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## Theoretical and Legal Aspect of Cyberviolence Against Women

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The relevance of the study is explained by the fact that in the society of the 21<sup>st</sup> century, which is constantly developing and changing, the processes of communication and learning have expanded to the online environment, gaining more and more territory. Social networking applications such as Facebook, Instagram, WhatsApp, Skype, Twitter, Tik Tok, Zoom, etc., allow people to stay in touch with others while identifying them as potential victims of online abuse. The European Court of Human Rights notes that cyberviolence is a form of domestic violence. The results of sociological studies and statistics demonstrate that the victims of domestic violence in the vast majority of cases are women, and therefore, the commission of cyberviolence threatens women. An analysis of recent publications demonstrates that cyberviolence as a form of domestic violence against women is an issue that is widely discussed by many professionals in the fields of law, psychology, sociology and education. Ukrainian legislation on the protection of women against domestic violence does not define cyberviolence as a form of domestic violence. At the same time, the analysis of judicial practice demonstrates that judges consider cyberviolence to be a form of domestic violence and prosecute the offender to administrative responsibility. All of this necessitates a theoretical exploration of the term “cyberviolence”, which would contribute to the legal definition of the phenomenon, distinguishing it from other concepts and developing efficient ways to prevent and counteract the perpetration of this act. The purpose of the study is the theoretical and legal analysis of the phenomenon of violence in cyberspace and its legal regulation in Ukrainian legislation. The efficient analysis of the research problems was provided by using the methods of interpretation of the law, legal modelling, technical-dogmatic, and comparative methods. In the context of the study, the definitions of cyberbullying and cyberviolence are examined and these concepts are distinguished. The author’s definition of cyberviolence is defined. To interpret cyberviolence as a form of domestic violence, the definitions of “psychological violence” and “sexual violence” given in the Law of Ukraine “On Preventing and Combating Domestic Violence” have been proposed to be improved. The foreign experience of cyberviolence regulation is studied, and it is proposed to identify the cyberviolence forms introduced by Romanian legislation among the cyberviolence forms in Ukrainian legislation. The theoretical provisions and conclusions proposed in the study are of significant value for the development of the theory of state and law in the area under study and for the improvement of the current legislation

**Keywords:** domestic violence, psychological violence, sexual violence, cyberbullying, offender, victim

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## Introduction

A survey of women between the ages of fifteen and twenty-five from twenty-two countries conducted by Plan International, a non-governmental organisation that targets violence against women, demonstrated that the vast majority of women surveyed had experienced online harassment, sending them explicit messages and images or being abused online [1].

Considering the global spread of digital violence against women, on 20 October 2021 the Group of Experts on Action on Violence Against Women and Domestic Violence (hereafter, GREVIO), which monitors the implementation of the Istanbul Convention, adopted General Recommendation No. 1 on the digital dimension of violence against women, recognising it as one of the current challenges currently [2]. The international community's increased interest in the phenomenon of cyberviolence has resulted in a demand for a theoretical and legal analysis of the phenomenon and its place among domestic violence forms, given the lack of a comprehensive study of cyberviolence in modern legal studies.

Specific issues concerning domestic violence in general and cyberviolence, in particular, have been the subject of research papers by domestic and international scholars, namely: L. Golovko, O. Uliutina, and others have studied public policies, national legislation and best practices to prevent and respond to domestic violence in Poland, the Czech Republic and Slovakia [3]. Marta Badenes-Sastre and Franziska Exposito conducted a bibliographic study to explore and analyse existing research on the perception and identification of gender-based violence and victim identification [4]. Ronald M. Hernández, Miguel Saavedra-López and others analysed the research on gender violence conducted by Latin American researchers in Scopus-indexed journals for the period 2010-2019 [5]. Ch. Charlton, R. R. Mani, S. Chinnappan, A. K. Balaraman and others conducted a scientific analysis of the results of the study of domestic violence in Australia for the period 1984-2019 [6]. Maria Pentaraki and Janet Speake have identified new issues of domestic violence that have emerged during the COVID-19 pandemic [7]. N. Henry, S. Vasil, and A. Flynn explored domestic violence against immigrant and refugee women using digital technologies [8], Mahfud and Rizanizarli analysed legislation to protect women from domestic violence in Indonesia [9].

*The purpose of the research* is to determine the place of cyberviolence among other forms of domestic violence, to clarify its manifestations and to develop proposals for improving the current legislation in this area.

The scientific originality of the study is the development of the author's definition of cyberviolence and proposals for adjusting the existing wording of "psychological violence" and "sexual violence" in the legislation.

## Materials and Methods

In conducting the research, general scientific methods were used, namely dialectical, which helped to establish

the legal nature of cyberviolence and cyberbullying; and historical, which clarified the state of scientific research on the legal regulation of domestic violence against women, and the evolution of the regulation of cyberviolence; analysis, through which the objective side of the administrative offence of domestic violence was established; synthesis, which allowed to illuminate the content of categories and obtain conclusions; deductive and inductive methods allowed making inferences about the determinants of cyberviolence; hermeneutic method allowed analysing the current domestic legislation to determine its efficiency at the current stage and clarify regulatory gaps, shortcomings and conflict of laws aspects (In particular, the Law of Ukraine "On Education" [10], the Law of Ukraine "On Preventing and Combating Domestic Violence" (hereinafter – the Law on Domestic Violence) [11], the Code of Administrative Offences [12]), the comparative legal, which helped to correlate cyberviolence and cyberbullying with each other system-structural, which contributed to a comprehensive vision of the research problems, highlighting its general component ("domestic violence against women") and partial ("cyberbullying in the family against women"); statistical method allowed exploring the Unified State Register of court decisions and decisions of the European Court of Human Rights on cases of cyberbullying. In conducting the research, several specific scientific methods of knowledge were applied, in particular: the method of legal interpretation helped to clarify the content of individual rules of law, including the evaluative concepts enshrined in the law; technical and dogmatic, which helped to establish and substantiate the definitions of the concepts under study; comparative, which allowed for the description of foreign experience in the regulation of cyberviolence, and legal modelling, through which suggestions for improving Ukrainian legislation on preventing and countering cyberviolence were provided.

## Results and Discussion

In the scientific literature, when referring to violence using communication, the concepts of "cyberbullying" and "cyberviolence" are used.

Thus, researchers define cyberbullying:

1) online bullying, which denotes the commission of violent acts designed to annoy, harm, or humiliate a person through various information and communication media, such as: mobile phones, e-mail, social networks, forums, blogs, online video games [13, p. 26];

2) bullying performed using electronic communications [14, p. 42];

3) intentional, systematic, against a person's will, psychological influence of one person on the mind of another, performed with the purpose of defaming, humiliating, intimidating, insulting, harassing a person and using information and communication means and transmitted to another persons in the form of messages, videos, photos, video recordings [15].

It is evident from the above that the concept of “cyberbullying” is used as a definition of violence through communication tools. Notably, the Law of Ukraine “On Education” uses the definition of bullying to interpret actions (acts or omissions) of participants in the educational process which involve physical, economic, psychological, and sexual violence, in particular using electronic communication, performed on a child and/or by the child against other participants in the educational process, resulting or potentially resulting in harm to the physical or mental health of the victim [10]. Notably, the legislative definition of “bullying” stresses the possibility of its commission using electronic communication means.

In turn, scientists define cyberviolence as:

1) deliberate systematic actions by one person or group of persons, performed through electronic communication means, against another person(s) and establishing a hostile, humiliating environment to frighten, violate a person’s rights to life and health, honour, respect, dignity, property, safe education and limit the free will of the person(s), etc. [16, p. 179];

2) aggressive, intentional actions committed by a group or an individual consisting of humiliation, harassment and intimidation of another person through using the means of information communications [17, p. 71].

According to GREVIO experts, the digital dimension of violence against women includes any behaviour that encompasses any act of gender-based violence against women that results in or may result in physical, sexual, psychological or economic harm or suffering. Such violence may include threats of acts occurring, coercion or arbitrary deprivation of liberty, regardless of whether it occurs in private or public life [2].

In the author’s opinion, cyberviolence is a form of domestic violence, which consists of the commission of intentional actions of a psychological and sexual nature against a woman using electronic communications.

Agree with the statement of Jurgita Pečuriene, researcher of gender violence at the European Institute for Gender Equality (EIGE), who has noted that violence online and in real life has a common purpose: controlling the victim in public, physical or digital space [18].

There is no consensus in the scientific community on the types of cyberviolence. The classification of cyberbullying types was first performed by American scientists R. Kowalski, S. Limber, P. Agatston. Though the researchers conducted the study about children, the types of behaviour they proposed may be applied to the types of cyberviolence against women, namely:

– quarrels, or flaming – exchange of short, humiliating, inflammatory messages (in chats, on forums);

– harassment is the systematic sending of offensive messages and phone calls that overload personal communication channels;

– libel, slander is the dissemination of derogatory false information about a person, which is done using text messages, photos and videos that offensively depict the person;

– imposture, impersonation – positioning by the offender of himself as a victim, which is performed by using the password to access the victim’s account in social networks, blog, e-mail, instant messaging, etc. and to spread adverse information on his behalf, as a result of which the victim receives malicious responses;

– fraud – obtaining confidential information (documents, photos, videos) and sending it to other persons by post or on the Internet;

– cyberstalking – secret surveillance and harassment of a person through the Internet to commit criminal acts (rape, assault, beating, etc.);

– happy slapping – posting videos on the Internet, where they can be viewed by other users without the consent of the victim or sending videos using mobile phones [19].

GREVIO experts consider that “cyber violence against women and girls” includes the distribution of video or photographic images, coercion and threats, including sexual humiliation and other forms of intimidation, sexual harassment of a person online, threats of rape, online stalking, impersonation, psychological violence and economic harm caused by digital technologies, [2].

Furthermore, V. Rufanova distinguishes among the types of cyberviolence: 1) sending messages and emails to blackmail or intimidate a person; 2) spreading false information about a person; 3) hacking into a social network email or page; 4) using and changing people’s profiles using other people’s passwords; 5) sending and spreading others’ photos to mock and discuss; 6) posting intimate photos to stigmatise or harass a person; 7) extorting personal information through electronic communication to spread this information; 8) copying and using personal information by hacking or illegally entering another person’s social media profile; 9) discussing a person in social media or chat rooms to defame or discredit [20].

Online violence against women can manifest itself through the use, manipulation, dissemination or sharing of private data, information and/or content, photographs or videos, including sexual images, audio and/or video recordings or photoshopped images [21].

As it can be seen, cyberviolence can have various manifestations. Thus, the development of the latest digital technologies results in the emergence of new types of cyberviolence.

To recognise cyberviolence as a form of domestic violence against women, the abuser must be a person on the list of those covered by domestic violence legislation, despite the fact of cohabitation with the abused person.

In most cases, the perpetrator commits cyberbullying deliberately and repeatedly to harm the victim, to whom they do not feel empathy. The victim is generally weaker than the offender and defenceless. Exposure of the victim to such aggression can result in lower self-esteem, cancellation of plans for the future, anxiety, depression, substance abuse, sleep disorders, and suicide.

As known, the Law of Ukraine “On Preventing and Combating Domestic Violence” defines the forms

of domestic violence against women as physical, psychological, economic and sexual [11]. At the same time, in none of these forms, and in the definition of domestic violence itself, there is no hint of the possibility of committing violence against women through electronic communications or on the Internet. It provides the perpetrator with a perception of legitimacy and impunity, which is unacceptable given recent social trends developing zero tolerance for domestic violence against women in general and all forms of violence in particular.

As evidenced by a review of court practice, Ukrainian courts, despite legislative conflicts, recognise violence committed through electronic communications or the Internet as an objective side of an administrative offence defined in Article 173-2 of the Code of Administrative Offences “Committing domestic violence, gender-based violence, failure to comply with an urgent restraining order or failure to notify a place of temporary residence” [12], for example:

- insulting with obscene words through social networks, sending messages through the mobile application “Viber”, which contain threats, insults and humiliation (decision of Ivano-Frankivsk City Court of Ivano-Frankivsk Region of September 13, 2021 in case No. 344/13527/21) [22];

- insulting with obscene language and threatening expressions during communication (correspondence) in social networks (Rivne City Court of Rivne region ruling of August 27, 2021 on case No. 569/17246/21) [23];

- sending SMS messages containing coarse obscene language and threats of physical violence (decision of the Svatove District Court of Luhansk region of February 12, 2021, in case No. 426/399/21) [24].

In all of these cases, the abuser’s actions were considered to be psychological violence, by which the law means verbal insults, and threats, including intimidation, harassment, humiliation, and other actions designed to control the reproductive sphere, limitation of the person’s will, if such actions or inaction caused the victim to fear for their safety or that of others, resulted in emotional uncertainty, inability to defend themselves or resulted in damage to the person’s mental health [11]. At the same time, the above definition of psychological violence does not indicate that these actions can be committed using electronic communication devices.

In addition to widespread psychological violence, cyberviolence can most often manifest itself in sexual violence, such as: imposing specific types of sexual contact on a woman using electronic communication, distributing photographs, and videos of an intimate nature about the victim, courting in a manner unacceptable to the victim, accusing her of sexual unattractiveness or inadequacy etc.

To ensure a uniform interpretation of cyberviolence as a form of domestic violence, the definitions of “psychological violence” and “sexual violence” in the Law of Ukraine “On Preventing and Combating Domestic Violence” [11] should be improved to include the

possibility of committing these types of violence using electronic communications.

Evidence of cyberbullying can often be printouts of electronic correspondence, screenshots of messages, pages in social networks, and websites. Notably, the Supreme Court, by its ruling of 13.07.2020 in case No. 753/10840/19, screenshots of messages from the phone and tablet and printouts from Viber were considered proper and admissible evidence [25]. Considering this, the victim should be obliged to preserve proper and admissible evidence of cyberviolence committed against them, and subsequently, submit them to the court.

The necessity to consider the phenomenon of “cyberbullying” as a separate type of violence was emphasised by the European Court of Human Rights (hereinafter – the ECHR) in its decisions. Thus, in the case of “Buturuga vs. Romania” (judgment of February 11, 2020) it was established that the applicant complained to the law enforcement authorities about the misconduct committed by her ex-husband, who inspected her page on the social network Facebook, listened to private conversations, copied documents and photos. The Romanian Themis did not qualify the actions of the offender as a manifestation of domestic violence. However, the ECHR, considering the case of Buturuga, recalled that domestic violence can manifest itself in various forms and should not be perceived by national authorities only as physical. Violence in cyberspace, which is currently one of the most widespread, can have various forms, including forced penetration into the victim’s computer, and distribution and manipulation of photos, videos, and private documents. The Court confirmed that such acts as access, illegal monitoring or storage of correspondence of one of the partners should be considered by the authorised bodies when examining cases of domestic violence. Thus, the Court determined that Romania had failed to perform its positive obligations under Articles 3 and 8 of the European Convention and obliged the state to pay Buturuga 10,000 euros in compensation [26].

Another ECHR judgment in the field of combating cyberviolence was adopted on September 14, 2021 in the case of “Volodina vs. Russia”. After the complainant divorced her husband, he established fake social media profiles in his ex-wife’s name, posted intimate pictures of her, tracked her whereabouts and sent social media messages threatening to kill her. At first, law enforcement agencies refused to consider such a statement. Eventually, criminal proceedings were opened, and the police determined that it was the ex-husband who had published the photos in which the applicant was naked without her consent, but the offender was not punished due to the expiry of the statute of limitations on criminal liability. The facts of surveillance of the applicant with a GPS tracker and sending death threats on social networks were not considered by the police in general. Consequently, the ECHR issued a judgment in which it established that Russia had breached its positive obligations under Article 8 of the European

Convention and ordered the state to pay 12,886.46 euros in compensation to Volodina. The ECHR stressed the obligation of states to ensure the establishment and efficient application of a system of punishment for all forms of domestic violence, regardless of whether they occur online or offline, and the provision of sufficient guarantees for victims [27].

Notably, the ECHR judgment in the case of “Buturuga vs. Romania” had a positive impact on law-making in Romania. Thus, on July 9, 2020, amendments to the Law on Domestic Violence of 2003 entered into force, according to which cyber harassment is recognised as a form of domestic violence. According to the amendments, cyberbullying includes online harassment, online hate messages, online harassment, online threats, publishing information and intimate graphic content without a person’s consent, illegal interception of messages, and using social media or email services to shame, humiliate, fear the victim [28]. The types of cyberviolence defined in Romanian legislation deserve attention and can be borrowed in Ukrainian legislation to clarify the manifestations of cyberviolence.

Forms of domestic violence committed in real life against women and online are not mutually exclusive and often occur in parallel, causing significant harm to women. Underestimation of the social illegality of physical and sexual violence committed using electronic communication can increase the usual manifestations of domestic violence. Abuse of new information technologies by perpetrators causes the victim to feel fear, anxiety and gradual isolation from friends and family. Therefore, ignoring the broader manifestations of domestic violence risks missing the social reality of violence against women, which stems from the idea of women’s inferiority and stereotypes about their role in society in general.

### Conclusions

Thus, cyberviolence as a phenomenon is an urgent problem of the present, which requires urgent solutions as soon as possible, as a large number of women victims are subjected to violence through electronic communication. Currently, cyberviolence against women

is not defined as a form of domestic violence in the Law on Domestic Violence, the Code of Administrative Offenses, or the Criminal Code of Ukraine. It can cause the offender to feel the absence of any responsibility and result in the recurrence of acts. However, the consequences of cyberviolence are not less, and in some cases even greater, when compared to other forms of domestic violence. It is explained by the fact that domestic violence is usually committed only in the presence of the victim. At the same time, specific forms of cyberviolence against the victim can be observed by a significant audience using electronic communication tools.

Cyberviolence is a form of psychological and sexual violence, and, therefore, the definitions of these concepts require legislative improvement by providing for the possibility of committing such types of violence using electronic communications. It will eliminate the gap that currently exists in the legislation regarding the impossibility of committing domestic violence in social networks, the World Wide Web and other means of electronic communication, and will bring legal clarity to the institute of legal liability for committing cyberviolence. It is encouraging that despite the lack of a legal definition of cyberviolence as a form of domestic violence, the Ukrainian justice system has brought abusers to administrative responsibility for committing such acts. It coincides with the practice of the European Court of Human Rights and contributes to the best protection of women from digital violence committed by current or ex-partners, and other family members.

Cyberviolence can have various manifestations (flaming, harassment, deceit, slander, happy slapping, imposture, cyberstalking, etc.), which victims may not be aware of, and therefore, raising legal awareness among women in this area will be facilitated by holding round tables, seminars, dissemination of information in the media, dissemination of social advertising on the prevention and combating of cyberviolence.

However, further, development is required to strengthen liability for cyberviolence and to supplement the types of evidence used in administrative offence cases with electronic evidence.

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## Теоретико-правовий аспект кібернасильства щодо жінок

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### Анотація

Актуальність дослідження зумовлено тим, що в суспільстві XXI століття, яке постійно розвивається та змінюється, процеси комунікації та навчання поширилися на онлайн-середовище, завойовуючи все більше й більше території. Додатки соціальних мереж Facebook, Instagram, Whatsapp, Skype, Twitter, Tik Tok, Zoom тощо дають змогу людям залишатися на зв'язку з іншими, але водночас викривають їх як потенційних жертв онлайн-насильства. Європейський суд з прав людини наголошує, що кібернасильство становить одну з форм домашнього насильства. Результати соціологічних досліджень та статистика свідчать, що постраждалими від домашнього насильства в переважній більшості випадків є саме жінки, а отже, учинення кібернасильства несе загрозу також щодо жінок. Аналіз останніх публікацій свідчить, що кібернасильство як форма домашнього насильства щодо жінок є проблемою, яку широко обговорюють багато фахівців у галузях юриспруденції, психології, соціології та освіти. Українське законодавство про захист жінок від домашнього насильства не визначає кібернасильство формою насильства в сім'ї. Водночас аналіз судової практики свідчить про те, що судді відносять кібернасильство до форм домашнього насильства та притягують кривдника до адміністративної відповідальності. Усе це зумовлює необхідність у теоретичному дослідженні терміна "кібернасильство", що сприятиме правовій визначеності цього явища, відмежуванню його від інших понять та розробленню ефективних шляхів попередження та протидії вчинення цього діяння. Мета дослідження полягає в теоретико-правовому аналізі явища насильства в кіберпросторі та його правовому регулюванні в українському законодавстві. Ефективний аналіз проблематики дослідження забезпечило використання методів тлумачення права, правового моделювання, техніко-догматичного, компаративістського. У дослідженні проаналізовано визначення кібербулінгу та кібернасильства й розмежовано ці поняття. Сформульовано авторське визначення кібернасильства. З метою тлумачення кібернасильства як форми домашнього насильства, дефініції "психологічне насильство" та "сексуальне насильство", наведені в Законі України "Про запобігання та протидію домашньому насильству", запропоновано удосконалити. Досліджено зарубіжний досвід регулювання кібернасильства та запропоновано серед форм кібернасильства в українському законодавстві визначити форми кібернасильства, як це зроблено в румунському законодавстві. Запропоновані в статті теоретичні положення та висновки мають істотне значення для розвитку теорії держави і права в досліджуваній сфері та для вдосконалення чинного законодавства

**Ключові слова:** домашнє насильство, психологічне насильство, сексуальне насильство, кібербулінг, кривдник, постраждала особа

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