

Prevention and Counteraction to Bullying in Ukraine as a Negative Social Phenomenon

Prevención y lucha contra el acoso escolar en Ucrania como fenómeno social negativo

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Abstract

Every State of law that really wants to achieve its objective in maintaining a stable and democratic society must be able in dealing with those deviant character constituting a threat to the smooth functioning of the society. It is therefore the responsibility of every State of law in ensuring that all conduct of its citizens must be able in respecting available legal prescription. The State of Ukraine has put in place credible penal laws by combating all acts considered to be bullying and a threat to social life. It is in this regard that a need for this paper was considered necessary, as it articulates the ills or aftermath of failure to effectively combat acts of bullying in Ukraine. In answering the above objective, there was the need to analyse the role of the Ukrainian Penal Laws in matters relating to bullying. From the position of the Criminal Law in Ukraine, one can ascertain that act of bullying continues to be a great pandemic to the society as we continue to experience an increase of this character irrespective of the efforts put in place by the laws. It is therefore in this regard that we think that it is not just providing the punishment of acts of bullying in the laws that is relevant, but in essence ensuring effective and severe punishment to all those considered as perpetrators of the crime concerned.

Keywords: Preventing, bullying, counteraction, social consequences.



Resumen

Todo Estado de derecho que realmente quiera lograr su objetivo de mantener una sociedad estable y democrática debe ser capaz de hacer frente a las desviaciones que constituyen una amenaza para el buen funcionamiento de la sociedad. Es por tanto responsabilidad de todo Estado de derecho velar por que toda conducta de sus ciudadanos sea capaz de respetar la prescripción legal disponible. El Estado de Ucrania ha establecido leyes penales creíbles al combatir todos los actos considerados como intimidación y una amenaza para la vida social. Es en este sentido que se consideró necesario este documento, ya que articula los males o las consecuencias de la falta de lucha efectiva contra los actos de intimidación en Ucrania. Para responder al objetivo anterior, existía la necesidad de analizar el papel de las leyes penales ucranianas en asuntos relacionados con la intimidación. Desde la posición del derecho penal en Ucrania, se puede afirmar que el acto de intimidación continúa siendo una gran pandemia para la sociedad, ya que continuamos experimentando un aumento de este carácter, independientemente de los esfuerzos realizados por las leyes. Por lo tanto, en este sentido, pensamos que no es solo proporcionar el castigo de los actos de intimidación en las leyes lo que es relevante, sino en esencia garantizar un castigo efectivo y severo a todos aquellos considerados como autores del delito en cuestión.

Palabras clave: Prevención, bullying, contraataque, consecuencias sociales

Introduction

Article 3 of the Constitution of Ukraine states that the human being, his or her life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value. The right to life and health, honour and dignity, inviolability and security are among those human rights that are conditioned by their nature and do not depend on the status of the individual in the state, i.e. are inalienable. The state is obliged to provide effective protection to all persons from such encroachments by third parties. In this regard, effective legal mechanisms must be introduced at the state level to counteract any negative manifestations of encroachment on the rights, freedoms and legitimate interests of a man and citizen. Nowadays, the issue of preventing such a negative phenomenon as bullying, as well as establishing legal responsibility for its commission, is becoming more acute.



The negative socio-economic situation and large gaps in the moral and ethical education of the younger generation have led to an increase in the number of cases of deliberate abuse of older and stronger to the smaller and weaker members of educational institutions (Sorochan, 2020). One of the areas of ensuring the rights of the child is to create a favorable environment for education, training, development and an effective system to ensure the realization of his or her rights. Bullying has become a common way of self-affirmation in schools. Sometimes participants in the educational process violate not only the norms of morality, but also the legal norms, for the violation of which there is legal liability. The prevention and counteraction of bullying in the realities of today's Ukrainian society is a priority in the fight against this phenomenon, the level of which is constantly growing (Dzhafarova et al, 2021).

The research by a lawyer I. Homzyak is interesting, where the law enforcement practice of courts in relation to bullying were analyzed and advice to human rights defenders in this area were provided. In particular, in 58% of cases the mother of the educational process participant was brought to justice, and the father was only in 13%. Only 2% of cases where a minor was brought to justice were recorded, and the teachers were in 7%. Thus, if a participant in the educational process commits bullying, it is most likely that their mother will be prosecuted. Most often, materials on offenses are compiled on the actions of minors, including persons aged 14 to 18 (a case of a first-grade pupil's actions has been recently recorded). The main age group suffering from bullying is minors (14-18 years old). They are immediately followed by minors (up to 14 years old). At the same time, there is a probability that 29% of the materials will be returned to the police for revision or the case will be closed in the absence of crime in the act. There is a problem, that is low level of law enforcement officials' training, who submit improperly executed protocols and appendices to the court. As a result, the court cannot answer even the most basic questions: who did it, what was done, what evidence may confirm that persons are participants in the educational process (Gomzyak, 2019).

Thus, the issue of effective prevention and counteraction to bullying in the Ukrainian realities finds its manifestation at both theoretical and applied levels. As for the theoretical, the analysis of bullying becomes important in the context of identifying conditions and factors affecting the lawful or unlawful conduct of the offender. And this issue is extremely important in the light of the legal awareness formation of young people who suffer from this negative phenomenon. Also, the relevance of bullying analysis is determined by no less complex and



fundamental issues of jurisprudence as a distinction between illegal and lawful, as an objective and subjective side of lawful behaviour. At the applied level, the study of bullying is manifested through the need to improve legal understanding of the legal qualifications of bullying, regulation of public relations relating to children's rights, educational process, improving responsibility for bullying in the national legislation of Ukraine and more.

Methods

During the study of the problems of preventing and combating bullying as a negative social phenomenon, general scientific and special legal methods of cognition of legal reality have been used.

The dialectical method was fundamental for revealing all the features of the nature of bullying as a socially harmful phenomenon that has negative legal consequences. The systematic approach was useful in forming the structure of the study and the most important conclusions.

Scientific pluralism has contributed to the accumulation of a wide range of knowledge accumulated by legal science on the essence of valuation concepts in law, defining among them the features of bullying as a valuation concept, understanding the various legal consequences of bullying.

The logical semantic and formal logical methods have contributed to the analysis of the peculiarities of responsibility for bullying in the national legislation of Ukraine. The normative dogmatic method was used in understanding the role of judicial practice in overcoming bullying in Ukraine. All these methods use are considered to be of huge essence as it has really delves into the cranes and depth of acts that will constitute bullying and how it can be combatted and prevented. The problem or bone of contention one need to develop here is that, the increasing phenomenon of bullying in the country is a clear indication that something need to be done if the State of Ukraine really wants a stable society if everyone has to live peacefully without constraints. It is one thing in providing good methodology to be used in combating and preventing this great vice, it is another to ensure effective prevention and why not complete eradication of the act. This will all depend on our legal commitment in ensuring a secure environment for crime prevention.



Results and Discussion

Understanding bullying in the scientific literature

Referring to domestic developments regarding the understanding of the concept of bullying, we can say that this term is also translated as "intimidation", "persecution". First of all, this is due to the fact that a significant feature of bullying is psychological and / or physical abuse of a person who cannot protect oneself for some reason, committed by an individual or group of people. It follows from the meaning of the word intimidation that a person is aware of certain consequences. These consequences can be either legally neutral (for example, when a person is intimidated by their parents) or have a certain legal consequence (threat of murder, use of physical force, violence). At the same time, we must understand that bullying is one of the types of offenses, that is "socially dangerous or socially harmful, illegal, culpable act committed by a tort person, which entails legal liability" (Shulga, 2013, p. 110).

The main characteristics of bullying should include emotional humiliation, insult to human feelings, which leads to its exclusion from the group. That is why bullying refers to aggressive behavior that is aimed at humiliating feelings, expressing negative emotions and degrading assessments of another person (Levchenko, 2021). Bullying does not include fraternal peer rivalry or impulsive aggression by victims in response to an attack by an abuser, which is essentially spontaneous, non-discriminatory, and with an unspecified victim. On the other hand, bullying does not include criminal acts that began as a conflict and developed, i.e. serious physical violence, threats of such violence, attacks with weapons, vandalism, and others are not bullying (Korol, 2009, p. 85). In view of this, and in particular on the basis of self-awareness, the bullying can be divided into: conscious, i.e. a person who commits violence is aware of the seriousness of their own actions and their consequences; unconscious, when a person does not perceive own actions as violent, but considers them as a joke or a game (Levchenko, 2021, p. 69). Bullying is manifested through various forms of violence that are committed systematically against the same person. Bullying is intensified when there is an imbalance of power between people. An imbalance can mean that one student is older, belongs to another race, or has more friends than another. This is really serious because the act of bullying really constitutes a great threat to our society as it makes life really unbearably unfair. Everyone wants and will always want to live in a society where their



fundamental human right will be respected at all levels, and anything that will jeopardize this peace or co-existence should be questionable and combated.

In the educational environment, bullying occurs not only between students, but also by teachers in relation to students or parents. Such kind of bullying can be manifested through systematic actions: unreasonable underestimation, systematic ignoring the opinion of the student or their actions, hanging "labels" on students, the use of derogatory words, intimidation (Levchenko, 2021, p. 70).

Thus, bullying always aims to destroy, offend, demoralize, subdue, and frighten the victim. In one case, it may be systematic verbal abuse, contempt, humiliation of someone. Otherwise, the consequences can take the form of knocking out, taking away or damaging things, degrading treatment, etc. These physical or verbal actions are inherent in direct bullying. In particular, it is necessary to single out indirect bullying. It is manifested through manipulative behaviour, spreading gossip, information, exclusion from a certain group of people communication, joint activities (hobbies), games, ignoring and boycott.

Influence on the psyche affects the formation of will, understanding the consequences, which may be legally significant, legally neutral or illegal. It is in this context that bullying should be understood as an element of lawful conduct in the context of lawful or unlawful behaviour. Provided that a person wants to have certain negative consequences, bullying can be understood as an offense, as an impact on people's consciousness. Understanding bullying from the point of view of the theory of law is important volitional criterion, i.e. a person forms a will that determines behaviour, legal consequences, especially negative, and all this we must understand in the context of bullying in order to formulate and analyze behaviour. Truly, the Ukrainian legislations are clear and explicit when it comes to assessing and evaluating the aspect of bullying and the various effects it has on the society. The rule will and continue to remain that, all these laws and legislations put in place by Ukraine are really fundamental as there is the need to combat this great pandemic and ill which has constituted a migraine in the society as some people think that they are stronger and more important than others by intimidating and ridiculing them in the eyes of the society. This is really a pole of frustration and embarrassment as the basic tenets of human right standard that of equality and non-discrimination has been challenged and defeated creating insecurity. Of what crime has the weaker and younger ones committed that they will experience such cruel act and practices from those who considered themselves as stronger. The law truly will be unjust when the



presumed equal are treated unequal just because of their age, physical output or position occupied in the society. There is really a need for adjustment on the part of the law.

National legislation of Ukraine in the field of prevention and counteraction to bullying

Today the basic national legislation in the field of bullying is the Constitution of Ukraine (1996), the Law of Ukraine "On Education" (2017), the Code of Ukraine on Administrative Offenses (1984), the Civil Code of Ukraine (2003) order of the Ministry of Education and Science of Ukraine "Some issues of response to bullying (persecution) and the use of measures of educational influence in educational institutions", orders of the Ministry of Internal Affairs of Ukraine, letters of the Ministry of Education and Science of Ukraine etc.

First of all, it should be emphasized that under the Article 52 of the Constitution of Ukraine "children are equal in their rights regardless of their origin, as well as whether they were born in or out of wedlock. Any violence against and exploitation of a child is prosecuted. The basic principle of the legal status of the child in the modern world is that children are equal in their rights regardless of origin, as well as whether they were born in or out of wedlock. It does not matter what is the ethnic and social origin, language or place of residence, race, color, political, religious and other beliefs they are, which family the child was born in, if they have full family and relatives or are deprived of parental care from birth, and what age or property status their parents are. Regardless of their origin, a child has equal rights with other children. This principle implies the absence of illegal privileges or any discrimination against children, depending on their origin. The legislation of Ukraine also protects the child from economic exploitation and from the performance of any work that may endanger their health, may be an obstacle to their education or harm their health, physical, mental, spiritual, moral and social development (determines the minimum age for employment, requirements for working hours and working conditions, measures in the field of education to protect children from illicit drug and psychotropic substance abuse, necessary measures to prevent forcing a child to be engaged in any illegal sexual activity).

The key legal act that directly enshrines the concept of bullying, the typical features of bullying, the rights and responsibilities of educational entities is the Law of Ukraine "On Education" (2017). In particular, in accordance with paragraph 3-1 of Part 1 of Article 1 of this Law "bullying (persecution) are acts (actions or omissions) of participants in the educational process, which consist in psychological, physical, economic, sexual violence, including the use of electronic communications against minors or juvenile and (or) by such a person in relation to other



participants in the educational process, as a result of which the mental or physical health of the victim could or has been harmed".

Legislation defines typical signs of bullying (persecution), including systematic (repetitive) actions; presence of the parties such as the offender (buller), the victim (bullying victim), observers (if any); actions or omissions of the offender, which result in mental and / or physical harm, humiliation, fear, anxiety, subordination of the victim to the interests of the offender, and / or social isolation of the victim (On Education, 2017). In its turn, bullying differs from a quarrel between children because (Bullying, n.d)

(a) it is accompanied by real physical or psychological violence: the victim is ridiculed, intimidated, teased, blackmailed, beaten, spoiled, gossiped about, boycotted, disclosed personal information and photos on social networks;

(b) three parties are always involved in a bullying situation: the one who persecutes, the one who is persecuted and the observer;

(c) bullying negatively affects all participants, their physical and mental health;

(d) bullying may occur spontaneously when a child suddenly finds himself or herself in a situation of persecution or joins a persecutor;

(e) if bullying has occurred, it may be repeated many times.

Having analyzed the concept of bullying, the question immediately arises: do adult students fall under the Law of Ukraine "On Education" (2017)? In this case, it should be noted that only school children, students of 1-3 courses of professional (vocational) education and freshmen of higher education institutions can be prosecuted for bullying. Given this legislative gap, lawyers are already preparing a bill to amend the legislation of Ukraine on bullying, so that adult participants in the educational process can also be protected, as well as the mechanism for responding to bullying in vocational (technical) education and higher education.

It should be noted that in accordance with Part 2 of Article 30 of the Law of Ukraine "On Education" (2017) educational institutions that have a license to conduct educational activities are required to provide on their websites (in their absence on the websites of their founders) open access to such information and documents as the rules of behaviour for the applicant in the educational institution; a plan of measures aimed at preventing and combating bullying (persecution) in the educational institution; the procedure for submitting and reviewing (with confidentiality) applications for cases of bullying (persecution) in an educational institution; the



procedure for responding to proven cases of bullying (persecution) in an educational institution and the responsibility of persons involved in bullying (persecution).

In our opinion, the availability of these documents is very important, because in cases of bullying it allows you to quickly collect the necessary evidence, other documents and pass them to authorized law enforcement officials. It also indicates the creation of a safe educational environment free of violence and bullying by the head of the educational institution, and their authority includes consideration of applications for bullying (persecution) of students, their parents, legal representatives and others, as well as issuance of decisions on investigation; convening a meeting of the commission to consider cases of bullying (persecution) to decide on the results of the investigation and take appropriate response measures, cooperation with authorized units of the National Police of Ukraine and the Service for Children, notifying them of bullying (persecution) cases in educational institutions (Part 3 of Article 26 of the Law of Ukraine "On Education").

To comply with these regulations, the Ministry of Education and Science of Ukraine in its recommendations to educational institutions on the application of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Combating Bullying (persecution)" (Recommendations for educational institutions on the application of the Law of Ukraine, 2018) stressed the need to create a safe educational environment in the institution. In particular, it was pointed out the need to introduce an integrated approach in the field of prevention and counteraction to bullying (persecution), which provides for two key areas:

(1) managerial (analysis of the situation in the educational institution, development of rules of behaviour, algorithms of action, etc.);

(2) educational (systematic work on informing, explaining in order to develop skills of tolerant and non-violent behaviour, communication and interaction of all participants in the educational process

Important for the prevention of bullying is the order of the Ministry of Education and Science of Ukraine (2019) "Some issues of responding to bullying (persecution) and the use of educational measures in educational institutions", which approves the Procedure for responding to bullying (persecution) and the Procedure application of measures of educational influence. The procedure for responding to the cases of bullying (persecution) regulates the concept of participants in bullying, the procedure for submitting applications or reports of cases of bullying (persecution) in an educational institution, the main issues of preventing and combating bullying (persecution)



in an educational institution.

In August 2020, the order of the Ministry of Internal Affairs of Ukraine came into force, which approved amendments to the Instruction on the organization of juvenile prevention units of the National Police of Ukraine with children who have committed administrative or criminal offenses. In particular, the amendments provide for the introduction of information on the taking the children who have committed bullying to the relevant records of the information system of the Ministry of Internal Affairs of Ukraine and the implementation of individual prevention measures by the police (Order of the Ministry of Internal Affairs of Ukraine No. 488). As previously envisaged, a child who has been prosecuted two or more times during the year is the subject to preventive registration. Exceptions were made for bullying. A child who committed bullying is registered on the first established fact of persecution on the basis of a court decision to prosecute the child or parents or persons replacing them under Article 173-4 of the Code of Administrative Offenses. The specified registration provides carrying out preventive work with the child, namely carrying out of acquaintance, preventive and educational conversations at the place of residence, training or work at least once a month; conducting interviews with the child's parents, legal representatives, family members in order to eliminate the causes and conditions that led to the commission of an administrative or criminal offense; drawing up the plan of actions for individual prevention on the basis of studying the characteristics materials and individual psychological features of the child, etc. (Paduchak, 2021).

Bullying is also a basis for civil liability. According to the provisions of the Civil Code of Ukraine, every person has the right to go to court to protect their personal non-property or property rights and interests (Article 16 of the Civil Code of Ukraine) and is entitled to compensation for non-pecuniary damage (Article 23 of the Civil Code of Ukraine). Moral damage consists of suffering experienced by an individual as a result of an injury or other harm to health; in the mental suffering that an individual has experienced as a result of wrongful conduct towards a person, members of their family or close relatives; in mental suffering experienced by an individual in connection with the destruction or damage of their property; in humiliation of honor and dignity of an individual, as well as the business reputation of an individual or legal entity (Part 2 of Article 23 of the Civil Code of Ukraine). Guided by the provisions of Articles 16 and 23 of the Civil Code of Ukraine and the content of the right to compensation for moral damage in general as a way to protect subjective civil law, compensation for moral damage must occur in any case, so the right



to compensation for moral (non-pecuniary) damage arises as a result of violation of the right of a person, regardless of the existence of special rules of civil law (the decision of the Grand Chamber of the Supreme Court of Ukraine dated 01.09.2020 in the case No. 216/3521/16-ц).

As we can see, the above regulations are the legal basis for combating bullying in Ukraine, even despite some of the shortcomings and gaps they have. Of course, the legal framework in the field of preventing and combating bullying needs constant review and improvement, especially in the light of case law. All these measures and practices used by the government of Ukraine is a laudable initiative and methods, but what one need to understand is why the constant experience of bullying notwithstanding the various methods and measures used by the State? It is the fact that the laws are not efficient or effective enough that combating of this. Or it is that those who are supposed to ensure the effective implementation of the governmental measures are not up to their responsibilities in preventing and combatting this act, this is really a question that needs to be handled with if we really need a stable and peaceful society. Putting in place measures, policies, laws, strategies, mechanisms, recommendations is a laudable and applaudable initiative, but of what use will this be if all these measures are not enforceable and implemented to the fullest.

National judicial practice as a factor in improving legislation to prevent and combat bullying in Ukraine

Since the adoption of legislation in Ukraine in the field of preventing and combating bullying, judicial practice has gradually begun to take shape, which should be an indicator for lawmakers to improve regulations further, as in practice, there are many issues that need to be addressed immediately when bringing participants in the educational process to justice.

The bodies of the National Police of Ukraine are perhaps the most important state body, whose officials are obliged to consider and resolve cases of administrative offenses in most areas of public relations in the country. The issue of the system of subjects for prevention and counteraction to bullying in Ukraine is ambiguous. On the one hand, it is quite broad, on the other hand, there is no clear legislative regulation on this issue. Therefore, there is a big problem in the order of interaction of the subjects for prevention and counteraction to bullying with each other, which negatively affects the common goals and objectives of this activity. The main problem is the lack of legislation that clearly establishes the list of subjects to prevent and combat bullying in Ukraine (Dzhafarova et al, 2021).



O. V. Pohorilets (2020) has offered the measures regarding the procedure and the obligation to consolidate evidence by representatives of juvenile prevention units of the territorial units of the National Police of Ukraine, in accordance with the requirements of the current legislation, in the case of teachers contacting law enforcement agencies as victims of bullying and activities to create a safe educational environment in educational institutions. At the same time, quoting D. A. Sorochan (2020), it is necessary to develop a set of preventive and educational measures aimed at preventing bullying manifestations among minors. It is necessary to fight not with individual facts of bullying, but to enshrine in the legislation the system of counteraction to harassment in educational institutions, which can be preventive in nature.

Olga Buleyko (Judge of the Court of Cassation of the Supreme Court) described the jurisprudence in the bullying cases. Thus, according to statistics in 2019-2020, local general courts considered 513 cases of bullying. During this period, 261 cases were closed, 36 of them on the grounds of release from liability for minor offenses, 121 - due to lack of event and body of the offense, 100 - due to the expiration of the penalty. In addition, 30 appellate cases were pending before the courts of appeal (Buleyko, 2021).

As an example, from the practice of the courts of appeal in cases of offenses under Article 173-4 of the Code of Administrative Offenses (1984), we can cite the decisions of the Buchach District Court of Ternopil region and the Ternopil Court of Appeal in case No. 595/420/20. The decision of the Buchach District Court of Ternopil region from 27.05.2020 considered the case of bringing to justice the teacher of Perevolotsk comprehensive school of I-III degrees, to responsibility for the offense under Part 1 of Article 173-4 of the Code of Administrative Offenses (1984), namely "Bullying" against an 8th grade student, which is expressed in psychological pressure on the student, namely forced her to sit on a chair with a wet cloth for 45 minutes of the lesson, and to close the proceeding due to lack of event and body of the offense. The representative of the injured schoolgirl appealed to the Ternopil Court of Appeal and asked to cancel the above-mentioned decision of the Buchach District Court of Ternopil region dated 27.05.2020 and to issue a new one to close the proceedings in the case of the teacher due to the expiration of the term of bringing to administrative responsibility. The decision of the Ternopil Court of Appeal (2020) considered the appeal; indicated the typical features (regularity (recurrence) of the act; the presence of the parties; actions or inaction of the offender, resulting in mental and / or physical harm, etc.); emphasized on the fact that the protocol and written explanations show that the teacher's actions were



not systematic, there is no proper and permissible evidence of the teacher's guilt in committing the incriminated offense, which would constitute an administrative offense under Part 1 of Article 173-4 of the Code of Administrative Offenses (1984); confirmed that the court of first instance correctly concluded that the event was only on February 20, 2020, which indicates a lack of systematic persecution or intimidation, which is defined by the concept of "bullying" and accordingly left the court decision unchanged and dismissed the appeal.

It should be noted that in Article 173-4 of the Code of Administrative Offenses (1984), there are no typical signs of bullying, which are provided by the Law of Ukraine "On Education" (2017), namely: systematic (repetitive) actions; the presence of the parties such as the offender (buller), the victim (bullying victim), observers (if any); actions or inaction of the offender, which result in mental and / or physical harm, humiliation, fear, anxiety, subordination of the victim to the interests of the offender, and / or causing social isolation of the victim. Due to this, a large percentage of reports on administrative offenses do not contain any signs of bullying and the proceedings are closed (Mironenko-Shulgan, 2019).

Sometimes there are cases of incorrect classification of acts. For example, instead of acting under Part 3 or 4 of Article 173-4 of the Code of Administrative Offenses (1984), police and courts qualify the actions of the perpetrators under Article 184 of the Code of Administrative Offenses (failure of parents or guardians to fulfill their responsibilities for the upbringing of children). This took place in the case No. 213/1175/19 on bringing the father to justice for committing offenses under Part 1 of Article 173-4, part 1 of Article 184 of the Code of Administrative Offenses (1984), namely: a young son committed bullying, i.e. acts of psychological and physical violence against his classmates, which could harm the psychological health of students (throwing other students' things from desks, insulting and touching classmates, pushing teachers, aggressively responded to a call for a lesson, moved desks in class, threatened classmates). The Resolution of the Ingulets District Court of Kryvyi Rih, Dnipropetrovsk (2019) in the case No. 213/1175/19 the father of the young son was found guilty of committing an offense under Part 1 of Article 184 of the Code of Administrative Offenses (1984) and imposed a fine.

There are many cases of returning case materials for revision due to shortcomings in drawing up reports on administrative offenses. In particular, the protocol does not specify whether the offender is a participant in the educational process, what violent acts were committed by the offender against the victim, what were the consequences of these actions and whether they really



took place, whether the act was systematic, if so, in what period of time, with a specific indication of the time of each event (Mironenko-Shulgan, 2019). Thus, by the Resolution of the Zolochiv District Court of Lviv region (2019) in case No. 445/523/19, having studied the case file, the court considers it necessary to return the relevant materials for revision and proper registration to the Zolochiv Police Department of the Main Department of the National Police of Ukraine*.

It should be noted that the court closed the cases of offenses under Article 173-4 of the Code of Administrative Offenses (1984), due to the lack of *corpus delicti* or the expiration of the term of bringing a person to administrative responsibility. For example, the Resolution of the Slavyansk District Court of Donetsk region (2019) in the case No. 243/1542/19, a 3rd year student of the state educational institution "Slavyansk Professional Agrarian Lyceum", who committed psychological and physical violence against a minor, resulting in the latter damage to mental health, than committed an offense, liability for which is provided for in Part 1 of Article 173-4 of the Code of Administrative Offenses (1984), was released from liability, the proceedings were closed and an oral remark was announced in accordance with Article 22 of the Code of Administrative Offenses (1984), due to the insignificance of the offense, which did not lead to serious consequences. The court took into account the identity of the offender, as well as the insignificance of the offense and the lack of causing property damage to anyone. By the Resolution of the Selidovo City Court of the Donetsk Region (2021, June), in case No. 242/3697/19, where a minor, a student of the Selidovo Vocational Lyceum, committed an administrative offense under Part 1 of Article 173-4 of the Code of Administrative Offenses (1984), the proceedings were closed without establishment of guilt in actions of the offender in connection with the expiration of term of imposing of administrative penalty on the basis of Part 1 of Article 38, paragraph 7 part 1 of Article 247 of the Code of Administrative Offenses (1984).

It should also be acknowledged that sometimes a report on an administrative offense is drawn up against a teacher or class teacher, stating that the latter has been concealing the fact of bullying that has taken place in the classroom. However, as can be seen from the existing judicial practice and the available court decisions in the Unified State Register of Judgments, the court closes the case due to the lack of administrative offenses in the actions of the teacher. In the given

* *in the case file there are no explanations of the offender, no information about the events (date, place, time and place), which led to a criminal offense of a minor, the proceedings against whom are under pre-trial investigation at Zolochiv Police Department of the National Police of Ukraine*



case, the court refers to Article 26 of the Law of Ukraine "On Education" (2017), which states that the head of the educational institution within their powers ensures the creation of a safe educational environment in the educational institution, free from violence and bullying (persecution), including: considers reports on cases of bullying (persecution) of students, their parents, legal representatives, other persons and issues a decision on the investigation; convenes a meeting of the commission to consider cases of bullying (persecution) to decide on the results of the investigation and takes appropriate measures, informs the authorized units of the National Police of Ukraine and the Service for Children about cases of bullying (persecution) in educational institutions. That is, as seen from the position of the court, only the head of the educational institution is responsible for not reporting the fact of bullying, as he or she is a party to the relevant legal relationship.

Thus, it should be recognized that the judicial practice in cases of bringing to administrative responsibility for bullying a participant in the educational process is currently considerable and is constantly accumulating. On the one hand, it is unfortunate that bullying as a negative phenomenon is only spreading in Ukrainian educational institutions, but on the other hand, the existing case law of such cases allows for better preparation for the collection and proper preparation of materials on administrative offenses, protection of victims of bullying in court and to consider the case as soon as possible.

Conclusions

The term "bullying" appeared in the legislation of Ukraine in December 2018 since the adoption of regulations on combating bullying. At present, the legislative level defined the concept of "bullying (persecution) of a participant in the educational process", its typical features, parties of bullying and introduced a separate article on administrative liability for bullying, manifestations that may be grounds for suspicion of a case of bullying (persecution) of a participant in the educational process in an educational institution, as well as identified the subjects of response in case of bullying (persecution) in educational institutions and their powers.

The study of bullying as a socially harmful and negative phenomenon shows the need to pay considerable attention to the state issues related to its prevention and counteraction. Moreover, statistics clearly show that bullying in Ukrainian educational institutions is becoming more frequent every year.



The analysis of judicial practice allows to single out certain problematic issues that arise during the prosecution of a participant in the educational process for bullying: incorrect qualification of acts committed; shortcomings in drawing up reports on administrative offenses; closing the case by the court due to the lack of *corpus delicti* or the expiration of the period of prosecution. Sometimes police officers confuse bullying with conflict when recording an offense. The court, considering the protocols on administrative offenses and available evidence, notes that bullying is not just a conflict, a quarrel between participants in the educational process, it is a manifestation of psychological or physical violence, both by classmates and teachers, teachers, which may have irreparable consequences for the life of the victim of bullying. Bullying is a frequent manifestation of violence, and a long process of conscious aggressive behaviour to inevitably cause fear, to create a negative environment for the victim of bullying.

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