crime or have antisocial behavior spend their free time from studying. In addition, the parents of minors with socially unacceptable behavior are also involved in the educational process. Parents together with children and teachers take part in special thematic conferences. According to this scheme, a number of Garda Juvenile Diversion Programs have been operating in Ireland since the 1960s<sup>33</sup>.

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<sup>33</sup> Children and the criminal justice system in Ireland. URL: <http://www.citformation.ie/en>

For the Ukrainian law enforcement practice, a number of early intervention programs are of interest, they are widely used in Ireland and are implemented within the scope of the NIACRO Association, which is a voluntary organization where more than 180 volunteers carry out a variety of work with at-risk juvenile offenders, families, and the population. Three most acceptable programs for the Ukrainian legal system will be presented within the scope of the scientific work. The Child and Parent Support (CAPS) Program aims to provide intensive support services to families with children aged 8–13 who are prone to antisocial or criminal behavior.

The Independence Visiting Program consists of providing friendly, independent support to minors who are under the guardianship and deprived of parental attention.

The Youth Employment Assistance Program covers youth between the ages of 15 till 18 who are registered in the juvenile correction system. The main goal of the program is to provide support by receiving education, professional skills, and employment.

At the same time, the NIACRO Association works with prisoners, their families and children through the Advice Centre (“Consultation Center”) – a one-stop service that provides advice and support to families of prisoners, and juveniles serving sentences and Family Links<sup>34</sup>.

Along with the programs with of long-term and early intervention in the system of preventing and combating juvenile delinquency, a significant place is occupied by national programs that are part of the national policy of stability and development of the country. They are directly aimed at preventing and countering crime, including among children and youth.

In order to ensure general prevention of crimes, The Strategy of the National Security (2002), was developed and implemented in Lithuania, which provides for the implementation of both specialized measures of legal response to any facts of the law violation, as well as the implementation of state-wide measures to protect the national security of Lithuania<sup>35</sup>.

The Lithuanian National Program “Del nacionalines nusikaltimu prevencijos ir kontroles programos patvirtinimo” (National program for the prevention and control of crimes)<sup>36</sup>, approved by the Seimas of the Republic of Lithuania was developed in accordance with the provisions of the Vienna Declaration on Crime and Justice: Responses and Challenges of the 21<sup>st</sup> century.

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<sup>34</sup> Evaluation of the Early Intervention Programme. NIACRO. URL: <http://www.niacro.co.uk>

<sup>35</sup> Lietuvos Respublikos Seimas. nutarimas. dėl nacionalinio saugumo strategijos patvirtinimo. Стратегія національної безпеки. 2002 m. gegužės 28 d. Nr. IX-907. 32 p.

<sup>36</sup> Lietuvos Respublikos Seimo nutarimas “Del nacionalines nusikaltimu prevencijos ir kontroles programos patvirtinimo”. URL: [www.vrm.lt](http://www.vrm.lt)

As indicated in the National Program, the number of juvenile delinquents is increasing and accounts 11–12 % from the total number of persons who have committed crimes. Although, according to Statistics Department of the Republic of Lithuania, the specific weight of crimes committed by minors is 4–5 %<sup>37</sup>. The number of crimes who commit serious crimes is increasing, and incidents of violence in schools and at home are becoming more frequent.

Considering that the National Program is aimed at achieving positive strategic and tactical goals, it is worth saying that the expected result of the implementation of social, cultural, material and financial measures will be as follows: stabilization of the crime balance; creation of a safe environment for human habitation; increasing crime prevention and improving the management system; improving the crime prevention and combat programs; increasing the level of public trust in law enforcement agencies, the government, and penitentiary institutions; introducing a balance between the crime prevention and crime investigation systems, and the responsibility for implementing the principle of inevitability of criminal punishment.

The Polish National Program “Program Zapobiegania Niedostosowaniu Społecznemu i Przestępcości wobec Dzieci i Młodzieży” is a response to the state of social maladjustment and crime among children and youth in Poland<sup>38</sup>. The Polish society, being concerned about the indicators of crime among children and youth, and low effectiveness of existing programs and projects, requires the coordination of all subjects that carry out preventive activities with the introduction of self-government, involvement of non-governmental organizations and all those who are concerned about the well-being of the young generation.

The Polish National Program envisages a system of complex measures aimed at preventing socially unacceptable development of the child, in particular, attention is focused on the following: proper living conditions of the child; regularity of the processes of education and upbringing of the child; respecting children’s rights, providing children with a sense of security, accepting and expanding children’s rights and opportunities; active participation of children in cultural life, and creation of opportunities for proper leisure management; development of social security, assistance to children and families in a difficult financial situation; security measures and public order.

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<sup>37</sup> Статистичний департамент Литовської Республіки. URL: [www.stat.gov.lt](http://www.stat.gov.lt).

<sup>38</sup> Program Zapobiegania Niedostosowaniu Społecznemu i Przestępcości wśród Dzieci i Młodzieży. Ministerstwo spraw wewnętrznych i administracji Warszawa, 2003. 100 p.

The Project OASIS (PO) Program was tested in Canada<sup>39</sup>. The Program was implemented in June 2008 for a period of two years in the city of Winnipeg (the capital of Manitoba Province). The financial balance of the Program made USD 185,000.

The Program covered minors between ages 12 till 19 who were members or would become members of criminal gangs. The goal of the Program is to create a society with all people having well-being, nobility and know how to dream.

The following measures were aimed at realizing the goal of the Program: academic support to improve educational achievement; family support; assessment of mental health and treatment (both at the expense of own and public funds); learning computer skills, improving English; entertainment measures; teaching life skills; assistance in employment. An individual completion plan within the Program has been developed for each Program participant (a special plan for each family). It is based on the assessment of the participant's personality by Program staff, and on the evaluation given by members of the participant's family. These plans typically include group counseling and educational services.

According to official results, 39 % of the Program participants started attending school regularly. Most participants reported that OASIS helped them find work and gave them the support they needed to stay in school or meet basic life needs.

The Multisystemic Therapy (MST) Program of influence focuses on working with all agents of socialization that affect juvenile offenders – their families, schools and teachers, neighborhoods and families. The MST recognizes that each system plays an important role in the world of youth, and that each system requires attention when effective change is needed to improve the quality of life for youth and their families. The MST is aimed at correcting violent behavior and persons who have committed violent offenses (age category of the Program action – persons aged 12–17)<sup>40</sup>.

The MST Program is built on the following principles: search for communication; focusing attention on positive and strong levers of the program participants; increasing responsibility for one's own actions in all family members; purposefulness, specific actions and clear determination; adjustment to the consequences (changes in the participant's behavior and, as a result, changes in the consequences of the participants' interaction within the Program with various systems of social life – family, teachers, friends, etc.); setting for development; continuity of work; evaluation and accountability; generalizations.

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<sup>39</sup> Офіційний сайт програми Project Oasis. URL: <http://newdirections.mb.ca/missionvision/>

<sup>40</sup> Офіційний сайт програми Multisystemic Therapy. URL: <http://mstservices.com>

The activities of the MST team are focused on the following: increasing the parenting skills of the Program participants; improving relations between family members and of the Program participant; involvement of Program participants in communication with peers with law-abiding behavior; providing assistance to the Program participant in improving his performance and finding his abilities; involvement of the participants in sports or interest clubs; creating a support network for the participant, which consists of his family, neighbors and friends.

The results of the Program were: a 25–70 %, reduction in re-arrests; a 47–64 % reduction in runaways; and a 57–68 % reduction in drugs use. The results depend on the age of the participant – the earlier the person became the participant in the Program, the greater the probability of a positive result.

The experimental crime prevention Program among teenagers with visits to correctional institutions, which was tested on the basis of Los Angeles Police Department (USA), is of practical interest. The purpose of the Program was to have a psychological impact on the minors who had a propensity for delinquency, drug abuse, and were registered in police. That is, the influence was carried out in the pre-criminal period.

The task by implementing the Program, first of all, was the selection of police officers (on a voluntary basis, taking into account special knowledge of the adolescent psychology, the ability to establish the contact with wards). Second, the accuracy of the teenagers' selection (17 teenagers were recommended by parents, school management and local police authorities) to participate in this experiment. The Program included: a) a visit to the Police Department, where the teenager directly observed the work with criminals, a meeting with peers who were arrested for various crimes, including drug abuse; b) visiting the Center for the Treatment of the Minors' Drug Addicts to get acquainted with treatment methods, as well as the strict regime of keeping patients; c) visiting "excursion" to a correctional center for teenagers, where criminals between the ages of 14 till 20, and who are waiting for a court decision, are held; d) visiting cells for pre-trial detention, prison yard, prison for juvenile criminals, and a morgue; e) acquaintance with living conditions and rules of behavior of detained and imprisoned persons<sup>41</sup>.

## **CONCLUSIONS**

The domestic criminal justice system for minors needs improvement and innovation of program measures for the correction of socially dangerous behavior, prevention and countermeasures against juvenile delinquency. That is why it useful to study and implement foreign experience in this field.

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<sup>41</sup> Офіційний сайт програми Multisystemic Therapy. URL: <http://mstservices.com>

Overcoming negative processes occurring in various spheres of state power, stabilization of economic and political relations will contribute to gradual implementation of the state's criminal policy in juvenile justice sphere. This is objective and necessary for the state that claims legal and democratic status.

Modern threatening trends regarding juvenile delinquency and solving the problem of protecting their rights and interests require the development of a new strategy in the juvenile justice construction.

Summing up, it should be noted that the provisions contained in the international rules and principles direct the efforts of states to create conditions that allow for a dignified life of a child in society; paying special attention to the personality development during the period when a teenager is most prone to socially unacceptable behavior by providing education, forming vital socially useful skills in a space as free as possible from the possibility of committing a crime or offense.

In addition, it is important to implement measures of intervention, correction and influence on the negative, criminally active behavior of minors under the conditions of the maximum mobilization of all resources, including the family, educational institutions, communities, volunteers and other public institutions, with the aim of promoting the well-being of the child, and reducing the intervention of by the law, and the effective, fair and humane treatment of juveniles in conflict with law.

When forming the domestic juvenile system of corrective and preventive program measures, one should take into account positive foreign experience regarding the adaptability of various components of long-term and early intervention programs to different age groups, rural and urban environments of minors, as well as the possibility of their application to children of various ethnicities, social classes, and family members.

In addition, we consider the development of early intervention programs and long-term programs of correction and prevention of criminal activities of minors to be a component of the national juvenile preventive policy, which provides for the involvement of both the state and public structures, and a wide range of volunteers, teachers, parents, and teenagers in the implementation of preventive and correction measures.

## SUMMARY

Within the Section, the peculiarities of juvenile delinquency, among which the following is presented, in particular: a constant indicator of the number of minors who have committed criminal offenses, and their small variety; the dominance of self-interested crime in the general structure of juvenile crime of the group character; "virtualization" of juvenile delinquency, etc., are highlighted.

The legal analysis of the valid legislation, the reform of institutions that are designed to protect the rights and interests of the child testify to the European integration vector of the formation of juvenile justice in accordance with the EU *acquis communautair*. The importance of the probation institution in the implementation of functions on protecting the rights and interests of the minors who have committed criminal offenses is revealed. The study of international rules and principles, directives and framework decisions of a juvenile nature indicates the preservation of the national interests of the state when implementing the relevant norms and standards in the domestic legal field.

The content analysis of foreign programs of early and long-term intervention, measures of correction and prevention of criminal behavior of minors gave grounds for a conclusion regarding the feasibility of forming a domestic juvenile system of program measures of correction and prevention, taking into account the gender, age, social, psychological and other characteristics of the child who has committed the offense. At the same time, the program measures should be reflected in the national program, and form the basis of the national policy of the stability and development of the country. The state policy of juvenile prevention should be built taking into account the priority of educational, teaching, social measures over punitive ones with forced isolation from society; implementation of probation rules in the field of juvenile justice (control, management, consultations, assistance); systematic introduction of restorative and testing practices in the development of strategies to reduce the level of crime; mobilization of the resources of a family, educational institutions, community, volunteers in the field of juvenile prevention, etc. The domestic system of criminal justice for minors needs further European integration and improvement of the systematic, structural and targeted nature.

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