Lesson 2: EU and National legislation on bullying and cyberbullying

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2.1 EU Legislation on bullying and cyberbullying

The European Union does have a specific legal framework to fight bullying and cyberbullying. However, the specific competences vary in the different member states. This is due to the division of competencies established by the Maastricht treaty of 1993. As a consequence, the only exclusive competencies that the EU can exert over its member states concern the customs union, the internal market, the monetary policies, the fishery policies and the common commercial policies. Regarding the rest of its competencies, the principle of subsidiarity impedes the EU to impose any legal framework to its member states. This limiting principle basically states that “social and political issues should be dealt with at the most immediate and local level that is consistent with their resolution” (Dankmeijer, 2020). In practice, this principle only allows for the EU to support member states to share best practices and to promote communication and cooperation with and among national authorities in establishing a legal framework.

Therefore, competencies can either be shared between the member states and the EU or of support from the EU to its member state. Regarding bullying and cyberbullying of students in an academic area, the EU can only support the member states in establishing legislation within the framework of European values.

In this sense, a few directives are considered relevant to take into account when regulating this issue. Directives include:

- Directive 2012/29/EU of the European Parliament and the Council of the 25th of October 2012, establishing minimum standards on the rights, support and protection of victims of crime.
- Directive (EU) 2016/800 of the European Parliament and of the Council of the 25th of May 2016, regarding procedural safeguards for children who are suspects or accused persons in criminal proceedings.
- Council Framework Decision 2008/913/JHA of the 28th of November 2008, combating certain forms and expressions of racism and xenophobia by means of criminal law.

Moreover, by being part of the European Union, its member states have to respect the organization’s fundamental values, including equality, combating violence and discrimination and reducing school leaving. In this regard, the EU has also established programs for its member states to receive help in fighting for the rights of children and against any type of discrimination, bullying and/or cyberbullying.

On the other hand, the EU has established a Fundamental Rights Agenda, in which indicators that are relevant for anti bullying are emphasized. Two of the most important ones include:

- An indicator for schools to monitor if national authorities have legally banned violence as a means for discipline, and if schools have implemented measures to provide confidential information and counselling for victims, as well as legal rights for psychological assistance.
- An indicator to monitor if states are implementing campaigns, including the participation of children, to promote non-violent forms of discipline and to stop spanking of young children. It also monitors the existence of legal provisions requiring schools to have adopted a child protection policy, addressing also bullying of children at schools and of requirement to access anti bullying policies.

Finally, it is worth mentioning that the EU has adopted a written declaration to support the establishment of a European Day against Bullying and School Violence. However, no specific mentions are made regarding people with disabilities.

2.2 National legislations in a nutshell

This section is divided into four subsections differentiated by countries: Spain, Italy, Finland and Croatia. The following subjects will be addressed: national definition of “bullying”, description of the specific legislations created at the national level in order to protect the victims, examine the role teachers should play under a situation of bullying and understand the responsibilities of the bully.

1. **Spain**

In Spain’s legislation, bullying is defined as “physical and/or psychological mistreatments that are both deliberated and continuous from one or several children who act in a cruel way with the main aim to subdue or frighten their target”. Different types of bullying are included in this definition, such as verbal bullying, physical bullying, social bullying, sexual bullying, and cyberbullying.

A specific legislation has been created to protect children who are victims of bullying, since it affects their dignity and fundamental rights. In fact, the Organic Law on Education recognizes students’ fundamental rights to enjoy the respect of their dignity and integrity, as well as to be protected against any type of aggression. This law also includes the need for children to respect their teachers and fellow students. Moreover, it is stipulated in the Organic Law on Education that every educational centre should implement a Daily Coexistence Plan that can be used as a reference for students, families and professors to fight bullying in every of its forms. In order to reinforce the Daily Coexistence Plan, schools are also encouraged to create anti-bullying programs, such as “Escuelas sin bullying”, who encourages students, through the creation of a website, a Facebook page and informational videos, to recognize, report and stop bullying, “Escuelas sin violencia”, “Proyecto Escuela Segura, Programa de Escuela Segura, “No al Acoso Escolar”, “Yo te escucho”, “Hazlo por los Niños”, “Ser respetuoso”, y “Aprender a Respetar”, a campaign created by the Spanish Ministry of Education to teach on the importance of respect and on the ways to reduce bullying. Finally, schools administrators are also expected to take measures to prevent, detect, and respond to bullying and other forms of violence in the school environment, providing, among other things, an adequate and specialized psychological and social support service to victims of bullying.

Another important legislation to take into account when discussing bullying in Spain is the LOMLOE, where several references to bullying are being made. First of all, this law identifies bullying prevention as one of the core principles of Spanish education. It also sets the importance for teachers to be formed and well-educated on this topic, and obliges the creation of protocols in fighting bullying. Furthermore, la LODE identifies the fundamental rights of students, including the protection against every form of intimidation, discrimination, violent situation and bullying.

When and if judicial actions must be taken, it is worth emphasizing the fact that bullying is a felony regulated by the Penal Code. As a consequence, injuries (article 147), threats (article 169), coercion (article 172), insults (article 205), slander (article 208), sexual aggressions on children younger than 16 (articles 178 and 183.ter), and homicide (articles 138 and 142) constitute crimes that can be condemned by judicial authorities. Moreover, the article 143.1 penalize forced suicide.

When there is a need to adopt corrective measures towards a situation of bullying, teachers will have a probative value, and will enjoy a presumption of veracity "iuris tantum'' unless contrary evidence can be proven by the students (art. 124 LOE (4260/2006). The teaching body can propose measures and initiatives to favour coexistence in the centre (art. 129 LOE (4260/2006). Furthermore, it is essential to state that every witness of bullying, including teachers as well as parents or students, has the obligation and the responsibility to report it. Any event that causes physical or moral damage in situations of bullying inside the educational context due to students actions or fault, negligence or inaction from the educational institution, may be subject to civil liability actions as the Civil Code will forecast the obligation to compensate for the damages caused.

On the other hand, regarding the responsibility of the bully, the situation depends on their age. In fact, if the bully is younger than 14 years old, sanctions must be taken in the Scholar facility directly. If he/she is between 14 and 18, penal as well as civil responsibility can be demanded in a penal process for minors, regulated by the Organic Law on the Penal Responsibility of Minors. Finally, if the bully is older than 18, penal and civil responsibilities can be demanded according to the Penal and Civil Codes.

Furthermore, it is crucial to state that, in 2011, the Spanish government passed the “Law on the Rights and Freedoms of Students”, which introduced a number of measures to combat bullying in schools. Among these measures, we can find the creation of a special commission to supervise and monitor the implementation of measures to prevent and combat bullying and cyberbullying. Additionally, the law regulates the establishment of an ombudsman to receive complaints about bullying, as well as the creation of a national anti-bullying plan. Finally, it is important to note that an State Observatory on School Convivence has been created through the Royal Decree 275/2007.

Nevertheless, no specific mentions are made regarding people with disabilities.

2. **Italy**

Regarding Italy’s legislation on bullying, plenty of information can be found on cyberbullying regulated for minors and on bullying in the workplace, but finding information regarding bullying in general in the academic area constitutes quite a challenge.

It is worth mentioning that, on the 17th of May 2017, a law regarding cyberbullying, the Law 71/2017 has been approved unanimously by the Parliament. This law, entitled:

“Regulation for the safeguarding of minors and the prevention and tackling of cyberbullying”, provides, in its first article, a legal definition of cyberbullying, as “whatever form of psychological pressure, aggression, harassment, blackmail, injury, denigration, defamation, identity theft, alteration, illicit acquisition, manipulation, unlawful processing of personal data of minors and/or

dissemination made through electronic means, including the distribution of online content depicting also one or more components of the minor's family whose intentional and predominant purpose is to isolate a minor or a group of minors by putting into effect a serious abuse, a malicious attack or a widespread and organized ridicule".

Moreover, it is essential to state that the law regulates the prevention of cyberbullying at school. Indeed, according to the article 3, the Italian Ministry of Education and University will lead an institutional forum of experts and interested stakeholders for discussing the issue and monitoring the effective implementation of the law. Furthermore, this forum will be in charge of implementing a comprehensive plan to combat and prevent cyberbullying.

Furthermore, this law defines the role of different actors in the Italian school environment, including the Ministry of Education, the Regional School office, the schools and the teaching staff, in promoting preventive, educational and re-educational activities. This set of actions is aimed at all minors involved in episodes of cyberbullying, whether they are in a position of victim or perpetuator, without distinction of age within the educational institutions.

More specifically, this set of actions includes that each school must identify among the teachers a contact person with the task of coordination initiatives to prevent and combat cyberbullying. In case it is necessary, it is this contact person who will report the cyberbullying incidents to the police forces, associations and youth centres in the area. Therefore, this teacher's role is essential. Moreover, as part of an educational community, the School Headmaster who becomes aware of acts of cyberbullying must inform the parents of the minors involved. School regulations and the educational co-responsibility pact should also be supplemented with references to cyberbullying conducts. Finally, schools must promote, within the framework of their autonomy, education in the conscious use of the Internet and the rights and duties related to it.

Finally, it is important to note that the warning procedure provided for stalking (Article 612-bis of the Criminal Code) has been extended to cyberbullying. Thus, in the case of insult (art. 594 of the Criminal Code), defamation (art. 595 of the Criminal Code), threatening (art. 612 of the Criminal Code), and unlawful processing of personal data (art. 167 of the Privacy Code), committed through the Internet by minors over the age of 14 against another minor, if there has been no complaint or if the complaint has not been filed, the procedure of admonition by the police commissioner is applicable.

3. **Ireland**

In Ireland, bullying is defined by the Department of Education as "unwanted negative behaviour, verbal, psychological or physical, conducted by an individual or group against another person (or persons) and which are repeated over time". Moreover, the act of placing a once-off offensive or hurtful message on a social network or public forum is also considered as bullying or cyberbullying if that message can be viewed or repeated by other people.

The Irish Department of Education has implemented a wide range of initiatives and research informed policies to address the issue of bullying in schools. Among those initiatives, a national anti-bullying forum was held in 2012, with led to the publication of an Action Plan in 2013. In this

Action Plan, a range of anti-bullying procedures for primary and post-primary schools in Ireland are described. Moreover, twelve key actions to support schools in preventing and addressing bullying, as well as to support schools and teachers by providing them a framework for acting in fighting bullying have been emphasized. Unfortunately, a number of those procedures for actions have not yet been implemented.

Furthermore, in 2022, the Cineáltas, or Action Plan on Bullying, was published by the Irish Government in order to update the national approach on addressing bullying. This Plan aligns with the four key areas of the Wellbeing Policy Statement and Framework for Practice (2019), and adopts the UNESCO's Whole Education Approach perspective regarding school-based bullying. The four key principles of the Cineáltas are the prevention, through the generation of empathy and the provision of training which provides a foundation for knowledge, respect, equality and inclusion, support, which are tangible, targeted and based on a continuum of needs which provide a framework for school communities to work together, oversight, as visible leadership creates positive environments for children and young people, and community, by building inclusive school communities that are connected to society, and that support and nurture positive relationships and partnerships.

As a consequence, teachers have a great responsibility in denouncing bullying, as they constitute the first resort for students to go to. Additionally, all schools should have an anti-bullying policy as part of their overall code of behaviour. Nevertheless, if the matter cannot be resolved by school staff members, it is possible to report the issue of bullying to the Chairperson of the school's Board of Management, who is legally responsible, according to the Education Act of 1998, for the school organization and has the duty to care for its students and report any incident that could occur. Moreover, it is important to mention that the Department of Education does not have any power to investigate complaints related to cases of bullying. Finally, serious issues of bullying must be reported to Tusla of the Garda.

In this case, there are no mentions of people with disabilities either.

4. **Croatia**

Regarding bullying and cyberbullying in Croatia, it is first of all worth mentioning that 14% of students have suicidal thoughts caused by any type of bullying, and 7% attempt it every year. Moreover, the fear of being bullied has pushed around 160.000 students into staying at home instead of going to school. Therefore, the country has taken measures to counter bullying. In fact, it has established a definition of bullying, which says that " Bullying among children means one or more children continually and deliberately harassing, attacking or harming another child unable to defend itself". Furthermore, according to the Protocol on the Procedure in Case of Bullying among Children and Youth, bullying is defined as "any deliberate physically or emotionally abusive behaviour aimed towards children and youth by their peers in order to cause harm, irrelevant of where it happens". Bullying can vary in types, severity, intensity and time period. It also involves repetition of the same pattern and reflects an imbalance in power.

As a matter of fact, there are several types of bullying recognized under Croatian Law. Those include physical bullying (hitting someone, pushing someone, throwing things at them, slapping

them, etc.), psychological and emotional bullying (repeated gossiping, calling names, ridiculing, intimidating, mocking, excluding of a child by one or more children), sexual bullying and cyberbullying.

It is clearly stated in Croatian's legal framework that, in all cases of violence between children at school, the school employees are obliged to act in accordance with the protocol on dealing with violence among children and young people (2004. It other words, the school is responsible for the bullying which occurs in its centre and its vicinity. Therefore, teachers and the school staff have the obligation both to prevent and to stop any form of violence in school, as well as to cooperate with the police if necessary. Moreover, according to the article 132 of the Family Act (OG No 103/15, 98/19), it is everyone's responsibility to report bullying conducted on a child in a social welfare centre at a police station, a social welfare or an education institution. All of them are required, according to the Act, to act on the received report and to cooperate with each other.

Practically teachers have the obligation to immediately stop the violent behaviour of the students and separate them, but also to provide help and support to the student who has experienced violence and to report this violent action to the rest of the school staff, including professional associate of the school, the director, etc. Once this report has been made, it is every school staff member's responsibility to take all measures to stop this violent actions from occurring and, in case it is needed, to report the bullying behaviours to the police. Additionally, in case the bullied child has been injured, the school staff has the obligation to call the emergency services to provide him with the needed care. Furthermore, a priority must be given to the child's needs and mental health. Thus, it is essential to provide him with a safe space to talk, as soon as possible, in order for him to be listened and considered in this issue and, in case it is necessary, to facilitate the possibility to talk to a psychologist or mental health professional in order to avoid the consolidation of trauma. Also, after reporting the bullying behaviours, it is the school staff duty to inform the parents or legal guardians of both the bullied child and the perpetuators about what has happened and to cooperate with them to implement the best solution possible. Finally, it is also crucial to interview the child or children who committed violent actions in order to point out the severity and inadmissibility of their actions, to advise and encourage them to change such behaviours and to pay attention to any issues that they might have that could have lead to such behaviours, in order to provide the help needed. In all this process, it is of vital importance to take official notes of all the actions implemented to solve the issue, in order to submit it upon request to other competent authorities and to report the event to the School's teacher Council.

Finally, it's worth saying that no mentions are made regarding people with disabilities.

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