

# **Bullying in Schools - A Core Issue to be Fomented by A Defective Legislative Context**

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**ABSTRACT:** Sociological studies demonstrate the fact that there is a significant low-intensity awareness as regards the issue of bullying in respect of the resource persons that are involved within the framework of the social protection or educational area. Therefore, the present paper is in favor of a "zero tolerance on violence" objective to be governed using a coherent legislative frame. The matter of normative enshrining in relation to international and European bullying and existing regulations of the national legislation is subjected to be a matter for discussion regarding the material of the present study. Specific legislative provisions pertaining to Law no.221/2019 regarding amendment and addendum to National Education Law no. 1/2011 (that identifies "Psychological violence as bullying") and Methodological Norms of law enforcement have been critically analyzed. The legislative context by means of which to regulate the juridical consequences that derive from non-compliance with bullying behavior within the framework of educational and training establishments represent an imperative.

**KEYWORDS:** bullying, Protection of Children and Youth, National Education Law, legal consequences, sanctions

## **1. Exordial arguments**

The institution of education represents the embodiment of a centre that studies a modus operandi in point of learning as well as the teaching establishment that ought to act as an incentive in point of the human being conduct and part of a system.

The positive outcome of school is assessed according to the path of evolution of each child towards adulthood, the degree of self-satisfaction as having the necessary background and expertise so as to provide an answer to the question that involves aspects that are related to "what type of person am I, the skills within the globalized society, the manner to maintain the personal accomplishments that have been obtained and the means to achieve a better version of myself?" (Romanian Ministry of Education 2019).

The values, rules and behaviors of the people in the presence of whom one youngster might have to interact with at a particular instant alter or affect the character/temperament. In point of fact, the assertion with regard to a widely acknowledged verity according to which a learner has to work hard or properly does not constitute the essential, but to apprehend the notion of benevolence or civility/empathy is an imperative as well. Nonetheless, the 'ethical' conceptualization is incompatible with bullying.

The phenomenon of *bullying* is crescively pervasive in parts of the world both in terms of age and the corresponding forms, and education is regarded as a vital factor to significantly mitigate the above-mentioned matter. Bullying has constituted a topic of interest for researchers and practitioners alike since the 1970s and became a subject matter beginning in the 1990s.

The word "bullying" does not have an equivalent in the Romanian language, but there are still multiple nuances to be associated with namely: intimidation, anxiety, maltreat.

The natural reaction of a layman as regards new concepts determines the individual to grasp/cognize the precise connotation of the terms, to clarify the meaning and purpose with the aim of creating an overall perception.

The perspective of Olweus [swedish psychologist, research professor at the University of Bergen, Norway, widely recognized as a pioneer in bullying research] - the first theorist to

delineate the phenomenon in the scientific community, has approached a conceptualization/postulation of the argument still a reference in respect of current research and theories, videlicet bullying is referred to as "a deliberate, repetitive action involving negative actions that are directed against others, being conducted by a group of people or by a person with social status superior to the victim(s)" (Chipea and Sîrbu 2017, 13).

The direction of material as regards the present article is focused not upon an analysis of the psychosocial and psycho-pedagogical aspects of the phenomenon of school bullying, to highlight the importance of a coherent legislative framework on the subject and to display the prevailing "normative inventory" in Romania, with corresponding pros and cons facets.

## **2. Analytics of bullying in Romanian schools**

The report of the World Health Organization (WHO 2016) states the fact according to which out of 42 European countries where bullying has been investigated, Romania ranks on third place within the placement. The reality of the unacceptable/appalling position "on the podium" have determined non-governmental organisations to issue a warning in relation to the need for public policies to counter bullying among children and the pressing need for "legislation to ensure the contingency of intervention".

The individual state-level document in reference to bullying has been the *National Strategy for the Mental Health of Children and Adolescents* (2016), approved by Government Decision No 889/2016. The content of the respective document placed bullying to be denominated as a high-risk factor for child well-being and hereupon recommendations were made in the direction of building up active bullying prevention programs within the framework of school and community.

In 2016, The Organization "Save the Children of Romania" has issued the first national study on the phenomenon of bullying in Romanian schools, and the data suggests a worrying level of the presence of various bullying-related behaviors in schools and a desideratum to treat the matter and the interrelated dynamics as part of the broader school context.

The survey has asserted that "there is low awareness of the problem, even among the experts in the field of social welfare or education". In terms of the common knowledge of the morpheme, the figures of statistics have indicated that "bullying" represents a familiar phrase for 48% of children, while 52% have expressed the fact according to which neither are aware of the significance nor know the term (Save the Children Romania 2016).

On the report of the sociological study (Tribuna.ro 2019) being carried out - in 2019 - by the "The Child Helpline" Association [non-governmental organization that organized in Bucharest, on 11-13 December 2019, the first National Forum dedicated to debates on public policies to combat bullying among children] (along with a series of concrete measures to reduce the repercussions of bullying in schools to be included as part of the legislative initiative in order to revise/reform and amend the National Education Law no.1/2011 and submitted to the House of Representatives), the evidence has evinced that almost three quarters (72%) of victims have faced direct aggression at least once in the past year, but only 40% of respondents have had the valiance so as to admit the status of experiencing the position of a victim.

## **3. The normative acknowledgement of the bullying act across international, European and national arena**

The protection of children against all forms of violence, the counter of bullying actions a de facto present-da issue on the international, European and national agenda.

### **3.1. International and European legislation**

*The United Nations Convention with regard to the Rights of the Child* (United Nations (1989), the Convention was ratified by Romania through Law No 11/1990) has stipulated – by means of Article 19- *the general framework for the protection of the child against the acts of violence*, namely personal harm, physical or mental abuse, abandonment or neglect, maltreatment or exploitation, sexual abuse inclusively (...). The rights of the child are additionally enshrined in the *Charter of Fundamental Rights of the European Union*, published in the Official Journal C 83, 30.3.2010, 389-403.

*The Regulation (EU) 1381/2013 of the European Parliament and of the Council dated 17 December 2013*, published in the Official Journal of the EU L345/62 of 18 December 2013, as regards the validation of the Rights, Equality and Citizenship Program for the 2014-2020 interval have assessed in the preamble (point 11) that particular cognizance ought be directed to the prevention and control/counter all forms of violence along with the decision-making of actions to respect and ensure the welfare/rights of the child and to contribute to the protection of children against maltreatment and aggression, therefore constituting a risk in point of physical or mental health and represents an infringement as regards the corresponding rights to individual evolution, protection and dignity.

The specific objectives - set out in Article 4 of the Regulation – subsume the following:

- the prevention and counter all forms of violence acts of against children, youngsters and women, other categories of individuals that are prone to be exposed as subjects, in particular between or among family members, and the protection of victims of similar deeds. (Point e);
- the advocacy and protection of the rights of the child (point f).

The United Nations (UN) and the European Union (EU) – via respective institutions, have undertaken a series of research and official policies in respect of the development a common strategy to curtail bullying, thence:

- The EU Agenda on Children’s Rights (2011);
- The EC Recommendation (2011) on policies to diminish early school abandonment in relation to the fact that educational and training structures do not provide sufficiently adequate support for pupils to overcome emotional, social or nurturing problems and to pursue studies or further training;
- Resolution 160 (2003) on local partnerships to prevent and counter violence in schools.

### **3.2. National legislation**

The current Romanian conception [expressed through the United Nations Convention on the Rights of the Child] on children's rights, specifies that children cease to be "subject" of protection and, accordingly are under the obligation to be supported by means of special measures in order to comply with corresponding rights and liberties, is enshrined in the Constitution.

*Article 49 of the Constitution – denominated” Protection of children and youth”, ascertains within the lines of paragraph 1 whereby "Children and youth shall enjoy special protection and assistance in the pursuit of their rights".*

The specialized literature (Tănăsescu, 2004) has emphasized that the analysis of constitutional norm "*sets up a form of law- a synthesized one- according to which the reality represents the basis and, hereby children and youth constitute the great human potential of present-day and of the future society as embodying the continuity and the world to come, the human perspective*".

*The Romanian state by the instrumentality of legislation has in view to regulate human rights in accordance with the declared status as a state governed by the rule of law [according to Article 1(3) of the Constitution "Romania is a constitutional, democratic and social state (...)] and alongside with the evolution of Romanian society, the ratification of international conventions and treaties and Romania's membership to EU, "the domestic legislation has complied with to adapt to existent realities" (Marin 2014, 124).*

*In relation to the infra-constitutional register, the legal framework with regard to the protection of children's rights and the guarantee in point of the the development is provided by Law 272/2004 on the protection and advocacy of children's rights (2004/2014), whereas the educational system is regulated by the National Education Law 1/2011 [published in Official Journal No 18 from 10 January 2011] and by secondary and tertiary legislation that has been devised/elaborated drafted in order to enforce the law by the Ministry of Education.*

*Law no. 221/2019 [published in Official Journal No 929 from 19 November 2019] has introduced several amendments and additions to the National Education Law no. 1/2011.*

*The new law has inserted within the text of the Educational Act normative measures that are aimed at regulating bullying, as follows:*

*In point of Article 7, after paragraph (1), the following paragraph (1<sup>1</sup>) has been inserted, with the following content:*

*"(1<sup>1</sup>) Behaviour/Conduct that imply psychological violence - bullying - is banned in educational establishments and in all places intended for vocational education and training."*

*Article 56<sup>1</sup> has been interposed, with the following content:*

*"The in-service training programs for teaching staff shall institute information sessions courses on issues related to psychological violence - bullying with the aim of acquisition of skills in order to identify eventual problems and to apply appropriate educational strategies."*

*In the Annex - an integral part of the Law, following paragraph 6, a new section is inserted, point 6<sup>1</sup>, with the following content:*

*6<sup>1</sup>. Psychological violence - bullying is defined as the action or series of physical, verbal, relational and/or cyber actions, within the framework of a social context that cannot be averted, being acted deliberately and involving an imbalance of power are considered to be prejudicial to dignity, thus establishing an intimidatory, hostile, degrading, ignominious or offensive context, directed against an individual or a group of persons and targeting aspects of discrimination and social exclusion, that are possible to relate to membership of a particular race, nationality, ethnic group, religion, social category, disadvantaged/deprived group or to beliefs, identity or gender orientation, personal characteristics, action or series of actions, behavior to be exposed in educational establishments and in all of schooling and vocational training institutions.*

*The Order of the Minister of Education no. 4.343/2020 [published in the Official Journal no. 492 from 10 June 2020] - has approved the Methodological Norms in point of the application of the stipulations of Art. 7 para. (1<sup>1</sup>), art. 56<sup>1</sup> and pt. 6<sup>1</sup> of the Annex to the National Education Law no. 1/2011, on psychological violence - bullying.*

*The identification of the corresponding intended objective within the reference text of the Methodological Regulations by means of the provisions of the Articles that are structured in two chapters has as continuation the assessment of "Operational definitions" and "The Regulations as regards the prevention and counter bullying in educational establishments".*

*The 4 Annexes – as component parts of the Regulations, represent the legislation in respect of the following issues that are expressed:*

- 1) Prevention of bullying and cyberbullying in pre-university educational establishments;*
- 2) Counter of bullying and cyberbullying in educational establishments by the instrumentality of integrated intervention, identification and reporting*
- 3) The formation and functioning or operation of the anti-bullying action group in pre-university educational establishments;*
- 4). The Infographic - a tool for learning. The intervention of the academic/teaching staff in point of bullying situations within educational establishments*

*According to the Methodological Regulation, the standard implementation of anti-bullying policies is basically ensured by means of the following:*

*- the liability with regard to educational institutions to compile strategies and plans to ensure a suitable climate for quality education, a sine qua non for reducing bullying;*

- the implementation of an anti-bullying plan by means of anti-bullying action groups, coordinated by the school director that should include teachers, learners, parents, the school counsellor and, depending on the context and needs, other people such as NGO specialists.
- the obligation for each educational establishment to introduce in the Internal Regulations of Order (ROI) with the objective "school with zero tolerance to violence".

The action to counter bullying in schools requires inter-institutional cooperation between the educational establishment, the County School Inspectorate, the Social Welfare and Child Protection Directorates and the Police Inspectorates.

#### **4. Has an anti-bullying law been created or not? Some critical observations on the regulations contained in Law 221/2019 and the Methodological Regulations as regards the application of the Law**

The question – as prior stated (Niță, 2021) is answered with negative response. A Law on Education (unfortunately, one of the most "patched up" organic laws), in which bullying is "invoked" has been created. Of course, Law No 221/2019 represents a step forward in the prevention and counter the phenomenon of bullying, a perspective that involves a constructive attitude of all individuals towards the legislative act under discussion.

Nevertheless, there are "inadequacies" of the regulation and the formulation of *lege ferenda* proposals.

In effect, the subsequent are to be considered:

a) The formulation of the legislator in terms of the definition of bullying is far from being able to meet the requirements of clarity, predictability and liability that must be associated with a particular provision of the law.

In this regard, the view expressed in legal doctrine (UniversulJuridic.ro, 2019) is an agreed one according to which the definition "could cause difficulties in the application of Article 7 para. (1<sup>1</sup>) of the Law, due to the high number of criteria that an act would have to meet in order to meet the definition of psychological violence, as well as their specificity. As an example, attention is drawn to the phrases "committed with intent" and "involving an imbalance of power", two criteria that are stipulated by the legislator, the concrete application of which in the case of an act being committed by a minor under the age of 14 is questionable, in view of the absolute presumption under the law of lack of discernment applicable to this category of persons along with the fact that it is difficult to envisage what degree of the "imbalance of power" might appear between the individual who commits a deed and the victim as in then situation in which both subjects are of the same age and belong to the same class".

b) The primary legislator has defined "psychological violence - bullying" and banned bullying-type behavior in both educational establishments and all places that are intended for vocational education and training, without, however, establishing the consequences of non-compliance with the interdiction.

Nevertheless, the legal rule - the basic structural element of the legal order - encompasses a corresponding structure by integrating three elements: a) the hypothesis; b) the provision; c) the sanction.

As regards of Law no.221/2019, there is a lack of sanction; the regulation is aimed exclusively at intervention mechanisms to prevent and counter bullying, and the mechanism for sanctioning the phenomenon is completely ignored in point of situations where prevention have not had the expected results.

The law makes no reference to the liability of the person who displays bullying-type behavior as, for example, in the case of Law No 167/2020 that bans mobbing (moral harassment at the workplace).

c) The methodological norms add to the law, contrary to Art. 4 para. (3) of Law no. 24/2000 on the rules of legislative technique for the drafting of normative acts, published in the Official Journal no. 260 from 21 April 2000.

According to the legal provision invoked "The normative acts issued in execution of laws, ordinances or Government decisions shall be issued within the limits and in accordance with the rules that order them".

It should be noted that the new normative act associates the concept of psychological violence and cyberbullying (point 6<sup>1</sup> of the Annex-integral part of the law), without defining cyberbullying, while in the Methodological Norms the regulations are aimed at preventing bullying and cyberbullying.

The specialized literature (Voiculescu 2020) displays that there are different opinions on bullying and cyberbullying, with two main lines of thought: "1) according to some doctrinaires, cyberbullying is only different from bullying in terms of context (technological or real) in which the violence is manifested; 2) an alternate opinion (an accepted one), cyberbullying represents a distinct form of aggression, with its own particularities compared to bullying of real life. Therefore, while bullying imply a limited geographical and temporal matter, in the case of cyberbullying the geographical and temporal subject area might be assessed as being almost boundless. From this perspective, cyberbullying is circumscribed to electronic bullying – a concept that is defined as intentional harm caused by the use of electronic means to an individual or group of persons, regardless of age, who perceive such acts as offensive, derogatory, harmful or untoward".

The second opinion is agreed and, in terms of the above-mentioned observation, the formulation of the legislator with regard to the definition of bullying is far from being able to meet the requirements of clarity, predictability and predictability that must be associated with a provision of the law.

## 5. Denouement

An educational environment that is more focused on the phenomenon of bullying is essential, but it must be sustained by a coherent legislative framework. In line with the view expressed by Ms. Nadia Tătaru, initiator of the national strategic approach and part of the working group on the Methodological Norms (Educatiefarabullying.ro, 2020) "bullying will not go away by itself, simply because it is legislated", we express the view that neither the involvement of responsible stakeholders nor "Best Practice Guidelines for the prevention of violence in schools" can fill the gaps in the regulatory framework.

On the eventual perspective that the holders of the right of legislative initiative are expected to impart the present opinion and thoroughly analyze the normative content of Law no.221/2019, the conclusion of the issues that have been taken into consideration reasserts the idea according to which "STOP to bullying" ought to be the motto of the future approaches as regards both school curricula and the policy makers that are involved in the development of a legislative framework with "zero tolerance to violence in educational establishments" objective.

## References

- Charter of Fundamental Rights of the European Union: Official Journal, C 83, 30.3.2010, 389-403.
- Chipea, Floare and Sirbu Ioana. 2017. "Psychosocial consequences of the scholastic bullying phenomenon." In *Sociologie Românească Journal*, volume XV, No. 3-4.
- Educatiefarabullying.ro. 2020. "About bullying." Opinion expressed by Ms. Nadia Tătaru, initiator of the national strategic approach and part of the working group on the Methodological Norms, available at <http://www.educatiefarabullying.ro/despre-bullying>.
- Government Decision No 889/2016 approving the National Strategy for Child and Adolescent Mental Health 2016-2020.

- Law no.221/2019 amending and supplementing the National Education Law no. 1/2011.
- Law 272/2004 on the protection and advocacy of children's rights, published in Official Journal No. 557 from 27 June 2004; republished in Official Journal No 159 from 5 March 2014.
- Marin, Marilena. 2014. "The legal adherence as concerns the rights of the individual among custom, law and jurisprudence." In *Management Intercultural Journal*, Volume XVI, No. 30.
- National Education Law 1/201, published in Official Journal No 18 from 10 January 2011.
- National Strategy for the Mental Health of Children and Adolescents, approved by Government Decision No 889/2016, published in the Official Journal No. 997 of 12 December 2016.
- Niță, Anca-Jeanina. 2021. "Bullying, legislative challenges. Legal and judicial approach." In *Universul Juridic Journal*, no. 8.
- Order of the Minister of Education no. 4.343/2020 approving the Methodological Norms for the application of the provisions of Art. 7 para. (1<sup>^</sup>1), art. 56<sup>^</sup>1 and point 6<sup>^</sup>1 of the Annex to the National Education Law no. 1/2011.
- Regulation (EU) 1381/2013 of the European Parliament and of the Council of 17 December 2013.
- Romanian Ministry of Education. 2019. "Education unites us - A vision for the future of education in Romania." available at <https://www.edu.ro/sites/default/files/Educatia%20ne%20uneste%20-%20Viziune%20asupra%20viitorului%20educatiei%20in%20Roma%CC%82nia.pdf>.
- Save the Children Romania. 2016. "Bullying among children. Sociological study at national level." Available at <https://www.salvaticopiii.ro/sci-ro/files/10/10551dfa-f0b2-4cb0-a103-08d811dc31a9.pdf>.
- Tănăsescu, Elena Simina. 2004. *The revised Constitution of – comments and explanations*. Bucharest: Publishing House All Beck.
- The Constitution of Romania of 1991 amended and completed by the Law No. 429/2003 on the revision of the Constitution of Romania, published in the Official Gazette of Romania, Part I, No. 758 of 29 October 2003, republished by the Legislative Council on the grounds of article 152 of the Constitution in the Official Gazette of Romania, Part I, no. 767 of 31 October 2003.
- The EU Agenda on Children's Rights, adopted in 2011, available at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:52011DC0060>.
- The Regulation (EU) 1381/2013 of the European Parliament and of the Council dated 17 December 2013, published in the Official Journal of the EU L345/62 of 18 December 2013, also at <https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX%3A32013R1381>.
- Tribuna.ro. 2019. "72% of students in Romania are victims of bullying." Available at <https://www.tribuna.ro/stiri/actualitate/72-procente-dintre-elevii-din-romania-sunt-victime-ale-abuzului-de-tip-bullying-studiu-sociologic-la-nivel-national-realizat-de-asociatia-telefonul-copilului-149109.html>.
- United Nations. 1989. "Convention on the Rights of the Child." *Treaty Series* 1577 (November): 3.
- UniversulJuridic.ro. 2019. "Comments. Law no. 221/2019 for the amendment and completion of the National Education Law no. 1/2011," available at <https://www.universuljuridic.ro/comentarii-legea-nr-221-2019-pentru-modificarea-si-completarea-legii-educatiei-nationale-nr-1-2011/>.
- Voiculescu, Nicolae. 2020. "In view of the lapse of mildness in respect of education: an analysis of bullying phenomenon." In *Universul Juridic Journal*, no. 11.