

не заподіюють істотної шкоди, тобто на момент криміналізації були малозначними діяннями.

Для з'ясування шляхів вирішення цієї колізії слід співставити поняття «істотна шкода» з іншими поняттями, якими визначається характер заподіяної злочином шкоди. В тексті КК України поряд із поняттям «істотна шкода» використовується поняття «значна шкода», яке згадується набагато більше разів, ніж істотна шкода.

Отже, можна зробити висновок, що законодавцю необхідно було використати у ч. 2 ст. 150, ч. 2 та Примітці до ст. 182, ч. 4 ст. 323, ч. 3 ст. 359, ч. 3 ст. 382, ч. 2 ст. 410 КК України поняття «значна шкода», а не поняття «істотна шкода».

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### **SOME PROBLEMS OF LEGAL REGULATION OF A JUVENILE OR A MINOR PERSON IN CRIMINAL PROCEEDINGS**

The Criminal Procedure Code of Ukraine (hereinafter – CPC) in article 3 gives the definition of "minor person" in this context: minor – minor person and juvenile at the age of fourteen to eighteen.

It should be noted that entry to minor person civil capacity of the full 18 years in accordance with article 34, 35 of the Civil Code of Ukraine isn't a reason to refuse the application of art. 226 CPC.

It should be said that under the law of interrogation juvenile or a minor person performed necessarily involving a teachers, a psychologists, and if necessary the doctor. The corresponding obligation provided for in Article 226 of the CPC which noted that interrogation of juvenile or the minor person is performed in the presence of a legal representative, a teacher or psychologist if necessary – a doctor. CPC establish interrogation time limits of juvenile or a minor person. It can not continue without a break for more than one hour, and the average – more than two hours a day. Persons under the age of sixteen explained the duty of the necessity of giving truthful testimony, without notice of criminal liability for refusal to testify and for knowingly false testimony.

It should also be noted that the CPC provides for the obligation of participation above mentioned persons in pretrial (investigation) activities involving juvenile or minors persons. Thus, in accordance with the article 227 of the CPC during the pretrial (investigation) activities involving juvenile or minors persons ensured necessarily involving of the legal representative, a

teacher or a psychologist and if necessary – a doctor. Investigator is also explained to them their right for permission to ask clarifying questions to juvenile or minor person.

In exceptional cases where the participation of the legal representative can undercut the interests of the juvenile or minor person witness, investigator, prosecutor at the request of the juvenile or minor person or of its own motion has the right to restrict the participation of a legal representative in the performance of certain pretrial (investigation) activities or remove him from participation in criminal proceedings and involve the replacement of another legal representative.

We think that in p. 3. art. 227 CPC use the phrase "exceptional cases" is not sufficiently defined and estimated a character that can complicate the acceptance of the decision which should be taken in a particular case. It also should be noted that the arguable reasons for the right of a juvenile or a minor person for petition to the investigator or prosecutor about the initiation of the issue of limiting the legal representative pretrial activities or the existence of grounds for removal legal representative and his replacement by another in criminal proceedings. We also should understand that a juvenile or the minor persons in the case of their physical development may perceive reality in bad way or mistakenly perceive it. So it seems that the last appeal with the general request is unnecessary and the right to eliminate legal representative or replacing left only in the hands of the investigator or prosecutor who independently decides is there a particular case exceptional. It is also possible to predict elicit a psychologist and / or doctor for their intellectual development opportunities in the context to understand in the right way their surroundings by the juvenile or a minor person, which can minimize unfounded circumstances of this appeal and did not complicated the work of the investigator. Such procedure could also help establish which particular case exceptional.

We also should pay attention to the article 491 CPC on the participation of a legal representative, teacher, psychologist or doctor in the interrogation of a minor suspect or accused. In the first part if the art. 491 CPC provides that a minor who hasn't reached the age of sixteen or if the minor acknowledged mentally retarded, his interrogation by the decision of the investigator, prosecutor, investigator judge, court or at the request of the defender ensured participation of a legal representative, a teacher or a psychologist, and if necessary – doctor. The position of the legislators in our opinion is confusing and not consistent because when interrogation a juvenile or a minor person in criminal proceedings under the art. 226 CPC established duty to involve legal representative, teacher or psychologist and only provides the right to chose about participation of a doctor. The art. 226 CPC used during interrogation regardless of the procedural status of a juvenile or a minor person and their ages. Under these circumstances is unclear establishing in the art. 491 CPC age limit for a minor to involve a teacher, psychologist or physician moreover on

the initiative of the investigator, prosecutor, investigator judge, court or at the request of the defender the suspect or accused. Especially inconsistency is that the part 2 of the article 226 CPC shall be carried out in any case, so why doesn't other parts of the article 226 CPC aren't obligatory for use. Even more that the that the name of the article 226 CPC contains the term "specifics" interrogation of a juvenile or a minor person, and the article 491 CPC refers to Chapter 38, paragraph 1, entitled "General rules for criminal proceedings against minors".

As a conclusion, which based on the analyzed articles of CPC they at least had to be coordinated and foresight in part 1 of the art. 491 age for a minor person is unreasonable because the art. 226 CPC didn't say about at all.

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## **ЩОДО ПОНЯТТЯ «НЕПРАВОСУДНЕ СУДОВЕ РІШЕННЯ» В КОНТЕКСТІ СТАТТІ 375 КРИМІНАЛЬНОГО КОДЕКСУ УКРАЇНИ**

Попри часте вживання в юридичній науці та застосування в практичній діяльності поняття «неправосудне рішення», його квінтесенція досі не знайшла термінологічної визначеності у вітчизняному кримінальному законодавстві.

Невизначеність цього терміну призвела до того, що в науковому дискурсі поняття «неправосудність», яким оперує кримінальне право України, і «незаконність», що використовується у кримінально-процесуальному праві, зазвичай ототожнюються і несуть ідентичне нормативно-змістове навантаження, тобто, визнаються синонімами (відповідної позиції притримуються такі вчені як В. І. Тютюгін, О. В. Капліна, І. А. Тітко та ін.) [1, с. 44].