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Child welfare as the primary direction of improving the legislation of the Republic of Kazakhstan: prevention of bullying in everyday and educational life

The article is devoted to the actual problem of bullying, that is, intentional and systematic infliction of emotional and physical harm to a minor by peers or adults. Despite a number of positive changes provoked by the adoption of appropriate legislative instruments to combat this phenomenon, there are still gaps that need to be addressed in the near future. The need to create a healthy atmosphere is justified by the fact that the well-being of children, the future generation of the Republic of Kazakhstan, is the benchmark for the development and progress of our country. Thus, in this article, the authors analyze the forms and consequences of bullying, world-class statistical indicators, and also study international and national experience in combating this phenomenon. Special attention is paid to the role of legislation in ensuring the well-being of the child and protecting him from bullying. The authors propose a number of practical recommendations for improving the legislation of the Republic of Kazakhstan in this area, as well as for improving the legal consciousness and legal culture of the population. The article is of undeniable interest to lawyers, educators, psychologists, sociologists, human rights defenders and all those who deal with issues of childhood and child welfare in order to improve the atmosphere prevailing around a minor citizen of our country.

Keywords: child, minor citizen, bullying, emotional harm, physical harm, school safety, child rights, educational system.

Introduction

In recent years, the media has presented bullying as an emerging problem in educational institutions. However, this is not a new phenomenon, harassing underage children both within the home and during the school year. Individuals who are directly involved in bullying, aggressors, initiators, instigators, have been tormenting schoolchildren in educational institutions for decades, but they did not limit themselves to this, continuing their bullying in public transport, on playgrounds, etc., however, the legislation did not regulate the legal mechanisms for solving this problem.

Traditionally, the problem of bullying has been solved with the help of schoolchildren codes of conduct. It was often possible to cope with less serious injuries on their own, cooperating with teachers, parents and schoolchildren themselves. However, recent media attention has been attracted by extreme cases where bullying has led to serious and sometimes fatal consequences. A good example in this case is the tragedy in the Abai region, when schoolchildren who were subjected to bullying decided to commit paired suicide, and this is not an isolated case when such events took place.

Such tragic incidents have increased the attention of the whole country to the prevention of school bullying and prompted the fight against bullying. We consider it is necessary to draw attention to the fact that not all citizens of the Republic of Kazakhstan reacted positively to the adoption of a regulatory legal act focused on the prevention and fight against this kind of psychological and physical violence.

Some Kazakhstanis wrote on their social networks, and in their survey responses indicated that, in general, “bullying” is peculiar only to European countries and has bypassed us. According to such persons, the Order of the Minister of Education of the Republic of Kazakhstan dated December 21, 2022 No. 506 “On approval of the Rules for the prevention of bullying of a child” represents “a loophole for family control and management for blackmail and corruption in the field” and “an unfinished terrible instruction” [1].

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Indeed, this legal instrument is imperfect in nature, but, nevertheless, it allows you to identify persons who are obliged to keep order in educational institutions, as well as the basic principles of combating bullying.

Methods and materials

The authors of this study turned to various sources providing statistical data on bullying cases in Kazakhstan, which, in turn, helped to confirm the relevance of the problem and its scale.

In order to write this scientific article, the method of systematic review of the literature was used, which allowed us to familiarize ourselves with the results of previous studies on the topic that interested us. Obtaining the opinions of experts in the field of child welfare, psychology, sociology, law and education provided a basic valuable insight into bullying, the reasons for the existence of such a phenomenon, as well as the results of this kind of pressure on human nature. In addition to the general theoretical analysis, experts gave their personal recommendations, which can also be applied by the legislator in the process of preventing and combating bullying.

In particular, we have studied the current legislation of our country, including the Constitution, laws related to the protection of the rights and interests of children, the educational system and others related to this topic. A perfect comparative analysis made it possible to compare the legislation of the Republic of Kazakhstan with the legislation of other countries that have been successfully fighting the problem of bullying for a long time, reducing negative percentage indicators. This allowed us to identify the best practices and mechanisms that can be applied here in the future.

The study of normative legal acts and recommendations of international organizations, such as the United Nations (hereinafter — the UN), the International Emergency Fund for Children at the United Nations (hereinafter — UNICEF), the World Health Organization (hereinafter — WHO), made it possible to familiarize and understand international standards and requirements in the field of child rights protection and bullying prevention.

Due to the above-described methodological basis, the authors wrote a scientific article on an urgent and disturbing topic, including reliable information, as well as having in its content specific measures to improve legislation and prevent bullying in the Republic of Kazakhstan.

Results and their discussion

The well-being of a child is a state of physical, mental, social and spiritual health and development of a minor, which ensures his full participation in the life of the society in which he finds himself, the realization of his rights, potential and interests.

The well-being of the child is one of the priorities of the UN, the European Union, the Council of Europe and other international and regional organizations, as well as many civilized states, including the Republic of Kazakhstan.

One of the main factors affecting the well-being of a child is the safety of his life, including from various forms of violence, exploitation, discrimination and persecution. Currently, bullying is one of the most common and dangerous forms of violence against a minor.

Bullying (possible synonyms of this term — “intimidation”, “humiliation”, “harassment”) is defined as any action that makes someone feel unhappy or uncomfortable because of their gender, race, religion, culture, abilities, appearance or disability, or a general combination of all of the above. This may be a one-time incident, but more often it repeats over a period of time, putting the victim of bullying in a difficult psychological and physical condition.

Bullying can take the form of name-calling, threats of violence, actual violence, intimidation, isolation, ridicule or other actions such as spreading unpleasant stories and gossip, sending inappropriate text messages and/or emails or making inappropriate phone calls, inappropriate use of the Internet/personal websites/blogs. Such actions are aimed at making the victim feel threatened, humiliated and unsafe.

Some types of bullying are physical in nature. For example: pushing, hitting, kicking, spitting, inappropriate touching (including of a sexual nature) or any other physical activity that is used in such a way as to make another person feel in danger. In addition, this category may also include the seizure and damage of personal property, which has both material and non-material value for a person who is a victim of external circumstances.

The physical type is accompanied not only by action, but also contains a verbal character, but, at the same time, the verbal character can be separate from the physical manifestation. Thus, the victim of bullying

hears in his address: name-calling, taunts or any other comments aimed at causing harm or used for intimidation. Along with the verbal type, there are also written insults: passing notes, graffiti, threats sent by e-mail, abusive text messages and other abuses of technology and social networks.

Also, in some sources, harassment acts as a separate group, which is of a relative nature: the exclusion of people from groups, which is especially painful for the younger generation who are used to being part of society and culture, as well as deliberate ignoring, gossip, and spreading rumors [2].

The listed emotional and physical effects on the unprepared and unshared psyche of a minor can be influenced in various ways, and none of them can be attributed to neutral or positive.

So, the signs and results of bullying are recognized:

1) Physical: bruises, scratches, cuts, damaged clothes;

2) Health condition: loss of appetite, abdominal pain, headaches, sweating attacks, sleep disorders, panic attacks, incontinence of natural physical waste;

3) Emotional: unwillingness to go to school, withdrawn or secretive behavior, unhappiness, unusual manifestations of character, refusal to talk about problems, high level of anxiety;

4) Changing the usual daily routine: they ask to take them to school instead of walking/traveling by public transport; they ask for more money, things that are lost or disappear repeatedly;

5) Academic: difficulty concentrating, impact on grades, missed classes.

Bullying is a global problem that affects millions of children worldwide. According to WHO, about 20% of children aged 11 to 15 years are subjected to some form of bullying by their peers at school, and about 10% of children aged 13 to 18 years are exposed to this kind of activity on the Internet.

In 2020, in Kazakhstan, according to UNICEF materials, 63% of children witnessed violence and discrimination, 44% became victims and 24% committed acts of violence and discrimination against other children at school [1].

A national study for 2022 on the assessment and monitoring of schoolchildren's behavior in relation to their health and well-being, conducted by the National Center for Public Health of the Ministry of Health of the Republic of Kazakhstan, showed that 17.5% of children are bullied from time to time, 6.8% of the surveyed adolescents experience bullying and intimidation from others 2-3 times a month, 14.1% of children aged 11–15 years old admitted that they themselves participated in bullying in relation to their peers [3].

Educational institutions have an ethical and legal responsibility to prevent bullying of any kind, ideally as part of a comprehensive approach to ensuring school safety and encouraging positive behavior. However, due to the fact that the administration of such organizations neglect their duties, concealing cases of harassment, hoping to solve this kind of violation of the rights of the child at their own level, without publicity and involvement of other authorities, leads not only to the inability to establish accurate statistics of bullying in Kazakhstan, but also to the death of victims. As noted by the deputy of the Mazhilis, Nartai Aralbayuly, in June 2023, “according to UNICEF, 66% of children in Kazakhstan face violence and discrimination at school. According to experts, elements of bullying and extortion form suicidal behavior in children. Unfortunately, according to WHO, the country ranks 10th in the world in the number of suicides among adolescents” [4].

The fight against bullying requires a comprehensive and multi-level approach, including legal, social, psychological, pedagogical, medical and other aspects. One of the important elements of this approach is the improvement of legislation regulating the prevention and counteraction of bullying, as well as the protection of the rights and interests of affected children. Legislation should reflect modern standards and requirements of international law, as well as take into account national peculiarities and realities.

In most countries, bullying is a punishable act and is considered an interference with personal human rights, which are specially protected by the Constitution of each country.

Due to the fact that we are discussing bullying of a child, who is often accompanied by the fact that the initiator is the same child, the question of criminal punishment is not in any of the countries, but the question is quite different if a person who has reached the age of majority is subjected to minor bullying.

Historically, the power over bullying in the United States has been almost exclusively the responsibility of school systems, and legislation governing the effects of bullying reflects a recent trend to view the most serious forms of bullying as criminal behavior that should be dealt within the criminal justice system.

Nevada has criminalized the threat of bodily injury or death to a schoolchild or school employee by verbal, written or electronic communication with the intent to intimidate, cause alarm; with the aim of causing panic or civil unrest or interfering with the work of a public school [5].

North Carolina recently passed a new law criminalizing cyberbullying, making it a misdemeanor offense for youth under the age of 18 [6].

A key part of Idaho's bullying legislation is contained in section 18 of the state's Criminal Code. The Law defines and prohibits harassment, intimidation, and bullying among schoolchildren, including bullying committed using technology (for example, a landline phone, car phone, or cordless phone, or using data or computer software accessed through a computer, computer system, or computer network). The law also contains a statement that any "schoolchild who personally violates any provision of this section may be guilty of an offense" in accordance with the Criminal Code [7].

In the state of Virginia, it is accepted that the most serious cases of harassment are punishable by a fine of \$ 2,500 and imprisonment for up to a year, and victims have the opportunity to sue schoolchildren who behaved inappropriately towards them.

Although bullying itself is not a separate criminal offence in the UK, some acts (or communications) involving intimidation or containing threats may be considered a crime, for example, under the Intimidation Act (1997) (Protection from Harassment Act), the Public Order Act (1986) (Public Order Act), the Malicious Communications Act (1988). Thus, in accordance with the latest regulatory legal acts, any person sending an electronic message that is indecent or grossly offensive, threatening or containing false information (which the sender knows about) is guilty of a crime [5].

For the most part, legislators require the introduction and use of appropriate preventive programs that include certain stages of work within an educational institution. Thus, clear sanctions are being developed against the initiators of bullying, up to and including expulsion from school. In some primary schools, so-called school courts are organized, where a commission consisting of elected representatives of schoolchildren and teachers examines complaints of harassment and determines the measure of punishment [8].

It is also important that responsibility is also provided for the administration of educational institutions. Under Arizona law, school staff has increased responsibility for failing to identify bullying when it occurs and respond appropriately [9]. Missouri law also requires schools to sanction school staff who fail to comply with reporting requirements to law enforcement agencies [5].

However, the existence of a punishment system is not enough, since it occurs after the discovery of the fact of harassment, such offenses must be prevented and dealt with from the moment of the first signal.

To address this problem, many countries have implemented a number of programs and initiatives aimed at reducing bullying and violence in schools: Kiusaamista Vastaa (hereinafter – KiVa), Olweus Bullying Prevention Programme (hereinafter – OBPP), United Against Bullying (UAB), SAVE, Donegal and ABC, Bullí & Pupe (Bullies and Dolls), etc.

Germany for the most part uses OBPP, which includes a system of patronage of high school schoolchild over younger ones. Thus, at the beginning of the school year, each fourth-grader takes a first-grader under his care and throughout the year helps him adapt to school, solve various problems, becomes his friend and assistant. Another interesting example is the experience of a preparatory school, where 1st and 2nd, 3rd and 4th grades study together. That is, children from two classes are combined into one class so that older children can help their younger classmates in their studies and not only in this. Such a scheme unites children and teaches them to take care of the smaller, weaker ones, and not to use force against them. In addition to incentive methods, punitive ones can also be used. The school may establish its own system of punishments for bad behavior or learning, for example, staying in class after lessons (Donnerstunde). If a schoolchild scores a certain number of demerit points during the year, he/she may be expelled from school.

Germany also has a tendency to entrust the implementation of preventive programs to trained volunteers who are students of humanities, who, due to their age and the smaller gap between generations, have a chance to quickly gain the interest and trust of teenagers, in particular, and start a more intensive discussion on the problem of bullying at school [10].

In the Republic of Kazakhstan, starting in 2022, a big step has been taken in the field of prevention and control of bullying. Amendments and additions have affected various regulatory legal acts, including the Law of the Republic of Kazakhstan "On Education", "On Mass Media", etc.

The legislator has fixed a concept similar to that given by UNESCO in 2019 regarding the interpretation of bullying. Thus, according to the Order of the Minister of Education of the Republic of Kazakhstan dated December 21, 2022 No. 506 "On approval of the Rules for the Prevention of bullying of a child", these are systematic (two or more times) humiliating actions, harassment and (or) intimidation, including those aimed at forcing or refusing to commit any kind of actions, as well as the same actions committed in public or using mass media and (or) telecommunications networks (cyberbullying) [11].

In addition to explaining the offense committed against a minor, a measure is provided to combat this negative phenomenon. However, there are aspects of the procedure that require reflection, revision and adjustment in order to more productively ensure the well-being of a child who has been bullied.

Upon reviewing the Order of the Minister of Education, attention was drawn to a seemingly insignificant detail in subparagraph 2 of paragraph 9 of Chapter 3, which directly examines the procedure for receiving information about child harassment and actions to identify signs of child harassment and respond to them. The deputy head of the educational organization for educational work is given a period of 1 (one) working day after receipt of information, within which he conducts a conversation with a child who has been bullied, with the initiator / instigator of bullying, their legal representatives with the involvement of a class teacher, a teacher-psychologist. However, if the information became known on weekends or holidays, and work with all parties begins only on working days, then the child victim will be in a state of stress and depression for the entire period, undergoing a wave of proliferation of negative information, including through social networks. Even a few days can play a big role in the onset of those bullying results that were given above. In this regard, we believe that it is necessary to react in the context of such circumstances immediately, from the moment the signal about such an event is received.

Subparagraph 2 of paragraph 12 of the same regulatory source indicates that, in addition to registering the initiator/instigator of bullying, monitoring of correction is provided. However, it is unclear what the criteria are for determining correction is it enough that there have been no more complaints about this child, or does he need to lead a generally positive social life.

The Law of the Republic of Kazakhstan dated July 23, 1999 No. 451-I “On Mass Media” has been amended in accordance with the Law of the Republic of Kazakhstan dated May 3, 2022 No. 118-VII ZRK “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the protection of the rights of the child, education, information and informatization”, in the section of the statement on the consideration of the facts of cyberbullying on Internet resources in relation to a child.

According to paragraph 1 of article 18-4, an application on the facts of cyberbullying against a child is considered by an expert group within 3 (three) working days from the date of its receipt [12].

As a tool of pressure on the victim, cyberbullying is quite dangerous, since information, including video/photo materials, can be distributed on social networks and be publicly available. This is confirmed by the Law of the Republic of Kazakhstan dated July 5, 2004 No. 567 “On Communications”, which states that cyberbullying against a child can be committed both as propaganda for the sexual exploitation of minors and include child pornography in its content [13]. On this basis, three working days is quite a long time, especially when, for example, the site will not be at least temporarily blocked. Such a measure to prevent bullying will allow to restrict an increasing number of users from viewing materials that may cause some kind of harm to a minor who has been subjected to cyberbullying.

No less frightening are cases when the information requested by an expert group to confirm the fact of cyberbullying falls within the competence of several information holders, and when responding to an application, it is required to obtain information from other information holders. In this case, the review period may be extended once by the authorized body for no more than 15 (fifteen) calendar days. This period of time seems to be incorrect for the same reason of the child's moral suffering from the dissemination of possible material on the social network.

Resolution of the Government of the Republic of Kazakhstan dated August 31, 2023 No. 748-2 “On approval of the Comprehensive Plan for the Protection of Children from Violence, suicide Prevention and ensuring their Rights and well-being for 2023–2025” provides for a number of measures aimed at realizing the rights of children to protection from violence, bullying and abuse. Short-term measures were envisaged for implementation within the framework of September-December 2023 [14]. Nevertheless, a more detailed search did not reveal the methods planned by the Decree for early detection and assistance to minors who have been subjected to or witnessed violence, bullying, cyberbullying, programs for the prevention of child bullying in educational institutions (based on the experience of the Finnish KiVa program), etc.

The legislator's choice of this program as a whole may contradict subparagraph 4 of paragraph 10 of the “Rules for the Prevention of child Bullying”, according to which measures are being taken to resolve an incident related to child bullying by involving a mediator with the consent of the legal representatives of the child, the initiator/instigator of bullying, and the child who was bullied [11], since the meaning of the KiVa program is not in the reconciliation of the parties, and in the impact on third-party viewers of the conflict [15].

The Order of the Minister of the Republic of Kazakhstan “On approval of the Rules for the prevention of bullying of a child” defines the procedure for the prevention of bullying of a child in educational organizations, covering cyberbullying committed in the Internet space [11]. However, the child's activities are not limited only to school or social networks, forums, chat rooms, gaming platforms, etc.

Children may experience bullying while attending their additional classes, playing sports, music, dancing, drawing and other creative activities, as well as while visiting cinemas, parks, museums, libraries and other public places. For example, in the United States, there is a Federal Law on the Protection of Children on the Internet (CIPA), which requires libraries receiving federal subsidies to install filters on computers to prevent children from accessing malicious content.

Bullying in other areas of children's activities can have the same or even more serious consequences than if it takes place in an educational institution, as it can affect the development of children in different areas, such as physical, mental, emotional, social, cultural, creative, etc. Bullying can undermine children's self-confidence, their interests, abilities, talents, hobbies, as well as their relationships with other people.

Bullying in other areas of children's activities can be more difficult to identify, prevent and suppress than bullying at school, as it can occur in different places, at different times, with different participants and through different channels. In this sense, the legislation of the Republic of Kazakhstan needs to expand the scope of legislation on the prevention and counteraction of bullying to all places where a minor may encounter bullying, as well as promote cooperation and coordination between various bodies and institutions responsible for the prevention and counteraction of bullying.

Conclusions

In this article, the problem of child welfare was considered, related to the lack of a full-fledged legal mechanism focused on preventing and combating bullying in everyday and educational life in the Republic of Kazakhstan.

The authors base their conclusions on the analysis of existing studies on the effect of bullying on the mental and emotional state of a minor with a fragile psyche. Such forms of violence as bullying, threats and blackmail and other manifestations of bullying have a detrimental effect on the mental health of children, as well as on their educational achievements and social adaptation, whereas the generation that may currently suffer from bullying by their peers or others is the future of our country, the continuation of history and the name “Kazakhstani”.

There is no doubt that the problem of bullying has become especially relevant in the light of the development of technology and the Internet and the extensive use of information and communication technologies in all spheres of life. However, the mechanisms that operate in the country in relation to countering cyberbullying are crude and shaky, requiring their logical strengthening and timely response by those responsible for such a fight.

The authors of the article note that in order to effectively combat bullying, it is necessary to develop and implement comprehensive measures that include not only legislative acts, but also programs to support victims of bullying, mechanisms for early detection of cases and prevention of manifestations of this phenomenon. In addition, it is not necessary to limit the current rules exclusively to an educational organization, since comprehensive coverage of all areas will be much more productive, given the requirements that modern youth now face — to be comprehensively developed, culturally athletic, etc.

Nevertheless, the steps taken by the legislator are indeed a positive start in preventing and suppressing bullying.

Thus, based on the conducted research and the data presented in the scientific article, it can be concluded that it is necessary to improve the legislation of the Republic of Kazakhstan in the field of child welfare and the prevention of bullying, the fight against it. Such measures will contribute to the creation of a safe and supportive environment for children, as well as contribute to their full development in educational and daily life.

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Баланың әл-ауқаты Қазақстан Республикасының заңнамасын жетілдірудің басым бағыты ретінде: күнделікті өмірде және білім беруде буллингтің алдын алу

Мақала буллингтің, яғни құрдастарының немесе ересектердің тарапынан кәмелетке толмаған балаға қасақана және жүйелі түрде эмоционалды және физикалық зиян келтіру бойынша өзекті мәселесіне арналған. Осы құбылысқа қарсы күрес бойынша тиісті заңнамалық құралдарды қабылдаудан туындаған бірқатар оң өзгерістерге қарамастан, жақын арада оларды жоюды талап ететін олқылықтар әлі де бар. Салауатты атмосфераны құру қажеттілігі Қазақстан Республикасының келешек ұрпағы — балалардың әл-ауқаты еліміздің дамуы мен прогресінің эталоны екендігімен негізделеді. Осылайша, мақалада авторлар буллингтің формалары мен салдарын, әлемдік деңгейдегі статистикалық көрсеткіштерді талдайды, сонымен қатар осы құбылыспен күресудің халықаралық және ұлттық тәжірибесін зерттейді. Баланың әл-ауқатын қамтамасыз етудегі және оны буллингтен қорғаудағы заңнаманың рөліне ерекше назар аударылады. Авторлар Қазақстан Республикасының осы саладағы заңнамасын жетілдіру, сондай-ақ халықтың құқықтық санасы мен құқықтық мәдениетін арттыру бойынша бірқатар практикалық ұсынымдар берген. Мақала заңгерлерге, тәрбиешілерге, психологтарға, әлеуметтанушыларға, құқық қорғаушыларға және еліміздің кәмелетке толмаған азаматтың айналасындағы атмосфераны жақсарту үшін баланың балалық шағы мен әл-ауқатына қатысты барлық тұлғалар үшін сөзсіз қызығушылық тудырады.

Кілт сөздер: бала, кәмелетке толмаған азамат, буллинг, қоқан-лоққы көрсету, эмоционалдық зиян, физикалық зиян, мектептегі қауіпсіздік, бала құқықтары, білім беру жүйесі.

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Благополучие ребенка как первостепенное направление совершенствования законодательства Республики Казахстан: предупреждение буллинга в повседневной и образовательной жизни

Статья посвящена актуальной проблеме буллинга, то есть умышленного и систематического причинения эмоционального и физического вреда несовершеннолетнему лицу со стороны сверстников или взрослых. Несмотря на ряд позитивных изменений, спровоцированных принятием соответствующих законодательных инструментов по борьбе с данным явлением, все еще имеются пробелы, которые требуют своего устранения в ближайшее время. Необходимость создания здоровой атмосферы обобщается тем, что благополучие детей, будущего поколения Республики Казахстан, — это эталон развития и прогресса нашей страны. Таким образом, в настоящей работе авторы проанализировали формы и последствия буллинга, статистические показатели мирового уровня, а также изучили международный и национальный опыт борьбы с этим явлением. Особое внимание уделено роли законодательства в обеспечении благополучия ребенка и защите его от буллинга. Авторами предложены практические рекомендации по совершенствованию законодательства Республики Казахстан в этой сфере, а также по повышению правового сознания и правовой культуры населения. Статья представляет неоспоримый интерес для юристов, педагогов, психологов, социологов, правозащитников и всех, кто занимается вопросами детства и благополучия ребенка, чтобы усовершенствовать атмосферу, царящую вокруг несовершеннолетнего гражданина нашей страны.

Ключевые слова: ребенок, несовершеннолетний гражданин, буллинг, травля, эмоциональный вред, физический вред, безопасность в школе, права ребенка, образовательная система.

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