SIGN SIGNS OF THE OBJECTIVE SIDE OF USE A MINOR CHILD FOR BEGGING (ARTICLE 1501 OF THE CRIMINAL CODE OF UKRAINE)

The article reveals the signs of the objective side of using a minor child for begging. The author points out the continuing nature of this act and determines the moment of its termination. The author analyses the optional features (place, time, environment, method, means and instruments of its commission). It is concluded that it is necessary to specify the existing ones, as well as to introduce and implement new forms of the objective side of the analysed act, which will facilitate the strict application of criminal law by the National Police of Ukraine and will allow to eliminate contradictions and gaps in resolving issues of bringing perpetrators to criminal liability.

**Keywords:** use; begging; systematic; begging; minor child/

Statement of the problem. Increasing the effectiveness of the provisions of the criminal legislation of Ukraine on liability for offences against the will, honour and dignity of a person is undoubtedly essential, especially today, in the context of the full-scale aggression of the Russian Federation. A thorough understanding of the essence of the criminal offence under Article 1501 of the Criminal Code of Ukraine (from now on - CC), "Using a minor child for begging", is impossible without a detailed analysis of the mandatory and optional features of its objective side, disclosure of their signs and determination of the moment of termination. Under the current conditions in Ukraine, special attention should be paid to the criminal legal protection of young children who are victims of the said criminal offence (Article 150-1 of the CC) in terms of using them for begging.

Recent research and publications analysis. The features of the objective side of any criminal offence have always been the subject of lively discussions held by criminal scientists since the late nineteenth century and to this day. The generally accepted position of scholars is that the objective elements of criminal offences include a socially dangerous act (action or inaction), as well as socially dangerous consequences, causal link between the act and the consequences, means, instruments, time, place, setting and method of its commission [1, p. 103; p. 73; 2, pp. 106-121; 3, pp.147-148]. In addition, issues related to ensuring the rights and freedoms of children have been studied by V. V. Vitvitska, L. S. Volynets, H. V. Dan, I. M. Danshin, I. V. Degtyareva, I. M. Dolianovska, V. O. Ivashchenko, O. M. Kostenko, L. M. Kryvochenko, V. V. Kuznetsov, A. V. Landina, V. O. Navrotskyi, O. O. Navrotskyi, V. K. Negodenko, O. P. Petraschuk, O. P. Riabchynska, O. M. Sytnik, N. O. Semchuk, N. S. Yuzikova. However, there have been almost no studies of the objective side of the offence under Article 1501 of the Criminal Code in Ukraine.

Therefore, this article aims to determine the peculiarities of the objective side of the offence under Article 1501 of the CC, disclose its signs, and determine the moment of its termination.

Outline of the primary material. The objective side is a set of features which characterise an offence from the external side, a particular act of behaviour of an individual, a socially dangerous act (Article 2, Article 11 of the CC). Compared to other elements of a criminal offence, the objective side is most fully described in the dispositions of criminal law
provisions, with the legislator indicating the main features that characterise a particular act. Depending on how they are described in the dispositions of the articles of the Special Part of the CC, the objective features are divided into two groups: mandatory and optional. In the criminal law doctrine, there are various positions on the definition of mandatory and optional elements of the offence. Scholars consider the following to be mandatory features: a socially dangerous act, socially dangerous consequences, causal link between a socially dangerous act and a socially dangerous consequence [4, p. 90], an act in the form of action or inaction [5, p. 103], a dangerous act and its harmful consequences or the threat of their occurrence [2, p. 79]. Unanimously, the means, tools, place, setting, manner and time of the criminal offence are recognised as optional features of the objective side. However, if these features are directly provided for or arise from the content of the disposition of the norm, they become mandatory for a particular act.

The objective side of the criminal offence under Article 150 of the Criminal Code has an obligatory feature of an act - the use by parents or persons in loco parentis of a minor child for begging (systematic begging for money, things, other material values). Under the generally accepted provision, the act has two forms: action and inaction (Article 11 of the Criminal Code) [6]. The objective side of the analysed criminal offence can be expressed only in active socially dangerous actions - the use of a minor child for begging. When committing such an act, the subject does not directly influence the consciousness and will of the victim in order to cause his/her determination (desire) to engage in begging. However, it only uses the minor as a kind of "tool" when begging for property from strangers (for example, using a baby when begging for money from passers-by) [7, p. 279].

The term "use" is identified with the concept of "exploit" and is interpreted as "to apply, to use something for the benefit, to take advantage of something" [8, p. 97; 9, p. 214]. In the scientific literature, the interpretation of this term is rarely found. In particular, use is the perpetrator's perception of the child not as a person but as a valuable thing for him or her, which by its appearance encourages other persons to transfer specific material values (money, food) to him or her free of charge. That is, in this case, the child is a "tool" for committing anti-social actions, being at the same time a defenceless victim of the offender [10, p. 128]. As noted by I. V. Degtyareva, "use" is characteristic of young children who do not understand reality and are used by a person as an "instrument" of a criminal offence [11, p. 76]. In our opinion, the use of a minor child for begging should be understood as holding or presenting the victim as a valuable thing for the subject, which, by its appearance, encourages outsiders to give him or her money, things, or other material values free of charge.

We can agree with the conclusion of I. V. Degtyareva that most criminal proceedings do not refer to a specific form of using a minor child for begging at all but only indicate the general wording of the disposition of Article 150 of the Criminal Code [11, p. 76], which was confirmed by our own research of case law.

The disposition of part 1 of Article 150 of the CC is descriptive and directly follows that begging is understood as systematic begging for money, things, and other material values from outsiders. At the same time, both a minor child and an adult who uses a child (most often when the child is not yet able to speak) can beg for material values from outsiders. The actual begging may take place orally, in writing or by conclusive actions [12, p. 338]. The peculiarity of the objective side of using a minor child for begging is the child's lack of determination to engage in begging, i.e. his or her desire or unwillingness to participate in this type of anti-social activity is not actualised [13, p. 196].

The analysed criminal offence is a continuing offence, i.e., an offence consisting of two or more identical acts that implement a single criminal intent of the perpetrator to use a young child for begging. Such acts may include holding an infant or other small child in the arms and controlling the actions of a child who independently begs for material values from outsiders [12, p. 338].

The next feature of the objective side is the socially dangerous consequences, i.e. those harmful changes that are caused to the object of the criminal offence and are divided into two groups: material and non-material. Material consequences are harm of a personal (physical) nature or property damage. Intangible consequences are adverse changes in the object of the encroachment, which are combined with the violation of particular interests of participants in social relations protected by the norms of the Criminal Code.

Depending on the description of socially dangerous consequences in the disposition of the CC article, the corpus delicti of criminal offences are divided...
into material and formal. The act provided for in Part 1 of Article 150\(^1\) of the CC does not contain an indication of the damage caused in the disposition; therefore, as noted, it is recognised as an act with a formal composition and is completed from the moment the third episode of soliciting money, things, other material values from outsiders using a minor child by the subject [13, p. 197].

At the same time, the qualifying and especially qualifying features of the analysed criminal offence are acts related to violence or threat of violence (part 2), as well as infliction of moderate or grievous bodily harm to a minor child (part 3). Therefore, in this case, the analysed criminal offence becomes an offence with a material component and will be considered completed either from the moment of use of violence and causing light bodily harm in connection with its use (part 2) or from the moment of occurrence of the consequences described in part 3.

Thus, regarding the material elements of a criminal offence under parts 2 and 3 of Article 150\(^1\) of the CC, the third mandatory feature of the objective side of the acts with material elements cannot be ignored - the causal link between the action and the consequence. Usually, in criminal law, causation is understood as an objectively existing connection between an act (action or inaction, i.e., the cause) and socially dangerous consequences (effect) when the action or inaction causes (generates) the onset of a socially dangerous consequence [1, p. 136]. Since the qualified and specially qualified corpus delicti of the analysed criminal offence provide for the occurrence of socially dangerous consequences (have a material composition), causation is also a mandatory feature for all of them.

As already noted, the causal link must exist only in material terms. In our case, this is part 2, 3 of Article 150\(^1\) of the Criminal Code, where the necessary causal link exists between the socially dangerous act of using a minor child for begging and the consequences in the form of light, moderate or severe bodily harm. The causal link is characterised by the fact that a socially dangerous act (use of a minor child for begging) committed by a special (Article 150\(^1\) (1)(b) of the Criminal Code\(1\)) or general (Article 150\(^1\) (2)(3)(b)(iii) of the Criminal Code\(1\)) of the Criminal Code is a direct and sufficient cause of the consequences specified in Article 150\(^1\) (2)(b)(iii) of the Criminal Code\(1\) (light, moderate or grievous bodily harm).

A thorough understanding of the objective side of the analysed criminal offence is possible with due regard for the optional features of its composition (place, time, setting, method, means and instruments of commission), even though such features are optional and do not affect the qualification. It seems logical to think that these circumstances are not independent elements of the objective side of criminal offences, as they are not included in the concept of an act, causal link or consequence, which constitutes their objective side. The commission's place, time and circumstances are a set of specific conditions under which a criminal offence is committed, the objective side unfolds, and the result occurs. Even though optional features do not affect the qualification of the analysed offence, they need to be established, as they can significantly affect the sentencing by the courts.

The place of commission of a criminal offence is a particular territory associated with its commission, where the act was started and finished, or a criminal result occurred, or its commission in this place makes the act qualified [4, p. 95]. According to investigative and judicial practice, the places where this criminal offence is committed are places of mass stay of citizens (places of trade - bazaars, spontaneous markets and modern shopping centres, religious buildings or complexes, metro or public transport stations, railway stations, crossings, stadiums, provided that mass events are held there), sometimes even private residences of citizens. In particular, in case No. 444/3862/12 of the Central City District Court of Kryvyi Rih, it was established that Mr V., being near a church, pursuing a mercenary goal to increase her income from begging, used her minor child G. and D. to engage in begging. V.'s actions were qualified under Part 1 of Article 150\(^1\) of the Criminal Code. As we can see, the commission's place was a playground near the church [14].

In other criminal proceedings, the city's central market was the location of the crime: in case No. 0549/1852/2012 of the Torez City Court of Donetsk Oblast, it was established that E., being the mother of the minor Zh., used her minor daughter to engage in begging on the territory of the city's central market. E.'s actions were qualified under Part 1 of Article 150\(^1\) of the Criminal Code [15]. Alternatively, even a shopping centre: in case No. 403/5632/12 of the Babushkinsky District Court of Dnipro, it was established that Z., intending to use her child K. to beg for money from outsiders for profit systematically, arrived at the Novy Tsentr shopping centre, where she used her minor child K. to beg. Z.'s actions were classified under Part 1 of Article 150\(^1\) of the Criminal Code [16].

Time is a mandatory element of a particular criminal offence when specified in the law as a particular part
of the year, month, week, or day. The analysed act was
daytime in investigative and judicial practice (mainly
from 9:00 to 17-18.00). On weekdays, rush hour became
popular among the subjects in case a criminal offence
was committed in cities due to the increase in the number
of people using public transport.

The setting of a criminal offence is a set of external
circumstances provided for by law, characterised by
publicity or the presence of certain events; that is, these
are specific and specific objective conditions in which
a socially dangerous act is committed, which in many
cases may indicate an increased degree of social danger
of a criminal offence [4, p. 95-96]. Only the situation
specified in the disposition of the criminal law provision
is of criminal legal significance. The circumstance of
the act under Part 1 of Article 150\(^1\) of the CC can be
determined by the presence of third parties who can
meet the needs of the subject of the criminal offence. In
this case, the situation may consist of conditions under
which the child is harmed in terms of health, physical
development or educational level (time of year, weather
conditions, pollution of streets or other conditions harmful
to a minor's health).

The method of committing a criminal offence is a
specific method, procedure and sequence of movements and
techniques used by a person to commit a criminal offence. In
cases where the method of committing a criminal offence is a
constructive feature, particular study and proof are required,
as they are essential for the qualification of the act. The use
of a minor child for begging, involving the use of violence or
the threat of its use, implies the method of its commission -
violece or the threat of its use, which are qualifying features
of this crime (part 2 of Article 150\(^1\) of the CC). In particular,
in case No. 613/23/14-к of the Bohodukhiv District Court
of Kharkiv Region, it was established that O., intending to
use a minor child for begging with the use of violence and
the threat of violence, forced his partner P., together with his
minor son R., to wear old worn clothes in order to arouse
pity from strangers and engage in begging. O.'s actions were
qualified under Part 2 of Article 150\(^1\) of the Criminal Code,
and the method of using a minor child for begging was
e coercion with the use of violence [17].

Conclusions and Prospects for Further Research.
Thus, specifying the existing and introducing and
implementing new forms of the objective side of the
analyzed criminal offence will facilitate the strict
application of criminal law by the practical units of
the National Police of Ukraine and will also eliminate
contradictions and gaps in resolving issues of criminal
liability of persons who use a minor child for begging.

Promising areas of scientific research in the context
of criminal law protection of a minor child from
begging are to develop further proposals for improving
the provisions of the current CC with due regard for
scientific achievements and practical experience of
application of the relevant provisions of the CC. This
research should include a detailed analysis of the
characteristics of victims of this criminal offence and
the characteristics of particular subjects, which in this
provision are parents or persons in loco parentis.

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