

# Administrative Law in Education: Specifics of Violations in Secondary and Higher Institutions

Oleksandr Akimov <sup>1\*</sup>, Natalia Melnychuk <sup>2</sup>, Mykola Mykytiuk <sup>3</sup>,  
Valentyn Serdiuk <sup>4</sup>, Andriy Motsa <sup>5</sup>

<sup>1</sup> Department of Public Administration, Interregional Academy of Personnel Management, Kyiv, Ukraine.  
Scientific and Methodological Center for Personnel Policy,  
Ministry of Defense, Kyiv, Ukraine.

<sup>2</sup> Department of Administrative Law and Process, Financial and Information Law, Institution of Higher Education  
Lviv University of Business and Law, Lviv, Ukraine.

<sup>3</sup> Institute of the Department of the State Protection of Ukraine,  
Taras Shevchenko National University of Kyiv, Kyiv, Ukraine.

<sup>4</sup> Department of Judiciary, Advocacy, and Prosecution,  
Institution of Higher Education, Lviv University of Business and Law, Lviv, Ukraine.

<sup>5</sup> Department of Geography and Tourism,  
Ferenc Rakoczi II Transcarpathian Hungarian College of  
Higher Education, Berehove, Ukraine.

\*Corresponding author: 1970aaa@ukr.net

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**Abstract:** General secondary education is positioned as a compulsory essential component of the system of continuous education. Its vectoriality is seen as ensuring the comprehensive development of the individual through educational activities. The article aims to analyse the procedural and legal aspects of administrative proceedings in cases involving violations in general secondary education. The study reveals the specifics of administrative proceedings in the modern educational field. It highlights the basic principles of education and differentiation of administrative offences. It is determined that proceedings on administrative offences in the secondary education environment are considered the activities of authorised subjects to regulate the process of consideration of cases on administrative offences by administrative procedural rules. The paper analyses the most significant legal and procedural aspects of administrative proceedings in the field of study. It highlights the prospects for improving administrative law in general secondary education. It is substantiated that modern approaches and tools in the system of administrative law in the educational environment should be adapted to the active implementation of successful international practical experience against the background of European globalisation principles of sustainable development. It is proved that integration of innovative solutions into the system of regulation of administrative proceedings for violations in the field of general secondary education environment allows preventive protection against the occurrence of offences, stimulates the development of the educational system for the successful social and professional realisation of the younger generation, prevents the risks of corruption, and increases the level of competitiveness of national educational institutions.

**Keywords:** administrative proceedings, administrative offence, general secondary education, legal factors, procedural aspects, administrative process.

## Introduction

Given that education is positioned as a determining factor in the socio-economic, political, cultural, and scientific development of society, it is a strategic resource for optimising the quality of life, realising national interests, and strengthening the authority and competitiveness of the state in a globalised environment. The state needs to ensure adequate regulation in the field of education.

Education in Ukraine should ensure appropriate competitiveness in the international educational space. A proper regulatory system in the educational field will help ensure the integration of the latest production and information technologies, which will intensify the pace of socio-economic and other areas of social development.

The phenomenon of administrative proceedings plays a significant role in this process. Proceedings for offences in education are considered the activities of authorised subjects to regulate the process of considering cases of administrative offences and the application of administrative penalties by administrative, procedural rules, and they have several specific legal and procedural features. This issue requires special attention in the context of Ukraine's priority in progressing in European integration during the post-war recovery period.

Thus, innovative approaches to considering cases of violations in the educational sphere require an expanded study of legal and procedural aspects, especially in the context of general secondary education.

### **Literature review**

Researchers have reflected on the need to optimise the legal and procedural basis of administrative proceedings in cases of violations in general secondary education in a number of scientific developments and publications. In particular, Voznyak and Zherybylo [1] analyse the potential possibilities of administrative regulation in decentralising the educational process.

The researchers Koval et al. [2] study the sustainability of the educational environment in the era of changes in the legal and procedural aspects of administrative regulation. In continuation, Bakhtina [3] conducts a comparative analysis of administrative discretion in full democracies and hybrid regimes.

Researchers Semenets-Orlova et al. [4] analyse the issues under study in the context of distance learning. At the same time, Shkuropatskyi et al. [5] focus on the specifics of the administrative process under the legal martial law regime.

The problems of the administrative process in modern conditions are also paid attention to by researchers Balakarieva et al. [6]. The researchers identified several legal and procedural aspects as the most important in modern administration.

Foreign researchers Cheng [7] and Rosenbloom [8] analyse various aspects of the administrative process, including in the educational environment. The authors propose to update the measure of administrative proceedings for violations in the context of bullying, improper performance of duties and corruption risks. In continuation, Cass et al. [9] emphasise the need to optimise the institution of administrative law in the field of education after the dynamics of the education system as a result of the COVID-19 pandemic, which has led to an increase in the share of distance learning processes.

Scholars Lunenburg and Ornstein [10] offer a balanced perspective on educational administration, using opposing perspectives on key issues. The authors discuss the role of social justice in our educational system, including its roots and importance.

The researchers Berendt et al. [11] raise the issue of the potential of artificial intelligence and "big data" to provide more effective real-time monitoring of the education system, considering the implications for fundamental human rights and freedoms of both teachers and students. The scholars argue that artificial intelligence affects data protection and privacy in the educational environment and fundamental rights in general.

According to most researchers, the modern educational environment should create student-centred teaching conditions, requiring transformational pedagogy, participation and collaboration, problem-based learning, and prevention of bullying and corruption. At the same time, the managerial paradigm of education should be implemented as a key to essential sustainability competencies.

Despite scientists' significant achievements, it is necessary to note their fragmentation, which necessitates further active scientific and methodological development of this issue.

The article aims to analyse the procedural and legal aspects of administrative proceedings in cases involving violations in general secondary education.

### **Materials and methods**

The research materials were based on scientific developments and publications on the issues under study, as well as legislative and regulatory acts in the field of administrative law and management of the educational process.

The research methodology is based on several modern scientific methods, including the following:

- a systemic method that allows the study of administrative law in the educational environment as a systemic formation that functions based on approved theoretical views and effective practices;
- *-theoretical* methods: analysis, classification, systematisation, generalisation. Analytical and synthetic research was used to determine the stages and factors of the object's dynamics, as well as various legal and procedural aspects. Induction was used to predict the possibilities of optimising the process under study. Generalisation was used to formulate the study's conclusions.

## Results

Education is a purposeful learning and teaching process aimed at the comprehensive development of human abilities. Article 53 of the Constitution of Ukraine stipulates everyone has the right to education. At the same time, complete general secondary education is considered compulsory. In general, the function of the state in this area is to ensure accessibility and free education provided by municipal and state educational institutions [4].

General secondary education is a purposeful systemic process through which systematic knowledge about a person and society, production, nature, and culture is obtained through cognitive and practical activities [1]. The result of such a process is an individual's social, intellectual, and physical development, which serves as the basis for further education and employment [6].

The basic principles of education in Ukraine are as follows:

- accessibility of all forms of public education services, continuity and unity of education;
- humanism and universal spiritual values;
- integration into the global cultural and historical development;
- equality of conditions for the realisation of the abilities and talents of every citizen;
- autonomy from the influence of public, political and religious formations, and flexibility of the education system;
- secular and scientific nature of education;
- active synergy with the education of other countries;
- tangent to practical science and production;
- synergy of aspects of public self-government and public administration in education [12].

Administrative proceedings synergise the various functions of the state apparatus, from the preparation and implementation of sectoral management acts to logistical activities [2].

In addition to the Law mentioned above, certain aspects of this issue are regulated by the Law of Ukraine "On Complete General Secondary Education" No. 463-IX [13], the Code of Ukraine on Administrative Offences (CAO) [14], Order of the Ministry of Education and Science of Ukraine [15], Order of the Ministry for Development of Economy, Trade and Agriculture of Ukraine [16] and several others.

In particular, the Decrees of the President of Ukraine "On Measures to Ensure Priority Development of Education in Ukraine" of 30.09.2010 No. 926/2010, "On Measures to Develop a System for Identifying and Supporting Gifted and Talented Children and Youth" of 30.09.2010 No. 927/2010, "On Measures to Improve the Functioning and Development of General Secondary Education" of 26.12.2013 No. 580/98, "On the National Doctrine of Education Development" of 17.04.2022 No. 347/2002 are of particular importance [17, 18, 19, 20].

In addition, certain aspects of the administration of the educational process are covered in the Concept of Implementation of the State Policy in the Field of General Secondary Education Reform "New Ukrainian School" for the period up to 2029, Order of the Ministry of Education and Science of Ukraine No. 329 of 13.04.2011 "On Approval of the Criteria for Assessment of Academic Achievements of Students (Pupils) in the General Secondary Education System", Order of the Ministry of Education and Science of Ukraine No. 1222 of 21.08.2013 "On Approval of Indicative Requirements for Assessment of Academic Achievements of Students in Basic Disciplines in the General Secondary Education System" [21, 22, 23].

Implementing the new legislation in the education sector provides for the transformation of national education based on Europeanisation. The Strategic Framework for European Cooperation in Education and Training towards a European Education Area and Beyond (2021–2030) (ET2030) is an updated vision of the further development of the education sector. The key goal of cooperation is to build and further develop the European Education Area [24]. The idea of creating a European Education Area by 2025 was announced in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Strengthening European Identity through Education and Culture on 17 November 2017.

In most European countries, one introductory law article outlines the right to education and the main aspects of this legal phenomenon. At the same time, in the Czech Republic, Lithuania, Slovakia, Slovenia, and Montenegro, these issues are outlined in two articles, in Croatia and Serbia – in three, in Switzerland – in four articles, and Portugal – in six. This indicates that these countries have different limits of constitutional regulation of education, including in the legal and procedural aspects of administrative proceedings in the sector.

In particular, the educational process is regulated by the Education Strategy of the Czech Republic until 2030 [25], the Framework of Educational Programmes in accordance with the Law on Education of the Czech Republic [26].

The main law regulating education in Slovakia is Act No. 245/2008 "Collection on upbringing and education" [27]. Lithuania's primary sectoral law is the Law on Education [28].

In Montenegro, secondary education is regulated by the General Law on Education [29] and the Law on Education of Children with Special Educational Needs [30].

Croatian secondary education legislation (ISCED 3) includes the National Pedagogical Standards for Secondary Education (OG 63/08, 90/10), the Ordinances on Adult Secondary Education (OG 112/00, 89/03, 194/03), the Ordinances on the Standards of Secondary School Teachers (OG 112/09, 94/10), the Ordinance on Secondary Education of Gifted Students (OG 90/93), and a number of others [31].

Administrative proceedings cover a wide range of public relations in the field of public administration and are subject to such differentiation:

- proceedings related to the implementation of the tasks of the internal organisation of the management apparatus;
- proceedings that mediate relations between various state bodies, institutions and enterprises;
- proceedings concerning relations between executive and administrative bodies and citizens.

It is worth noting that the difference between process and proceedings implies that proceedings are regulated through special organisational regulation.

It should also be noted that some difficulties characterise the identification of an indicator of differentiation of administrative proceedings. This is because several theoretical aspects of this procedural activity have not yet been developed [4]. Also, the solution to the problem is complicated by the wide range of administrative and procedural activities. In this regard, applying a single criterion for classification will not be sufficient to form an optimal system of administrative proceedings.

*Proceedings in cases of administrative offences* are considered to be the activities of authorised subjects to regulate the process of considering cases of administrative offences and applying administrative penalties by administrative procedural rules.

The main tasks of administrative proceedings are defined in Article 245 of the Code of Ukraine on Administrative Offences [14]:

- complete, comprehensive, timely and objective establishment of the circumstances;
- implementation in strict compliance with the requirements and norms of the law;
- ensuring full implementation of the decision;
- Identifying the most significant preconditions and causes that contribute to the commission of administrative offences, development of a system of preventive prevention of offences and strengthening the rule of law, raising public awareness of these issues [2].

Administrative proceedings in cases of violations in general secondary education are based on the basic *principles of administrative proceedings* enshrined in Ukraine's legislative framework. These principles form the procedure for bringing perpetrators to appropriate administrative responsibility.

The basic principles of administrative liability include:

- the principle of legality;
- the principle of the rule of law;
- the principle of transparency;
- the principle of priority of the interests of the individual and the state;
- the principle of humanism;
- the principle of priority in finding out the objective truth;
- the principle of the national language;
- the principle of individualisation of punishment;
- the principle of equality of all before the law;
- the principle of proportionality of punishment to the offence;
- the principle of applying the presumption of innocence.

Generally, there are two main types of proceedings in cases of administrative offences: *ordinary and simplified*.

*Ordinary* proceedings are implemented in most cases and are regulated in detail by the current legislation. They involve drawing up a record, determining the measures of restraint and the procedure for their application, and considering cases, facts, and circumstances that are evidence of law. They also involve the obligations of the parties to the proceedings.

*Simplified proceedings* are applied to a small number of offences and are characterised by a minimum of procedural actions and their efficiency.

The decision on an administrative offence is made in two copies, one of which is handed to the person held administratively liable.

After properly considering the case of an offence in the administrative field of the educational process, the authorised official, by Art. 283 of the Code of Administrative Offences, must issue a fair decision that will serve as the basis for administrative proceedings in the case [6].

*A decision on an administrative offence (Article 287) may be appealed against by the prosecutor, the person against whom it was issued, and the victim.*

*One of the following decisions may be made:*

1. leaving the decision on the case of an administrative offence unchanged while dismissing the complaint, after which a decision is made;
2. cancellation of the decision in the case of an administrative offence, subsequent referral of the case for reconsideration, after which the relevant decision is made;
3. cancellation of the decision in the case of an administrative offence, followed by closure of the case and issuance of a relevant decision;
4. change of the penalty within the limits established by the relevant regulatory act on liability for an administrative offence, but, at the same time, with the exclusion of measures to increase the penalty, with the subsequent issuance of a relevant decision [5].

If it is determined that the decision on an administrative offence was made by an official or body that is not competent to decide the case, such a decision shall be cancelled. The case shall be considered by the competent official or competent body [6].

A copy of the decision on the appeal against the decision is sent within three days to the person against whom it was issued, and within the same period, a copy of the decision is sent to the victim at his/her request.

The executive authorities develop and implement measures to prevent administrative offences, identify and eliminate the causes and conditions that contribute to their commission, educate citizens in the spirit of high consciousness and discipline, and strictly comply with the laws of Ukraine [1].

An administrative penalty imposed on the perpetrator of an administrative offence is positioned as a generally accepted measure of responsibility [2]. Its use is aimed at educating the person who committed the administrative offence, motivating him or her to comply with the laws of Ukraine, respect socially important rules of coexistence, and preventing the commission of new offences [5].

The procedural aspects of appealing against a judge's decision in an administrative offence case are as follows: The decision may be appealed by the person held administratively liable or his/her legal representative, defence counsel, victim, or his/her representative to the court of appeal within ten days from the date of the decision (Article 294(2) of the Code of Administrative Offences).

Based on the results of the appeal, the appellate court shall issue one of the following rulings:

1. dismissing the appeal and leaving the decision unchanged;
2. cancellation of the decision and closure of the proceedings;
3. cancellation of the resolution and adoption of a new resolution;
4. amendment of the resolution.

In the event of a change in the resolution in terms of imposing a penalty, it cannot be increased within the limits provided for by the sanction of the relevant article of the Code of Ukraine on Administrative Offences [5].

### **Discussion**

According to the results of scientific research by modern scholars, in particular, Lukina [32] and Marmaza [33], proper institutional and regulatory support is a condition for the effectiveness of the process of forming optimal approaches to the implementation of administrative proceedings. Most modern scholars refer to the environment of general secondary education as a unified administrative field.

Some scholars, in particular Momot and Demchenko [34], and Samchenko [35], focus on transforming the existing management system into a system of administrative offences.

According to the researchers, integrating the European community's practical experience into the national concept of administrative proceedings will not only allow for an efficient organisation of the administrative process but also help minimise its resource intensity while simultaneously intensifying its efficiency.

Scholars Dubinina [36] and Maletych [37] emphasise that administrative proceedings should combine the versatile functionality of the state apparatus and aim to prevent administrative offences. Meanwhile, Bandurka [38] highlights the prospects for improving administrative proceedings in Ukraine's legal framework.

According to the author, the legal and procedural aspects of the administrative process in cases of violations in the field of general education, in particular, general secondary education, require improvement in the context of European successful legislative practice, which will not only improve traditional mechanisms but also integrate effective tools to combat corruption, and, in particular, the widespread phenomenon of bullying in secondary education institutions.

Researchers Zarei and Mohsenzadeh [39], and Cass et al. [9] substantiate the functionality of administrative proceedings as an influential instrument of management regulation. The authors analyse the possibility of improving the law of evidence in administrative proceedings.

Despite the significant scientific achievements in administrative law, the issue of practical adaptation of legal and procedural aspects to the traditional secondary school education process remains fragmentary, which determines the areas for further research.

## Conclusion

General secondary education ensures the diverse development of the individual through educational activities based on the principles of science and universal values. It possesses the features of multiculturalism, integrity, systematicity, synergy, democracy, and humanism. Violations of these principles often result in administrative liability.

An analysis of the procedural and legal aspects of administrative proceedings in cases of violations in general secondary education shows that proceedings in cases of administrative offences in the secondary education environment are currently being considered in the context of synergising the diverse functionality of the state apparatus, from the preparation and implementation of sectoral management acts to logistical activities. Administrative proceedings cover a wide range of public relations in public administration.

It is obvious that modern approaches and tools in the administrative law system in the educational environment should be adapted to the active implementation of successful international practical experience against the background of European globalisation principles of sustainable development.

The integration of innovative solutions into the system of regulating administrative proceedings for violations in the field of general secondary education makes it possible to provide preventive protection against offences, stimulates the development of the educational system for the successful social and professional realisation of the younger generation, prevents the risks of corruption, and increases the competitiveness of national educational institutions.

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