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DOI <https://doi.org/10.32849/2663-5313/2021.9.11>**Maryna Prykhodko,***Postgraduate Student at the Department of Public Management and Administration, National Academy of Internal Affairs, 1 Solomianska square, Kyiv, postal code 03035, marina.d.ukr@gmail.com***ORCID:** orcid.org/0000-0001-7570-2152

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ELEMENTS OF AN ADMINISTRATIVE OFFENSE (MISDEMEANOR) IN COMBATING BULLYING (HARASSMENT)

Abstract. *The purpose* of the publication is to highlight and characterize the elements of an administrative offense (misdemeanor) in combating bullying (harassment) in Ukraine, which define the act as illegal and together are the basis for bringing a person to administrative responsibility. **Research methods.** Based on general scientific methods of cognition (empirical analysis, synthesis, system analysis, concretization, induction, and deduction), the author has put forward the definitive characteristic of an administrative offense (misdemeanor) in counteraction to bullying (harassment) through specifying and characterizing its features. **Results.** The main features of an administrative offense (misdemeanor) in combating bullying (harassment) are identified: illegality (violation of the rights of the child protected by law and other regulations); guilt (acts are usually committed intentionally); socially harmful acts (actions or inaction of psychological, physical, economic, sexual nature, which cause significant harm to the victim of bullying); administrative punishment (liability for bullying is provided by the penal part of art. 173-4 of the Code of Ukraine on Administrative Offense), as well as specific features distinguishing it from other types of administrative offenses (misdemeanors): “consciously” – an element is available when characterizing the guilt of juveniles and (or) minors persons, which means awareness of the action, not the consequences, and is sufficient to bring the perpetrator to administrative responsibility; “recurrence” of socially harmful acts of physical, psychological, moral, sexual, economic nature, including with the use of electronic communications, i.e., committing two or more acts of violence within a particular period for the incurrance of administrative liability for bullying (harassment). **Conclusions.** It is proposed to understand an administrative offense (misdemeanor) in combating bullying (harassment) as illegal, intentional, and (or) deliberate, repetitive socially harmful acts in the form of psychological, physical, economic, sexual violence, including with the use of electronic communications, which entail administrative liability.

Key words: bullying, illegality, guilt, actions, administrative punishment.

1. Introduction

Relevance of the topic. With every passing day, Ukraine’s anti-bullying policy is gaining momentum in the fight against the socially adverse phenomenon – bullying (harassment). Besides the positive aspects of the implementation of legislation on combating bullying (harassment), there are also challenging ones, incl., the adequate classification of the act and its subsequent qualification. To eliminate this shortcoming, it is essential to identify elements of an administrative offense (misdemeanor) in combating bullying (harassment), which has determined research relevance.

Literature review. It is worth mentioning many domestic and international scientists have taken an interest in the issue under

consideration and counteraction to bullying (harassment). However, it should be noted that the vast majority of these studies have been conducted through the prism of psychology (D. Olweus, H. O. Alieksieienko, L. I. Lushpaiu, I. I. Sydoruk, N. V. Lesko, et al.). In addition, there is a lack of legal studies devoted to the relevant issue – some contributions belong to I. H. Bukhtiarova, V. K. Kolpakov, V. A. Kryzhanovska, O. M. Poshtarenko, I. D. Pastukh, O. H. Strelchenko, L. M. Sukmanovska, and others.

The purpose is determined by the urgency of the research and involves highlighting and characterizing the elements of an administrative offense (misdemeanor) in combating bullying (harassment) in Ukraine.

Material statement. In order to distinguish the features of an administrative offense (misdemeanor) in the field of combating bullying (harassment), first of all, it is necessary to characterize the category of “bullying” and “administrative offense” (misdemeanor).

It should be noted that the scientific realm contains a pluralism of opinions about the concept of bullying; the author presents some of them.

Thus, N. Lashchuk states that bullying is intentional, not aimed at self-defense, long-term physical or psychological violence by an individual or a group which has domination over the individual and mainly occurs in organized groups for a specific personal purpose (Lashchuk, 2020, p. 22).

I. Zvarych interprets bullying as the aggressive behavior of a person, including a child, towards peers, each other to humiliate, intimidate, bully, which often includes physical violence to persuade a person to one’s own rules in school, class, team, group (Zvarych, 2020, p. 4).

From the above definitions, it appears that bullying is manifested in organized groups in the form of physical or psychological violence. At the same time, the scientists are not limited to the educational environment in favor of the Ukrainian legislation on combating bullying.

Latino, A. L., Carella, T., Pedale, R. et al. point out that bullying is systematic abuse of power and is described as aggressive behavior or intentional infliction of harm to peers, which repeats under upsetting the balance of power (Latino A.L., Carella T., Pedale R., 2019, p. 115).

In the context of an administrative offense (misdemeanor), the legal definition is enshrined in the Code of Ukraine on Administrative Offenses (CUAO) and is defined as “an illegal, guilty (intentional or negligent) act or omission that trespasses against public order, property, rights, and freedoms of citizens, the established order of management and entails administrative liability” (Kodeks Ukrainy pro administratyvni pravoporushennia).

2. The main elements of an administrative offense (misdemeanor) in combating bullying

It is worth mentioning that an administrative offense (misdemeanor) of bullying (harassment) is characterized by essential features which together give rise to bringing a person to administrative responsibility.

Thus, analyzing Art. 9 of CUAO, there are four main features of an administrative offense (misdemeanor):

- Illegality;
- Guilt (intent or negligence);
- Socially harmful acts (action or omission);

- Administrative punishment.

The author describes each of them:

1. Illegality as a feature of an administrative offense (misdemeanor) means that only a socially harmful, guilty act can be an offense (misdemeanor), which is enshrined in CUAO. In other words, if the actions are not envisaged in CUAO, it is not an offense (misdemeanor).

Administrative illegality, as a formal feature of an offense (misdemeanor), is a legislative “assessment” of the harmfulness of the act from which the administrative legislation protects public relations.

One could address the connection between illegality and social harm under which illegality is an external manifestation of the offense (misdemeanor), and social harm – internal.

It should be noted that CUAO gives an exhaustive list of offenses (misdemeanors); thus, if the act has socially harmful consequences but is not directly envisaged in CUAO, it cannot be considered an offense (misdemeanor).

2. Guilt is a mandatory element of an administrative offense (misdemeanor) and consists of the internal psychological attitude of the person to the act he/she has committed.

Articles 10 and 11 of CUAO enshrine the forms of guilt: intent and negligence. Therefore, an administrative offense shall be considered committed deliberately if the perpetrator realized the unlawful nature of his/her action or inaction, foresaw its harmful consequences and desired them, or knowingly allowed consequences to occur (Kodeks Ukrainy pro administratyvni pravoporushennia).

An administrative offense shall be regarded as committed through negligence if the perpetrator foresaw harmful consequences of his/her action or inaction but recklessly relied on their prevention or did not foresee some consequences, although he/she had to and could foresee them (Kodeks Ukrainy pro administratyvni pravoporushennia).

Consequently, guilt is an important criterion for recognizing an act as an administrative offense. Therefore, no matter how socially harmful the action or inaction, if they are not found guilty, the administrative offense doesn’t take place, and thus, the person cannot be prosecuted.

3. One of the characteristic features of an administrative offense (misdemeanor) is its harmfulness to society. The essence of this feature is its objectivity because an administrative offense (misdemeanor) is the result of human consciousness, will, and behavior, which manifests itself in two forms: action (active human behavior) and inaction (passive human behavior). Act (action or inaction), as an element of an administrative offense (misde-

measur), causes (or may cause) harm to public relations, which are protected by administrative law. Moreover, harm can be tangible, moral, physical, etc.

To distinguish the act which is considered an administrative offense (misdemeanor) from other similar offenses fixed by part 2 of art. 9 of CUAO, it is explicitly stated that administrative liability for offenses enshrined in CUAO arises "if these violations, by their nature, do not entail criminal liability"; (Kodeks Ukrainy pro administratyvni pravoporushennia).

4. The author emphasizes that according to Art. 9 of CUAO, which defines administrative offense (misdemeanor), administrative punishment is an independent and mandatory element of an administrative offense (misdemeanor). In other words, if the act is an administrative offense (misdemeanor), the penal part of the article obligatorily provides for liability in the form of administrative penalties and measures of influence.

Bullying (harassment) as a type of an administrative offense (misdemeanor) is also characterized by the above essential features which make it possible to recognize the act as illegal and bring a person to administrative responsibility.

The social harmfulness of bullying (harassment) is evident in the fact that actions of psychological, physical, economic, sexual nature cause significant harm to the victim of bullying and adversely affect her/his future public position.

An administrative offense in combating bullying (harassment) is most often expressed in actions that involve psychological, physical, economic, sexual violence.

DOCUDAYS UA International Human Rights Documentary Film Festival project, in terms of its anti-bullying campaign, introduces examples of the abovementioned features of harassment: "verbal abuse or intimidation using offensive words, i.e., constant insults, threats, and disrespectful comments about someone (about appearance, religion, ethnic affiliation, disability, mode of dress, etc.); physical intimidation or bullying through aggressive physical horriification consists of repeated blows, kicks, footsteps, blocking, pushing and touching in an undesirable and inappropriate manner; social intimidation or bullying with the use of isolation tactics means that someone is intentionally not allowed to participate in group work, dining at the dinner table, games, sports, or social activities"(Vseukrayinska initsiatyva DOCUDAYS UA Vydly bulinhu ta kiberbulinhu).

An administrative offense in combating bullying (harassment) can also be

expressed in the form of inaction: "A failure of the head of the educational institution to inform the authorized units of the National Police of Ukraine about bullying (harassment) of a participant in the educational process" (p. 5 of art. 173-4 of CUAO) (Kodeks Ukrainy pro administratyvni pravoporushennia).

Illegality in the field of combating bullying means that persons, by their actions (inaction), violate the child's rights protected by law and other regulations, in particular, the right to education and a safe educational environment.

The legal bullying (harassment) framework comprises: the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, UN Security Council's Resolution 1325 "Women, Peace, Security"; Laws of Ukraine: "On the Protection of Childhood", "On Protection of Public Morality", "On Prevention and Counteraction to Domestic Violence", "On Ensuring the Rights and Freedoms of Internally Displaced Persons", "On Amendments to Certain Legislative Acts of Ukraine on Combating Bullying (Harassment)", "On Education"; the Decree of the President of Ukraine "On urgent measures to prevent and combat domestic violence, gender-based violence, protection of the rights of victims of such violence"; Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Interaction of Subjects Carrying Out Measures in the Field of Prevention and Counteraction to Domestic Violence and Gender-Based Violence; Orders of the Ministry of Education and Science"; Orders of the Ministry of Education and Science "On Approval of the Regulations on Psychological Service in the Education System of Ukraine"; "Some Issues of Response to Bullying (Harassment) and the Use of Measures of Pedagogic Influence in Educational Institutions"; Letters of the Ministry of Education and Science of Ukraine: "Guidelines for interaction of teachers in educational institutions and cooperation with other bodies and services for the protection of children's rights", "On approval of guidelines for detection, response to domestic violence and interaction of teachers with other bodies and services"; "Guidelines for preventing and combating violence"; "Recommendations for educational institutions on the application of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Combating Bullying (Harassment)", "On Creating a Safe Educational Environment in Educational Institutions and Prevention of Bullying (Harassment)", etc. (Derzhavna naukova ustanova Instytut modernizatsiyi zmistu osvity. Zakonodavchi ta normatyvno – pravovi akty shchodo zapobihannya ta protydyi nasylstva).

Para. 1 of Art. 173 – 4 of CUAO expressly lists illegal actions: actions of psychological, physical, economic, sexual violence, including with the use of electronic communications means.

Administrative offenses of bullying (harassment) are usually committed intentionally (when the perpetrator was aware of the illegal nature of his/her action or inaction, foresaw its harmful consequences, and wanted them or knowingly allowed the consequences) (Kodeks Ukrainy pro administratyvni pravoporushennia).

Administrative punishment for bullying (harassment) is provided by Art. 173-4 of CUAO and occurs if the actions, by their nature, do not entail criminal liability. Thus, acts that have the elements of bullying (harassment) “entail the imposition of a fine of fifty to one hundred non-taxable minimum incomes or public works for the period from twenty to forty hours” (Kodeks Ukrainy pro administratyvni pravoporushennia).

3. Specific elements of an administrative offense (misdemeanor) in combating bullying

It is worth mentioning that an administrative offense (misdemeanor) in combating bullying (harassment) is characterized by specific elements distinguishing it from others:

1. *Conscious nature.* It is essential to keep in mind the fact that subjects of bullying (harassment) are juveniles and (or) minors who, due to their age, cannot fully realize the harmful effects on the person – a victim of bullying (harassment). Therefore, when characterizing the guiltiness of juveniles and (or) minors, the author proposes to highlight such a feature as *consciousness*, which means the awareness of actions, not consequences, and is sufficient to bring a perpetrator to administrative responsibility.

2. *Repetition frequency.* Given that one of the typical (mandatory) elements of bullying (harassment) is regularity (frequency), socially harmful effects of physical, psychological, moral, sexual, economic violence, including the use of electronic communications, shall contain this feature, i.e., a person must commit two or more violent actions for the incurrance of administrative liability for bullying (harassment).

Based on the above, the author proposes to understand an administrative offense (misdemeanor) in combating bullying (harassment) as illegal, intentional and (or) deliberate, repetitive socially harmful acts shown in the form of psychological, physical, economic, sexual violence, including the use of means of electronic communications, which entail administrative liability.

4. Conclusions

Thus, the analysis of elements of an administrative offense (misdemeanor), as well as in the field of combating bullying (harassment), allows identifying and characterizing main (illegality; guiltiness; socially harmful acts; administrative punishment) and specific (“consciously” and “repetition frequency”) features.

The author puts forward the legal category of an administrative offense (misdemeanor) in combating bullying (harassment) – illegal, intentional and (or) deliberate, repetitive socially harmful acts in the form of psychological, physical, economic, sexual violence, including the use of electronic communications, which entail administrative liability.

The prospect of further research is to formulate the author’s position on administrative liability for bullying (harassment) and thus, improve the current legislation of Ukraine.

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Приходько Марина,

ад'юнкт кафедри публічного управління та адміністрування, Національна академія внутрішніх справ, площа Солом'янська, 1, Київ, Україна, індекс 03035, marina.d.ukr@gmail.com

ORCID: orcid.org/0000-0001-7570-2152

ОЗНАКИ АДМІНІСТРАТИВНОГО ПРАВОПОРУШЕННЯ (ПРОСТУПКУ) У СФЕРІ ПРОТИДІЇ БУЛІНГУ (ЦЬКУВАННЮ)

Анотація. *Метою* публікації є висвітлення та характеристика ознак адміністративного правопорушення (проступку) у сфері протидії булінгу (цькуванню) в Україні, які визначають діяння протиправним та в сукупності є підставою для притягнення особи саме до адміністративної відповідальності. *Методи.* На підставі загальнонаукових методів пізнання (емпіричного аналізу, синтезу, системного аналізу, конкретизації, індукції й дедукції) запропоновано дефінітивну характеристику адміністративного правопорушення (проступку) у сфері протидії булінгу (цькуванню) шляхом виокремлення його ознак і надання їх характеристики. *Результати.* Визначено головні ознаки адміністративного правопорушення (проступку) у сфері протидії булінгу (цькуванню), зокрема: 1) протиправність (порушення охоронюваних законом та іншими нормативно-правовими актами прав дитини); 2) винність (діяння, як правило, вчиняються умисно); 3) суспільна шкідливість (дії чи бездіяльність психологічного, фізичного, економічного, сексуального характеру, які несуть істотну шкоду для жертви булінгу); 4) адміністративна караність (відповідальність за булінг передбачена санкцією ст. 173-4 Кодексу України про адміністративні правопорушення). Також з'ясовано специфічні ознаки булінгу, які вирізняють його з-поміж інших видів адміністративних правопорушень (проступків): а) «свідомо» (ознака в характеризованні винності малолітніх т/або неповнолітніх осіб, яка полягає лише в усвідомленні дії, а не наслідків, і є достатньою для притягнення винного до адміністративної відповідальності); б) «повторювальність» суспільно шкідливих дій фізичного, психологічного, морального, сексуального, економічного характеру, у тому числі із застосуванням засобів електронних комунікацій (тобто вчинення особою двох чи більше насильницьких актів із певним проміжком у часі для настання адміністративної відповідальності за булінг (цькування)). *Висновки.* Запропоновано під адміністративним правопорушенням (проступком) у сфері протидії булінгу (цькуванню) розуміти протиправні, умисні та/або свідомі, повторювальні суспільно шкідливі діяння у формі психологічного, фізичного, економічного, сексуального насильства, у тому числі із застосуванням засобів електронних комунікацій, за які передбачена адміністративна відповідальність.

Ключові слова: булінг, протиправність, винність, діяння, адміністративна караність.

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