

## АДМИНИСТРАТИВНОЕ ПРАВО И ПРОЦЕСС

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### DELICTOLOGICAL CHARACTERISTIC OF PERSONALITY OF JUVENILE OFFENDER

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#### SUMMARY

The article considers the content and purpose of the delictual characterization of the personality of a juvenile offender in the administrative-legal aspect. The purpose of this article is to study the socio-psychological mechanism of behavior of minors who committed administrative misconduct. It has been established that the delictual characterization of the person who committed the administrative offense has many common features with the criminological characteristics of the offender's personality. At the same time, in contrast to crimes, the representation of children often does not form a clear boundary between the unwanted (immoral) behavior and the illegal, constituting the composition of an administrative offense. The main characterizing the juvenile offender is the degree of social deformation and adaptation of this personality. Knowledge about the characteristic features of the personality of a minor offender helps to better determine his guilt and to choose an effective measure of legal reaction to an unlawful act. The consideration of the administrative-legal and socio-psychological aspects of the personality of a juvenile offender is the starting point for improving the juvenile administrative justice, which should be aimed at socializing the child, developing his legal consciousness at the level of an autonomous or, at least, conventional morality.

**Key words:** administrative offense, delictology, child, personality, socio-psychological aspect.

#### ДЕЛІКТОЛОГІЧНА ХАРАКТЕРИСТИКА ОСОБИСТОСТІ НЕПОВНОЛІТНЬОГО ПРАВОПОРУШНИКА

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#### АНОТАЦІЯ

У статті розглядається зміст та призначення деліктологічної характеристики особистості неповнолітнього правопорушника в адміністративно-правовому аспекті. Метою статті є вивчення соціально-психологічного механізму поведінки неповнолітніх осіб, які вчинили адміністративні проступки. Установлено, що деліктологічна характеристика особи, яка вчинила адміністративне правопорушення, має багато спільних рис із кримінологічною характеристикою особистості злочинця. Водночас, на відміну від злочинів, в уявленні дітей часто не сформовано чіткої межі між небажаною (аморальною) поведінкою та протизаконною, що складає те чи інше адміністративне правопорушення. Головним, що характеризує неповнолітнього правопорушника є ступінь соціальної деформації і дезадаптації його особистості. Знання про характерні властивості особистості неповнолітнього правопорушника допомагає більш правильному встановленню його форми вини та обранню ефективного заходу правового реагування на неправомірний вчинок. Урахування адміністративно-правових та соціально-психологічних аспектів особистості неповнолітнього правопорушника є вихідною засадою вдосконалення ювенальної адміністративної юстиції, яка має бути спрямована на соціалізацію дитини, розвиток її правової свідомості на рівні автономної або конвенціональної моралі.

**Ключові слова:** адміністративне правопорушення, деліктологія, дитина, особистість, соціально-психологічний аспект.

**Statement of the problem.** The state and society should strive to create conditions that allow the child to have meaningful life in society. Particular attention should be paid to the period of life of adolescents when they are most prone to improper (deviant) behavior (The Beijing Rules, 1985). Every

behavior, including delinquent, always has a socio-ethical meaning and evaluation. Such behavior is simultaneously a consequence of the material embodiment of moral qualities and psychological characteristics of the individual. A minor person (child, adolescent) is not an exception to this rule.

**Relevance of research topic.** The definition of delictual characteristics and the degree of deformation of a person allows to determine further measures of minimization of negative determinants on this person.

**Research status.** It should be emphasized that the legal science is quite widely represented by criminological studies of the phenomenon of child crime: V. Golina, B. Golovkin, S. Gorlach, D. Vygovsky, V. Vitvitskaya, G. Didkovskaya, O. Dzhezha, P. Pylypchuk, O. Semerak and others. Instead, the crime is not the only manifestation of deviation among children, although it is most socially dangerous. A significant number of juvenile delinquencies form harmful acts, which in the rules the Code of Ukraine on Administrative Offenses (CUAO) qualify as administrative offenses. Taking into account their share in the general statistics of juvenile delinquents and the high percentage of latency, the damage from such negative actions can not be underestimated. However, the question of the delictual characterization of minors who commit administrative misconduct in scientific circles is less marked.

**The purpose of this article** is to study the socio-psychological mechanism of behavior of minors who committed administrative misconduct. Accordingly, the research objective is to create an understanding of a juvenile delinquent to further integrate this knowledge into the implementation of administrative juvenile justice and juvenile prevention. The methodological basis of the study formed the general and special methods of scientific knowledge in their rational totality.

**The main material.** Condition of juvenile delicacy and administrative misconduct. Analysis of statistical data of the General Prosecutor's Office of Ukraine shows that for five incomplete years (from 2014 to September 2018 inclusive), the number of registered criminal offenses committed by minors or their participation reached almost 29 thousand cases. The number of juvenile offenses committed by administrative offenses is much more complicated. According to the State Statistics Service of Ukraine, only impact measures envisaged by Article 24-1 of the CUAO for 2014–2017 were applied to 66,2 thousand juveniles (data from the Statistical Bulletins "Administrative Offenses" for the relevant years). It should be emphasized that, firstly, only persons who have reached the age of 16 can be brought to administrative liability (while the minimum age for criminal liability is 14 years). And secondly, the law provides for the possibility of applying and specific administrative penalties to such persons, and accordingly, these indicators are included in the general statistics of the persons brought to administrative responsibility of individuals and to distinguish them from the available statistical data does not seem possible. However, even the data given is enough to see more than twice the difference in the number of recorded administrative misconduct and crimes committed by minors.

The highest percentage among recorded juvenile delinquencies is administrative offenses that violate public order and public safety – 50%, as well as administrative offenses that violate the established order of government – 38,9%. Among them, such offenses as "smoking tobacco products in prohibited places" (Article 175-1 CUAO) – 27,1%, "drinking beer, alcohol, low alcohol beverages in prohibited places of law or appearance in drunken places in public places" (Article 178 CUAO) – 16%, "residence without a passport of a citizen of Ukraine or without registration of a place of residence" (Article 197 CUAO) – 35,68% are leaders among all other offenses. In addition, minors account for a significant number of such offenses as "petty hooliganism" (Article 173 CUAO) – 3,93%, "committing domestic violence" (Article 173-2 KUpAP) – 1,5%. Among other types of juvenile administrative offenses, attention is drawn to "the management of a vehicle by a person who does not have the appropriate documents for the right to manage" (Article 126 KUpAP) – 3,51%, "driving vehicles in a state of

intoxication" (Article 130 CUAO) – 2%; "Petty abduction of someone else's property" (Article 51 CUAO) – 1,11%; "Illegal crossing or attempt of illegal crossing of the state border of Ukraine" – 0,84% (Article 204-1 CUAO), "violation of the rules of the traffic that caused damage to vehicles, cargo or other property" (Article 124 CUAO) – 0,84 % etc (Administrative offenses in 2016).

The boundary between administrative misconduct and crime is manifested in the degree of social danger. On the objective side, some offenses are completely identical and differ only in consequence or size of such element as the subject of the offense. Given this, the internal connection that combines the identity of the perpetrator and the offender (in administrative qualifications) is often very close, and the features that characterize these individuals are very similar.

#### **Socio-legal analysis of the identity of a juvenile offender.**

The personality of the offender is the person of a person who "arbitrarily interrupted a certain node from a plurality of social ties that unite this person with the state and society" (Alaukhanov, 2008). The diversity of relationships, qualities and typical features that determine the identity of the offender, criminology studies in two aspects – legal (criminal) and socio-psychological. It is appropriate to base such division on the basis and for the characterization of the person of the juvenile offender who committed an administrative delinquency. Accordingly, the administrative and legal characteristics of the personality of a juvenile delinquent is based on legal categories such as the type of misconduct, the commission of an offense by a group of persons, repetition, the commission of an offense by a person who previously committed a criminal offense, the harmfulness of a misdemeanor, the material or formal composition of the delict, the type of administrative penalty or measure influence, etc. Important for the administrative-legal characteristic is also the form of guilt, the motivation and purpose of committing an administrative offense, the presence of adult instigators, the consequences of misconduct. Administrative-legal and delictual qualities demonstrate the degree of social deformation of the child's personality, its special qualities, make it possible to identify the most significant features of such persons, sometimes negative prospects for further criminalization.

Within the socio-psychological analysis of the identity of a juvenile offender, the moral and ethical characteristic of the latter becomes of special significance. In the structure of the individual distinguish biological and physiological, socio-demographic, moral and psychological, social-role features.

The destructive behavior of a person depends on its biological nature, its features. Any external influence on it is refracted through the prism of its biological nature. Do not take this into account – means to ignore the deterministic understanding of human action. However, it should be kept in mind that the biological origin does not contain any ethical or moral element (Criminology, 2009). A child from an adult has a number of anatomical-physiological and mental characteristics. Given these peculiarities, the period of childhood is defined as the most intense stage of human development. The biological age of children is characterized, for example, by the maturity of the skeleton (the course of ossification processes), the level of development of secondary sexual characteristics, functional, morphological and mental maturity (Antonik, Andrianov, 2009). However, the factors presented alone do not identify the child offender personally. On the contrary, given the conditional "imperfection" of the child's body (insufficient physical strength, height), this factor may restrain the child from committing more dangerous delinquents. However, the physiological characteristics of a minor sometimes play a role in committing offenses involving violence against younger or worse peers, but in this case, the main factors of such antisocial behavior are primarily the psychological characteristics of the adolescent. Under the

mental component of the person understand the independent inner world: her feelings, perceptions, experiences; strong-willed, intellectual and emotional peculiarities; temperament and character. Some of these qualities and properties have a natural foundation. All of them are relatively stable and individual, which does not preclude their development throughout the life of a person under the influence of its specific living conditions and as a result of diseases. But basically, they change under the influence of upbringing and re-socialization. That is why this component of a person is not a purely psychological beginning, but its psychosocial properties (Criminology, 2009).

“Juvenile offender – a changing and dynamic person”. Even a superficial look on him reveals a strange inconsistency of judgments, conclusions and motives, instability of behavior, illogical behavior and actions, etc. In the psychology of the offender, there is a unity of incompatibility: the duality and contradictory nature of the very basis of the person, its relation to society, to the people around them, to the norms and rules of conduct (Boceliuk, 2010). To diagnose the adequacy of the mental development of an individual, scientists-psychologists rely on the concept of age and individual peculiarities of human mental development. All individuals are in the same society the same degrees of mental development, but pass them in different ways. There are typological and individual differences in the process of development and its results. They are manifested in the functional features of the nervous system, in mental, emotional, moral, volitional qualities, in the needs, interests, abilities and characterological features of children and young people. In the process of development, a unique individual identity is formed (Age Psychology, 2012). It is the psychological and psychological peculiarities of childhood that is the criterion that defines the age of legal responsibility.

The causes of administrative violations of this category of persons depend on the peculiarities of their mental and social development (Kovalchuk, 2007). At the same time, in proceedings on administrative violations, such a question remained without due attention of the legislator. R. Blagout argues that adolescence itself is a significant deviant factor in the life of a minor. The scientist discovers the interconnection of the negative properties of various types of temperament and character peculiarities; proves that certain types of accentuations of character (hyperventil, epileptoid, isteroid, labile, unstable, conformal), as well as delays in mental development and cross-mental development, socially disadapted and addictive behavior have a certain delinquent significance (Blaguta, 2006).

Studying the administrative practice and the materials of registration and prophylactic cases of children taken on the preventive record in some territorial subunits of the juvenile prevention of the National Police of Ukraine gave us grounds to identify the following main groups of juvenile offenders, depending on their individual peculiarities of mental development: a) persons with obvious signs of lagging intellectual component in mental development; b) a person with obvious signs of lagging volitional component; c) persons with adequate mental development, but those who by type of temperament are sanguine or choleric; d) persons with mental acceleration. Of course, the inconsistency of psychology is inherent in teenagers and, to a certain extent, in adolescence. Moreover, the formation of the personality of this age can proceed only on the basis of overcoming internal contradictions, on the basis of their unity and struggle. It should be emphasized that human mental activity is fully possible through its active communication with other people and social groups. Socio-demographic features include information about gender, age, level of education, occupation, length of service, marital status, place of residence and other data on the social status of individuals. The above signs establish connections of the person of the offender with the typical characteristics of the whole society (Criminology, 2009). As a

rule, unlawful acts begin to be committed by juvenile elementary school children, although their proportion in the total number of juvenile offenses is much smaller than that of older adolescents (Bandurk, 2014). The development of a higher level of moral consciousness is associated with the development of intelligence, so it appears not earlier than adolescence, and then only in 10% of people of this age. The child may know how to behave correctly, but for some reason do otherwise (Kulagina, 1999). But most of these acts, if they do not contain signs of a crime, do not come to the attention of statisticians and analysts, since the child acquires administrative capacity only from the age of 16. Among the persons who committed offenses at the age from 16 to 18 years of age, the social status (their immediate environment: family, friends, family ties and relationships between family members) largely determines the nature of such delinquencies. For example, among the persons who compiled administrative materials under Article 44 of the Code of Ukraine on Administrative Offenses “unlawful purchase, storage of narcotic drugs or psychotropic substances without the purpose of marketing in small quantities” (in 2016 they accounted for approximately 0,5% of all detected juvenile offenses), almost 60% were children from ordinary families of middle income. The facts of such administrative offenses, as a rule, were detected by police at night or at night on the outside of schools, near cafes and discos. It was found that in most cases, such parents do not exercise authority over their children and have no proper influence on them. In addition, the presence of these adolescents in informal groups (“companies”) has a significant impact on the commission of such offenses. During a confidential interview with such children, some of them acknowledged that the smoking of “weak” narcotic plants in small doses is very often practiced among their acquaintances of adolescents.

Y. Kolosovsky proposes to classify juvenile offenders into four groups according to the nature of the formation in the last deviant behavior – the first group of offenders should include minors, the formation of whose personality took place in a normal positive environment; to the second - minors, whose formation took place in an environment with certain but not significant moral and emotional deviations; to the third – persons whose formation took place in an unfavorable, contradictory environment; to the fourth – the persons whose formation took place in a completely unfavorable environment (Kolosovsky, 2014).

Personality-role properties are conditioned by the fact that the behavior of a person depends, firstly, on the social positions which she observes in society; and secondly, from the understanding and fulfillment of its own role roles and functions arising from the data of social positions (Criminology, 2009). In this context, it is possible to identify groups of child offenders who evade education that commit acts of violence in the family, leave families or state institutions for orphans, have criminal record for committing criminal offenses, etc. It is among these categories of minors that such violations as smoking tobacco products, drinking alcoholic beverages in prohibited areas of law, or appearing in drunken places in public places, residence without a passport of a citizen of Ukraine or without registration of a place of residence, intentional spoilage of a passport or loss of it with negligence, breach of the border regime, illegal crossing or attempted illegal crossing of the state border of Ukraine, etc.

Children who are in conflict with the law are subject to legal arbitrariness. Set themselves above the requirements of the law, not fully aware that their execution is a necessary obligation. Delicatological studies each time confirm the essential specificity of their legal consciousness. Persons committing an offense disclose (hidden or explicit) contempt of the law; they are sure that the law can be bypassed, violated in a particular situation in favor of personal or clan-group interests, counting (sometimes unreasonably) on their own legal impunity (Criminology, 2009).



All these properties are also inherent in most of the juvenile offenders.

**Conclusions.** As for the identity of a juvenile offender, the main thing that characterizes him is the degree of social deformation and maladaptation of his personality. Integration of the child into the social environment and vice versa, disorganization and delictualization of the individual, is usually the only connection with the processes of its organic formation. Social deformation occurs gradually, encompassing all deeply morally spiritual and other important social principles of the personality of a minor. The process of deformation is accelerated if the child is in an antisocial environment, whether the family or its individual members (for example, a parent or mother, older brothers drink alcoholic beverages, narcotic or psychotropic drugs, have unusual convictions), or a destructive youth subculture whose values are formed on based on drunkenness, drugs, petty mischief, sexual inactivity, and gambling.

Unlike crimes, the representation of children often does not form a clear boundary between the undesirable (immoral) behavior and the illegal, constituting the composition of an administrative offense. Against the background of a high level of marginality, even the adult population of the Ukrainian population has a social danger that children and adolescents, if there is a possibility to avoid punishment, go to commit an offense without undue hesitation. In the future, the absence of internal restraining motives and regulators of behavior leads to the fact that as soon as fear of punishment disappears, or there is the possibility of avoiding legal liability, a person no longer stops anything before committing more dangerous offenses, in particular crimes. Compared to crimes, the deterrent factor in legal liability for administrative offenses is significantly lower, so juvenile offenders often do not think about the consequences of antisocial misconduct. The commission of an administrative offense in childhood is, in many cases, an indicator of a person's tendency to disregard not only moral norms, but also rights. Each of these approaches to the study of the identity of a juvenile offender is undoubtedly important both from a theoretical and a practical point of view. Knowledge about the characteristic features of the personality of a minor offender helps to better determine his guilt and to choose an effective measure of legal reaction to an unlawful act. In some of our previous publications, we have already paid attention to the social reintegration of the influence of juvenile offenders (the Scandinavian model of juvenile justice) within the framework of criminal-legal relations (Veslov, Kovalenko, Ustimenko, 2016). However, such an approach is not unnecessary for the improvement of juvenile administrative and tort relations. The consideration of the administrative, legal and socio-psychological aspects of the personality of a juvenile offender is the starting point for the improvement of juvenile administrative justice, which should be aimed at the socialization of the child, the development of its legal consciousness at the level of the autonomous (moral norms and principles become their own property of the individual, that is, internal) at least, the conventional morality (the source of moral principles remains external, but the child is guided by the correspondence with the surrounding environment). The statement in this scientific article creates prospects for further research in this direction, namely: analysis of determinants of juvenile administrative delicts; review of the minimum age of administrative liability established by the legislation of Ukraine today and the system of measures of influence on such persons; bringing standards of proceedings in cases of administrative violations of minors to the requirements of international norms, etc.

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