

INTEGRAL REPARATION OF DAMAGE IN CIVIL LIABILITY IN CASE OF BULLYING: THE JURISPRUDENTIAL SOLUTION.

REPARACIÓN INTEGRAL DE LOS DAÑOS DE RESPONSABILIDAD CIVIL EN CASO DE INTIMIDACIÓN: LA SOLUCIÓN JURISPRUDENCIAL.

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ABSTRACT: The protection of human rights is evident in the defense of human rights. This is only achieved through different institutions of Civil Law; of course overcoming the patronization that prevailed in this discipline of law in the nineteenth and twentieth centuries after coding. One of the institutions that have had repercussion on a person is civil liability, considered in Article 20 of the Constitution. It is necessary that this issue transcend private relations to the need for fair compensation. Civil liability is the judicial solution that is determined by the Judiciary of the Federation for the phenomenon so harmful to our childhood that has been called bullying, studied in psychology, but very little in legal systems with have tendencies toward bureaucratic solutions through protocols that may be useful but that are incapable of solving the daily cases that are occurring faced the Judicial Power of the Federation. There are special laws in some states of the country, but our study and research is geared to the analysis of bullying in other countries; such as Spain and the United States that do not have special laws and in which moral damage and responsibility for other ways of solving these issues. The purpose of the paper is to explain the legal solutions that are given to the illegal act of bullying from different positions adopted by the state courts in relation to the Federal.

RESUMEN: En la defensa de los derechos humanos es evidente la protección de la persona, pero ello sólo se logra desde distintas instituciones propias del Derecho Civil, por supuesto

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superando la patrimonialización que primó en esta disciplina del derecho en los siglos XIX y XX después de la codificación. Una de las instituciones que ha tenido repercusión de la persona es la responsabilidad civil, considerada como tal en el artículo 20 constitucional ¿por qué? Bien pues es necesario que esta figura trascienda de las relaciones privadas a la necesidad de una justa indemnización. La responsabilidad civil es la solución judicial que ha determinado el Poder Judicial de la Federación de ese fenómeno tan dañino para nuestra infancia que se ha denominado bullying, estudiado en la psicología, pero muy poco en un sistema jurídico con tendencias a una solución burocrática a través de protocolos que pueden ser útiles pero que son incapaces de resolver los casos diarios que están ocurriendo como sí lo ha afrontado el Poder Judicial de la Federación. Existen leyes especiales en algunos estados del país, pero nuestro estudio e investigación está encauzado al análisis del bullying en otros países como España y a los Estados que no poseen ley especial y en los cuales se ha reconocido el daño moral y la responsabilidad por hechos ajenos como forma de dar solución a estos asuntos. Este es el objetivo del trabajo, explicar las soluciones jurídicas que se dan frente al acto ilícito de bullying a partir de distintas posiciones adoptadas por los Tribunales locales con relación a los Federales.

KEYWORDS: Civil liability, integral reparation, bullying, fair compensation, moral damages.

PALABRAS CLAVE: responsabilidad civil, reparación integral, bullying, justa indemnización, daño moral.

SUMARIO: Introduction. I. A Necessary Preamble: Constitutionalization Of Civil Law. Implications In Civil Liability. II. Concepts And Elements Of Civil Liability In Current Events. Iii. The Bullying In The Comparative Law. Iv. Considerations Of The Commission And The Inter-American Court Of Human Rights In Cases Of Violation Of The Physical Integrity Of Minors In Educational Institutes. V. Methodology. Vi. Jurisprudential Solution In Mexico Before Damage Caused By Bullying. Vii. Case Studies. Results And Conclusions. Bibliographic References.

INTRODUCTION

In a printed newspaper in Southeastern Mexico, it was reported that four students left the ABC Elementary School in a locality, because of teacher mistreatment to the students. It was reported in the paper that the Director of XYZ held a meeting and when the parents started

to complain he suspended the meeting. "A man got tired of the bullying that three minors exerted on his son and he fired a weapon in a Middle School", is the front page of another new source. With the heading "Outrageous case of bullying in school against minor of different capacities", another case is published on the Facebook account of a newspaper. As we can see, the relationships between minors are the result of the adult's relationship. The fact is analyzed from the psychological perspective. Today in Mexico there are more than ten special local laws on the subject but none reaches or implies a reform of civil laws to incorporate bullying. The legal framework of psychological of this social phenomenon is reduced to Article 3 constitutional as a principle for the General Law of Education,³ which in its article 7, sections VI and VI *bis*, as well as 8th fraction III, sets the basis for an education free of violence in any of its manifestations, knowledge of human rights and respect for them, as well as the promotion of the valuation of diversity and the culture of inclusion as conditions for social and cultural enrichment.

The elaboration of this investigation aims as a general objective; to explain the legal solutions that are given to the illegal act of bullying from different positions adopted by the local Courts in relation to the Federal to protect the violation of the rights to the physical integrity and moral of those affected by acts of bullying. The above objective is derived from the study of a series of cases; some investigated by national jurisprudence, others by comparative law, where it is established that bullying is an unlawful act that involves moral damage and responsibility for other people's events and this is the basis for our hypothesis. Likewise, the General Education Law establishes in its article 42, that on the part of the Mexican State seeks to protect and preserve the physical, psychological and social integrity of the minor. In relation to complementary laws only exists in the General Law of the Rights of Children and Adolescents,⁴ article 57 a recommendation to incorporate protocols and policies to avoid these cases of harm to minors. The legislation provides administrative solutions but the legal assessment of the fact from the perspective of comprehensive reparation has only been offered by the Judiciary of the Federation, establishing legal criteria on this phenomenon that attacks against the most precious thing that a society has: the childhood.

It should be noted that the situation of aggression among peers, usually high school students is not a question of warming countries. In this respect we note that it was in northern Europe where cases of aggression were detected for the first time. In the research presented below, we offer two cases of national and international comparative law, its feasibility of legal study,

³ Published in the Official Journal of the Federation on June 13th, 1993, which last reform was published on June 1st, 2016.

⁴ Published in the Official Journal of the Federation on December 4th, 2014.

to a reality that has spread in all countries and to which the southeast does not escape unfortunately.

I. A NECESSARY PREAMBLE: CONSTITUTIONALIZATION OF CIVIL LAW. IMPLICATIONS IN CIVIL LIABILITY

In the case of bullying which affects a person, a fundamental institution of Civil Law has suffered a crisis that seems to lose importance, how can it be explained? If we only focus on the rhetoric of human rights, what protects civil law? What is a person fundamental institution? A response may be: "heritage", but can there be heritage without a person? We know that only there is an exception in the case of the Foundation as a legal person, in other cases of course not. The dignity of the person, the free development of personality and respect for the rights of others is stated in Article 1 of the Mexican Constitution, are in this regard published in some texts.⁵ In this coexistence, the difference between the protection of the human being transcends the particular and surpasses the nineteenth-century Civil Codes that in reality are "updating" that majestic Roman law that transcended until our days, that in the era of the protection of the person at level Internationally through globalization we call good,⁶ begins to lose the reason of the content in what were some of its institutions beginning as is the case of extra contractual civil liability. Comprehensive or just reparation occurs that transcends the will of the parties in the contractual⁷ and extra contractual area. On the other hand, human rights must be filled with content, as they "evolve towards specificity", which means a decrease in discretion and an increase in tax rates. Practice shows that invariably discretion is always used against the weakest and most unprotected sectors. It is fundamental that the discretion of the judges be drastically limited by a legislative technique that exhaustively establishes a series of cases in which the liberty of a teenager can be legitimately deprived.⁸

The constitutionalization of civil law has been defined by the Judicial Branch of the Federation when it states that, if it is true, that the Political Constitution of the United Mexican States offers no textual basis for affirming or denying the validity of fundamental rights among

⁵ In this regard see Pérez Fuentes, Gisela María and Cantoral Domínguez, Karla, "Moral damage and rights of personality of minors, Editorial Tirant lo Blanch, Mexico, 2015.

⁶ The application of the pro person principle in international treaties makes unlawful any act of trafficking of people, disappearance of people, commercialization of women, children and unborn children.

⁷ The existence of abusive clauses, mainly in the contracts of adhesion such as those of a tourist nature or of services of both health and private education give way to a protection with respect to the persons of the society that has not been affected but that they may be in such disproportionate relationships.

⁸ Cf. Inter-American Court of Human Rights, Case of Reeducation Institute against Paraguay, September 2nd, 2004.

individuals, This is not a barrier to give an adequate response to this reality. According to Mexican jurisprudence the fundamental rights provided in the Constitution enjoy a double quality since on the one hand they are configured as subjective public rights, and on the other they translate into elements Objectives that permeate the entire legal system: including those relationships that originate between individuals. Fundamental rights occupy a central and indisputable position as the minimum content of all legal relationships that occur in the legal system. In this logic, the dual role-played by fundamental rights in the organization and structures of certain rights are the basis for affirming their impact on relationships between individuals.⁹

In the case of civil liability there is the assumption of the presence of the principles of solidarity and equality with a full spectrum in the consideration that is oriented towards the full development of the person is therefore the interpretation of contemporary civil liability as a fundamental right based on a comprehensive reparation that includes an equitable but not quantifiable assessment based on the principle of constitutional solidarity.¹⁰

II. CONCEPTS AND ELEMENTS OF CIVIL LIABILITY IN CURRENT EVENTS.

Civil liability is defined doctrinally and legislatively as the obligation of a person to compensate for the damages caused. This definition is based on the general principle of law: *The one who causes harm to another has an obligation to repair it.* The obligation to repair the damages caused to the victim can be presented as a result of acts of varying kinds,¹¹ among which bullying can occur.

Lets briefly analyze the elements or circumstances that result in civil liability.¹² The right to a integral reparation or fair compensation is a substantive right which extension should be protected in favor of the governed, -not only the individuals affected. Therefore should not

⁹ Cf. jurisprudence thesis: 1a./J. 15/2012, Tenth Period, First Chamber, *Judicial Weekly of the Federation and its Gazette*, Book XIII, October 2012, Volume 2, p. 798, under the heading: Fundamental Rights. Its validity in relationships between individuals

¹⁰ Perlingieri, Pietro, *The Civil Law in the constitutional legality according to the Italo-community system of the sources*, translated and coordinated by Luna Serrano, Agustín and Maluquer de Motes y Bernet, Carlos, Madrid, Ed. Dykinson, 2008, p. 728 et seq.

¹¹ Yzquierdo Tolsada, Mariano; *Non-contractual civil liability. General part. Delimitation and species, elements, effects or consequences*, Madrid, Editorial Dykinson, 2015, p. 75.

¹² Cf. Thesis: 1a. LII / 2014, Tenth Period, First Chamber, *Gazette of the Federal Judicial Seminary*, Book 3, February 2014, Volume I, p. 683, under the heading and following text: CIVIL RESPONSIBILITY. ITS CONCEPT AND CLASSIFICATION. Civil liability entails the obligation to compensate for damages caused by a breach of obligations assumed (contractual source) or by virtue of an unlawful act or created risk (noncontractual source); Therefore, if possible, reparation of the damage must consist in the establishment of the situation prior to it, and when this is impossible, in the payment of damages. However, non-contractual civil liability may be of a nature: 1) objective, derived from the use of dangerous objects that create a state of risk for others, regardless of whether the agent's conduct was not guilty, and that he had not acted Illicitly, which is based on an element outside the behavior; Or 2) subjective, which derives from the commission of an unlawful act that, for its configuration, requires an unlawful, culpable and harmful conduct.

be unnecessarily restricted, the compensation has a deterrent effect on harmful conduct that will prevent future illicit behavior.¹³ The obligation is to repair this case that is typified with the following characteristics:

1. The unlawful act that occurs between persons who are bound by a prior compulsory relationship, in which one of the parties breaches the agreement.
2. The unlawful act that is generated by people who were not previously linked by a previous relationship, extra contractual civil liability or *aquiliane*,¹⁴ where this type of responsibility will be focused. Other authors point out that non-contractual liability is an autonomous obligation born of an unlawful act implies the objectification of the so-called extra-contractual liability.¹⁵ This position is not alien to the recent criteria laid down in the judgments of the Mexican courts.

In this regard, the Judiciary of the Federation in Mexico has distinguished the types of liability in the following terms:

"The essential distinction between contractual and non-contractual liability is based on the existence or otherwise of a prior bond between the parties. So that this second type of liability may derive from any cause established in the law; whether it takes into account the general wrongful act that involves the breach of a duty or when, without any wrongdoing, a harmful event occurs. This places the agent in the obligatory position to repair it, by expressing mandate of the law, resulting in what is known as objective liability. Non-contractual liability arises from damage to a person without a legal relationship agreed upon between the perpetrator and the injured party. This can be derived from an act of its own, from other people's acts, from damage to animals or from things that are possessed. The non-contractual liability budgets the causation of harm without involving a contractual relationship between the parties involved, or pre-existing, damage that is outside the scope of its own. This distinction leads to the existence of different regimes for these types of responsibility without giving up objective responsibility. In addition to the unilateral declaration of will, illegitimate enrichment and business management, in parallel, is regulated by the unlawful fact as an independent source of obligation, in its aspect of indemnifying credit rights".¹⁶

¹³ Pizarro, Daniel, *Moral damage. Prevention. Repair. Punishment. The moral damage in the various branches of law*, 2nd edition, Buenos Aires, Hammurabi, 2004, p. 532.

¹⁴ In view of the *Lex Aquilia de Damno*, recognized in Rome since 408.

¹⁵ O'Callaghan Muñoz, Xavier (Coord.); *Civil liability. General issues and their restorative effect*, Editorial La Ley, Spain, 2010, p. 77.

¹⁶ Cf. Thesis: I.5o.C.55 C, Tenth Period, Collegiate Circuit Courts, *Judicial Weekly of the Federation and its Gazette*, Book XXIII, August 2013, Volume 3, p. 1721, under the heading: CONTRACTUAL AND EXTRA CONTRACTUAL RESPONSIBILITY. ITS DISTINCTION.

The right to integral reparation allows annulment of all the consequences of the illegal act and to restore the situation that should have existed if the act had not been committed. If this is not possible, it is appropriate to pay a fair compensation as a compensatory measure for damages. In no way should it imply generating a profit for the victim, but granting him adequate compensation. Compensation is not fair when it is limited by limits or rates, when instead of being the judge who quantifies it based on criteria of reasonableness. It is the legislator that arbitrarily, sets compensation amounts, regardless of the case and its reality. Only the judge, who knows the particularities of the case, can quantify the compensation with justice and equity.¹⁷

In order for compensation to be paid due to the damage caused by an unlawful act, the existence of an offense is not required,¹⁸ it is sufficient: 1. To act unlawfully: conduct is unlawful when it is contrary to public order norms custom. The principle of unlawfulness then for the constitution of the subjective civil responsibility implies a behavior contrary to the right of the one who violates it; 2. That damage is caused by violation of an imperative or prohibitive rule of law or a subjective right of others; 3. That there is a cause-effect relationship between the fact and the damage; and 4. That there is no inexcusable fault of the victim.

The Inter-American Court of Human Rights has determined that the right to full reparation allows, as far as possible, to annul all the consequences of the unlawful act and to restore the situation that should have existed in all probability if the act had not occurred. If this is not possible, the payment of a fair compensation as compensation measure for the damages caused, which in no way should imply generating a profit to the victim, but granting adequate compensation. The modern law of damages looks at the nature and extent of damage, to the victims and not to the perpetrators. The damage caused is the one that determines the compensation. Their nature and amount depend on the damage caused, so that repairs cannot enrich or impoverish the victim or his successors. The responsibility is not intended to be excessive, as it must be subordinated to qualitative requirements. Compensation will be excessive when it exceeds the amount sufficient to compensate the victim. However, limiting liability by setting a quantitative ceiling involves marginalizing the concrete circumstances of the case, the actual value of the repair or deteriorated health. Compensation is not fair when it is limited by limits or rates, and instead

¹⁷ Cf. Thesis: 1a. CXC/2012, Tenth Period, First Chamber, *Judicial Weekly of the Federation and its Gazette*, Book XII, September 2012, Volume 1, p. 502, under the heading: FUNDAMENTAL RIGHT TO COMPREHENSIVE REPAIR OR FAIR COMPENSATION. CONCEPT AND SCOPE.

¹⁸ In this regard, see Theses, Sixth Epoch, Third Chamber, *Judicial Weekly of the Federation*, Volume LXII, Fourth Part, p. 143, under the heading: RESPONSIBILITY FOR ILLEGAL FACTS (LEGISLATION OF THE STATE OF GUERRERO).

of being the judge who quantifies it based on criteria of reasonability; it is the legislator who arbitrates.

1. Mobbing and bullying: Differences, similarities and consequences.

Both figures are a reflection of a type of harassment. The first one -mobbing- at work is known as occupational harassment, a form harmful to the dignity of the worker of psychological character. The second is generally recognized as harassment in the school environment, usually between peers, called bullying.

The term mobbing originates in the Scandinavian media, especially in Sweden, where it was first used to describe the employer's hostile behavior toward the worker. For mobbing or harassment to occur, it is necessary to understand any manifestation of an abusive behavior, especially the behaviors, words, attitudes, gestures and writings that may attempt to be repeated or systematized against the dignity or physical or psychological integrity of an individual, jeopardizing their employment, or degrading the working environment.¹⁹

The Judiciary of the Federation has defined mobbing as a conduct that is presented within a labor relationship with the aim of intimidating, opacity, intimidating or consuming the victim emotionally or intellectually; with a view to excluding it from the organization. The harasser may seek the need to attack or control the victim. The element of systematization in aggression must be present in the labor relationship. The unlawful act of psychological harassment can be manifested through the total exclusion of any work assigned to the victim, or through verbal aggression against his person, to an excessive burden of work to be performed. All of the above are with the intention of reducing self-esteem, health, integrity, freedom or security. The Supreme Court of Justice of the Nation has stated that mobbing can be presented in three levels depending on who adopts the role of active subject:

A) Horizontal: when the aggressiveness or harassment at work is done between colleagues without there being superiority of charges between one and the other.

B) Vertical descending: this happens when the aggressiveness or the labor harassment is between those who occupy positions of hierarchy or superiority with respect to the victim.

C) Vertical ascending: this occurs less frequently and refers to labor harassment that takes place between those who occupy subordinate positions with respect to the victimized boss.²⁰

¹⁹ Arciniega, Rosa Silvia; "The moral harassment (mobbing) in Labor Organizations", *Ibero-American Psychology*, Universidad Iberoamericana, Mexico City, vol. 17, number 2, July - December 2009, pp. 13-23.

²⁰ 20. Cf. Thesis: 1a. CCLII/2014, Tenth Period, First Chamber, *Judicial Weekly of the Federation and its Gazette*, Book 8, July 2014, Volume I, p. 138, under the heading: LABOR HARASSMENT (MOBBING). ITS NOTION AND TIPOLOGY.

2. Harassment of the physical integrity of children and their consequences through integral reparation: bullying.

Bullying is defined as a specific form of aggression involving an imbalance of power between peers; those who possess greater real or figurative power inflict intentional, systematic and repeated harm on those who are weaker.²¹ The term of bullying was incorporated by Dan Olweus, who understood it as a subtype of violence that manifests itself repeatedly against a student.²²

The scale and impact of all forms of violence against children was revealed in the World Report on Violence against Children,²³ specifically in schools and other educational settings of the United Nations, which highlighted the magnitude of problem.

In Mexico, in 2007, the National Institute for the Evaluation of Education reported, based on questionnaires applied in 2005, that violence among students is a daily problem and it is necessary to address it from all different fronts.²⁴ The illicit act discussed in this article focuses on bullying against children that is given under the care of public or private educational institutions. Bullying is identified as a specific behavior of aggression, in which a student is abused when exposed repeatedly over time to negative actions by one or more students. The characterization of bullying²⁵ as mistreatment can manifest in several ways such as the following:

- A) Physical aggression: Direct (fights, blows, pushes) or indirect (small robberies, or destruction of belongings and provocations).
- B) Verbal: Direct (insults to the victim or his family that implies a ridicule in public) or indirect such as speak ill of someone, sow rumors and lies.
- C) Psychological or intimidating, which cause fear, this causes the victim to obtain some object or money through means that do not want to perform.

²¹ Mena, Alejandro José and Arteché, Adriane Xavier; "Bullying in Guatemala and Brazil: A problematic in different contexts", *Interamerican Journal of Psychology*, Interamerican Society of Psychology, Austin, Vol. 48, num. 2, 2014, pp. 166-171

²² In this regard, see: Olweus, Dan, *Aggression in the Schools: Bullies and Whipping Boys*, European Journal of Social Psychology, Vol. 10, 1, 1978, p. Bullying at School: What We Know and What We Can Do, Blackwell Publishing, USA, 1993; "Harassment and Harassment in School: An Intervention Program", *Perspectives: Quarterly Review of Comparative Education*, No. 93, vol. XXV, 1, International Bureau of Education, UNESCO, 1995, pp. 139-145.

²³ UNICEF, *World Report on Violence against Children*, prepared by Pinheiro, Paulo Sergio, 2006, available at: [http://www.unicef.org/lac/Informe_Mundial_Sobre_Violencia_1\(1\).pdf](http://www.unicef.org/lac/Informe_Mundial_Sobre_Violencia_1(1).pdf)

²⁴ Aguilera García, María Antonia *et al.*, *Discipline, violence and consumption of substances harmful to health in primary and secondary schools in Mexico*, National Institute for the Evaluation of Education, Mexico D.F., 2007, p. 66.

²⁵ Rodríguez Gómez, Juana María; "School Harassment-Prevention and Action Measures", *Educacao Magazine*, Pontificia Universidad Católica do Rio Grande do Sul Porto Alegre, Brazil, vol. 32, no. 1, january-april, 2009, pp. 51-58.

D) Social: Isolate the victim away from the group.

Regarding the definition of the different forms of mistreatment to imply legal consequences, we have to:

A) Mistreatment actions must occur repeatedly over time for a long period; however, the concept of repetitiveness in terms of quantity is not yet defined.²⁶

B) Actions among equals do not prevent an inequality of power in which there is an imbalance in physical, social and psychological forces. This implies an abuse of power with the defenselessness of the victim.

C) The actions must be supported in a school, which manifests itself in a group.

D) The passivity and therefore social responsibility of the authorities of the School Center allows the existence of these illegal acts. A situation of aggressor, victim, spectator and responsible person can be created directly by the fact; in all of them is civil liability, which occurs in different levels.

E) It generates as a consequence of the wrongful act, a moral damage that manifests through anxiety and anguish of the victim, deterioration of their self-esteem and a general affliction of the dignity of the person attacked. In turn this affects their socio-personal and moral development.

An important element in the determination of bullying is the presence of intent, that is to say the existence of fraud by the aggressor. There are no homogenous opinions about this. Although most authors consider that the bullying behavior requires the intent of the aggressor to cause the damage, if manifests itself over a period of time and implies a disadvantageous situation for the victim.²⁷ On the other hand several authors insist that the intent of the perpetrator may not be present in all cases of bullying. Some aggressors may not or may not be aware of the harm done; while it is not readily apparent when a simple joke can constitute a true case of school harassment.²⁸ From a psychological - social perspective, bullying represents a pattern of behavior, hence the repetition of transgressing facts.

²⁶ Solberg, M and Olweus, Dan, Prevalence Estimation of School Bullying with the Olweus Bully/Victim Questionnaire, *Aggressive Behavior*, 29, 2003, pp. 239-68.

²⁷ Carrera, María Victoria, *et. al.*, Toward a More Comprehensive Understanding of Bullying in School Settings, *Educational Psychology Review*, Vol. 23, no. 4, 2011, pp. 479-499.

²⁸ Ortega, Rosario, *et.al.* "Violence among school children. Concepts and verbal labels that define the phenomenon of maltreatment among equals ", *Interuniversity Journal of Teacher Training*, University of Zaragoza, Spain, no. 41, August 2001, pp. 95-113; So also see Swain, Jon; "What does bullying really mean?", *Educational Research*, vol. 40, no. 3, 1998, pp. 358-364.

With respect to the test of bullying, the Judicial Power of the Federation has considered that the proof of intent is extremely difficult and unnecessary, since the damage to the victim is caused independently of the intent of the aggressor. However, the School Center must prove a normal diligence; which is what in traditional civil law has been known as an analogy to that of a good parent.

At the state level there are approximately ten federal entities that have regulated in some sense bullying through a special law. It has not detected any changes in the area of civil law. It is interesting to mention that the abrogated Law for the Protection of the Rights of Children and Adolescents of the State of Mexico²⁹ has considered bullying when at least one person felt offended in an interaction involving two or more individuals and is presented repeatedly in school settings.

In this sense, in order to establish civil liability for bullying suffered by a minor, it must be corroborated: 1) the existence of bullying, 2) physical or psychological damage, and 3) the causal link between bullying and harm which must be tested in the event that school malpractice is claimed from a school.³⁰

According to the special laws in the different states of the country, such as the current one in Mexico City,³¹ the following types of child abuse are considered:

I. Psycho-emotional: any action or omission aimed at devaluing, intimidating or controlling actions, behaviors and decisions, consisting of prohibitions, coercion, intimidation, threats, indifference, blackmail, humiliations, destructive comparisons, abandonment or devalued attitudes, or any other, that provokes in whom it receives alteration in any of their cognitive spheres and auto evaluative that integrate their self-esteem or alterations in some sphere or area of their psychic structure. It also includes acts or omissions whose forms of expression may be silences, prohibitions, coercions, intimidations, threats, insults, attitudes of carelessness, devaluation or abandonment that provoke in and the student harm in any of its cognitive, behavioral, Affective and social;

II. Direct physical: any intentional act or omission that causes bodily harm;

²⁹ Law repealed by publication in the Official Gazette "Government Gazette" on May 7, 2015, which published the Law on the Rights of Children and Adolescents of the State of Mexico. The abrogated law referred to in article 60 bis as follows: School harassment is considered when at least one person is offended in an interaction involving two or more individuals and is presented repeatedly in school settings.

³⁰ Cf. Thesis: 1a. CCCXXXIV / 2015, Tenth Period, First Chamber, Gazette of the Judicial Weekly of the Federation, Book 24, November 2015, Volume I, p. 951, under the heading: SCHOOL BULLYING. LOADING THE PROOF TO SHOW THE EXISTENCE OF MORAL DAMAGE

³¹ Law for the promotion of coexistence free of violence in the school environment of the Federal District, published in the Official Gazette on January 31st, 2012, see article 33.

III. Indirect physical: any action or omission that causes damage or impairment in students' belongings such as the subtraction, destruction, disappearance, concealment or retention of objects or other belongings;

IV. Sexual: Any act or omission that threatens, jeopardizes or impairs the freedom, security, integrity and psychosexual development of students, such as stares or lascivious words, harassment, non-voluntary sexual practices, harassment, rape or the demeaning use of The image of the students;

V. Through Information and Communication Technologies: all psycho-emotional violence implemented through the use of virtual platforms and technological tools, such as chats, blogs, social networks, electronic mail, text messages sent by cellular devices, forums, Servers that store videos or photographs, web pages, telephone and other technological means, including impersonation by that means of communication. It is usually anonymous and massive where, usually, the majority of members of the educational community learns of the violence exercised, and

SAW: Verbal: violent actions that are manifested through the use of language, such as insults, put disqualifying nicknames, humiliate, devalue in public, among others.

The responsibility derived from bullying is typified in a modality of moral damage, if it is demanded of the persons who carried out the illegal act. This must be proved by the complainant, when proved under expert evidence that there are psychological damages related to this illegal act of aggression. The ways in which the consequences of bullying can be manifested are: depression, low grades, low self-esteem, among many others, but bullying can generate civil responsibility for other people's events.

III. THE BULLYING IN THE COMPARATIVE LAW

In 1983, three teenage boys in northern Norway died of suicide. The act was related to the serious intimidation that they had suffered from other students of its same school. These acts caused serious studies from the Ministry of Education of the country, a strong national campaign against the harassment in the schools, and a program was implemented for prevention called Olweus Bullying.³²

³² In the 1970s, Dr Dan Olweus launched the first global investigation into systematic bullying. The results of his studies were published in a book of Sweden in 1973 and in the United States in 1978 under the title of aggression in schools: bullies and aggressive children, cf. Olweus, Dan, *Bullying at school: What we know and what we can do*, 1993 and Olweus, Dan, *The Olweus Bullying Prevention Program: Design and implementation issues and a new national initiative in Norway*, 2004, pp. 13-36.

In comparative law and specialized doctrine it has been pointed out that bullying constitutes an attack on the dignity, physical integrity and education of the children affected. Bullying is the equivalent of school harassment or school violence; referring to any form of psychological, verbal or physical abuse that occurs repeatedly among schoolchildren over a period of time.³³ Bullying can be approached from three fields of study: from the field of health, as a psychological and physical medical problem, and the field of sociology as a phenomenon or social fact that affects the coexistence in the school environment which transcends to the family and to the community or society in which it is presented and from the field of law as an antisocial conduct carried out by minors with little or no regulation on the matter. Bullying has been characterized by abuse among children or young people at the same educational level and age, and with aggressive superiority on the part of one of them. In Spain this phenomenon is also enforced and from a report of the Ombudsman of the country,³⁴ has been treated as an abuse between equals that we consider are not such. In 2005, Instruction 10/05 of the State Prosecutor's Office on Bullying issued, the Spanish Instruction cited refers to a catalog of conduct, of a permanent nature or continued in time and developed by one or more students also susceptibility to provoke in the victim feelings of terror, of anguish and inferiority suitable to humiliate him, to degrade him and to break, in his case, his physical and moral resistance.

IV. CONSIDERATIONS OF THE COMMISSION AND THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN CASES OF VIOLATION OF THE PHYSICAL INTEGRITY OF MINORS IN EDUCATIONAL INSTITUTES

The Inter-American Commission has considered cases of harassment and physical and intellectual abuse of minors that non-pecuniary reparation measures are of essential importance. For this reason, in the case of the Institute of Reeducation of the Child vs. Paraguay requested the Inter-American Court of Human Rights to order the State to provide a comprehensive reparation, which would not only provide adequate reparation for the victims who were deprived of their liberty in the Institute, but would constitute a sufficient guarantee of non-repetition of such violations in the future.³⁵

³³ Mendoza Estrada, María Teresa, *Violence in the School: bullies and victims*, Editorial Trillas, Mexico, 2011, p. 9.

³⁴ Ombudsman, Report of the Ombudsman on school violence. It can be consulted at <http://www.defensordelpubl.es/ Acceso: 8 December 1999>.

³⁵ Inter-American Court of Human Rights, Case of Reeducation Institute against Paraguay, September 2nd, 2004, paragraph 311.

The Commission³⁶ requested as modalities of integral reparation in case of bullying, that the Court order to the State, among others, the following complementary measures:

- A) Ensure respect for the rights of children and adolescents.
- B) Adequate Legislation regarding the deprivation of liberty of children and adolescents and its full compliance by all State authorities, in accordance with international standards governing the matter. In particular, it was pointed out that the State must establish that deprivation of liberty must be an exceptional measure and only use as ultima ratio;
- C) The construction of help centers that are able to house inmates without overpopulation;
- D) The creation of a specialized and adequate legal assistance system to deal with the judicial processes faced by children and adolescents with sufficient powers and resources to exercise legal defense;
- E) The review of all the trials that are carried out against the victims, which the State shall report within six months on the results of such review;
- F) The investigation, prosecution and punishment of officials who by action or omission allowed or facilitated the occurrence of the three fires, as well as the officials who designed, implemented and implemented the institutional policy that allowed children and adolescents to be detained in inhumane conditions in the Institute.

The bullying repair includes a repair of both material and moral damage. The reparation of the damage to the person, has expressed the CrIDH,³⁷ can not be affected by present or future fiscal reasons, reason why it must be delivered to the beneficiaries of integral form according to the established in the sentence.

1. Reparation for moral damages.

The Inter-American Court of Human Rights, in order to contribute to the reparation of these damages, has provided the State's obligation to provide, free of charge, through its specialized health institutions, the psychological treatment required by the affected children. As well as the medical treatment that is required, the medications and the surgical operations that may be necessary. In providing the psychological treatment, the particular circumstances of each person must be considered, and the needs of each, so that they are offered collective, family and individual treatments, according to what is agreed with each one of them and after an Individual evaluation.

³⁶ *Ibid*

³⁷ Case of Reeducation against Paraguay, paragraph 337.

2. Conclusions of the sentences in case of bullying analyzed by the Inter-American Court as a modality of integral reparation.

A) The State violated the right to life enshrined in Article 4 (1) of the American Convention, in relation to Article 1.1 thereof, and also violated the right to humane treatment enshrined in Articles 5.1 and 5.2³⁸ of the American Convention, To the detriment of children injured in the latter, when the victims were children.

(B) The State should be particularly concerned with ensuring the life, integrity and security of the persons who testified and of their families. It should provide them with the necessary protection against any persons.

C) The State must provide medical and/or psychological treatment to the children affected by these bad practices as to their relatives.

V. METHODOLOGY

For this research, contemporary methods of analytical doctrine, comparative law and legal policy have been used. Through analytical doctrine,³⁹ it can be recognized and placed in the constitutionalisation of Civil Law, which must be observed in the context of a series of tendencies that are imposing the need to revise and reformulate the paradigms of legalistic positivism inherited from the nineteenth century, as is the case of bullying. Within the channels for the constitutionalisation of civil laws, three are examined: legal reform, interpretation according to the Constitution and direct application of the constitutional rule to a case of conflict between individuals in the absence of a law on the same.⁴⁰ In addition doctrinal interpretation is the methodology of legal interdisciplinary, so dogmatic must in an integral work, describe the object of the problem and prescribe solutions of interpretation and application of it. The doctrine therefore has a creative function, and as Atienza points out, it must reformulate the set of norms that are object of interpretation.⁴¹

Comparative law⁴² is the study of the relations between orders and legal institutions and the construction of doctrine applicable to their own legal institutions. In order to apply the

³⁸ Article 5. Right to Personal Integrity. Everyone has the right to have his / her physical, mental and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In this regard, see American Convention on Human Rights, signed in San José, Costa Rica, on November 22nd, 1969, in force in Mexico as of March 24th, 1981.

³⁹ Pérez Fuentes, Gisela María and Cantoral Domínguez, Karla, "Challenges of legal research in quality postgraduates. Myths that conspire against ", in Pérez Fuentes, Gisela María (Coord.), *Current Issues of Legal Studies*, Editorial Tirant lo Blanch, Mexico, 2016, pp. 23-56.

⁴⁰ Corral Talciani, Hernán, Some reflections on the constitutionalisation of private law, *Major Law*, Universidad Mayor, N° 3, October 2004, Chile, pp. 47-63.

⁴¹ Atienza, Manuel, *The sense of law*, Editorial Ariel, Spain, 2001, p.246.

⁴² Pérez Fuentes, Gisela María and Cantoral Domínguez, Karla, "*Challenges of legal research in quality postgraduates. Myths that conspire against it*", *op cit.*, p. 41

method of comparative law, it is now important to apply the criterion of legal systems in traditions or legal systems as a way to overcome the classic legalistic or dogmatic position in comparative law studies, which gave us the opportunity to understand the way in which bullying has been developed legally and its prevention and protection mechanisms to prevent further incidents of this nature in schools in Mexico.

Legal policy has a normative, sociological and material phase, and its correct interrelation could lead to the formulation of a policy.⁴³ For this reason, when a State body intends to create-apply a legal norm, and to do so carries out an activity that includes the aforementioned phases, discretion is satisfied through legal policy.⁴⁴ This allows us to consider that legal policy can originate from the moment in which the legislator carries out the drafting of its rule in order to anticipate the scope that it wishes to obtain; However, in jurisdictional proceedings, it should be limited to choosing one of the various senses that can be extracted from the norm, so that this method allows us us to analyze the evolution of bullying by the legislator as well as from the case study. An assessment was made of the sentences that have been pronounced in specific cases of bullying.

VI. JURISPRUDENTIAL SOLUTION IN MEXICO BEFORE DAMAGE CAUSED BY BULLYING

In order to understand the position assumed by the Judiciary of the Federation, the path of different types of civil liability must be traced, especially produced by its own facts and by other events to emphasize that the civil liability for other people's events is not always objective, as sometimes occurs and is often confused.

Lawful and unlawful acts generate obligations; thus, it is a rule that the conduct of a person is attributable to it. Therefore, the responsibility arising from the conduct of a person, whether that conduct is lawful or illicit, is called subjective because it implies the element of guilt. As an exception to this rule, it is established that the conduct of third parties is also imputable to other persons. This is called *aquilliane liability* or for other people's acts because of the Roman's law expert that created the formula. In this figure the guilty element is vanished, because it is recognized that the conduct that caused damage, is alien to who is forced. It still is estimated to have a fault for lack of care in the people who depend on it and whose

⁴³ *Ibid*, pp. 45-46

⁴⁴ Cossío Díaz, José Ramón; *Law and Economic Analysis*, Editorial Fondo de Cultura Económica -ITAM, Mexico, 2nd reprint, 2008, p. 181.

conduct caused the damage. This in turn, would generate an obligation, not to the one who committed it, but to the person on whom it depended. Therefore, parents are responsible for their children, mentors regarding their pupils within the educational area, hoteliers regarding their employees, employers regarding their workers and the State with respect to their public servants. A different exception is in which results even from the absence of conduct, by the mere fact of owning a thing that in it causes harm. Here, there is no conduct and therefore there is no fault, therefore, this responsibility is called objective in the absence of the subjective element fault.

The responsibility for acts of others that is produced by an unlawful act carried out by a person linked to another for labor, social or simply affiliated reasons, is to say, the one who performs the wrongful act is not the one who responds civilly, so it must be proved that the precedent pertaining to the care of a "good parent" which currently means the average care that should be taken when working with dependents, has proceeded.⁴⁵

To determine the types of civil liability that is generated by bullying it is important to determine to which subjects it is directed; when liability for action is claimed, the damage is attributed to a specific aggressor. If it is found that the conduct of the aggressor defendant affected the dignity, physical and moral integrity of the victim, the harmful event will be the behavior of the aggressor or bullies. But if negligence is demanded of the school authorities we are in the case of civil liability for acts of others, in this case the responsibility attributable to the school will generate by the non-fulfillment or omission of the duties of care. It is necessary to differentiate then if it was demanded by an aggression to the dignity of one or several people or if it was demanded by the breach of the duties of care of the school, in this case by omission.⁴⁶

1. Means of Proof in bullying trials.

⁴⁵ "... reparation of the damage that must be done by the offender has the characteristics of a public penalty, but when the same reparation must be demanded to third parties, it will have the characteristics of civil responsibility; ... are obliged to repair the damage ... IV. The owners, companies or negotiators or mercantile establishments of any kind, for the crimes committed by their workers, day laborers, employees, domestic workers and craftsmen, with reason and in performance of their service. ... whatever denomination is examined, it is clear that the justification for the reference provision is none other than to compel to answer for the reparation of the damage to the bosses or employers for whose commission and account the worker has been developing The activity during whose performance and by its motive commits an infraction, since it has been the bosses or employers who in using the subject in question, have given the opportunity to take advantage of their function, hurt the interests of others, Is that the people who deal with them do so by taking them for granted by considering them as an integral part of the organization of the company, the workshop, the establishment, being therefore just that the boss or employer who is who called the worker to benefit directly with Ordinary work, responds to a third party of the abuses that he commits with reason and in the performance of his duties. REPAIR OF THE DAMAGE BY THE SUPERVISOR OR BOSS OF THE WORKER WHICH COMMIT A CRIME IN THE PERFORMANCE OF THEIR POSITION (LEGISLATION OF THE FEDERAL DISTRICT AND TERRITORIES). Cf. Thesis, Fifth Epoch, First Chamber, Federal Judicial Weekly, Volume CXXVII, p. 309.

⁴⁶ Cf. Thesis: 1a. CCCXIII / 2015, Tenth Period, First Chamber, Gazette of the Federal Judicial Seminary, Book 23, October 2015, Volume II, p. 1641, under the heading: SCHOOL BULLYING. IT MAY GENERATE RESPONSIBILITY FOR ACTIONS AND OMISSIONS.

It was explained that civil liability has an evolution in the Mexican legal system, when the right to damages is defined as the right to a fair compensation, without setting limits to the amount that must be paid for moral damages, by imposing on the person responsible the obligation to pay an indemnity; The victim obtains the satisfaction of seeing his desires of justice fulfilled.⁴⁷ However, in order not to be arbitrary, the Judiciary of the Federation established in a sentence a test to evaluate the responsibility derived from bullying and the application of said test will be evaluated from the reinforced protection that deserve the rights of the children: dignity, education and non-discrimination.

In the event that bullying is demanded for actions or acts of aggression, it must be corroborated:

1) Harassment of the victim and identification of possible aggressors (teachers or students). This harassment has been considered unnecessary as a proof of harm. That is, the intention to do so by deceit, as this would leave unprotected many behaviors that cause damage. As far as the situation of disadvantage of the victim with respect to the aggressor is obvious and also does not need proof of it.⁴⁸

2) The physical or psychological damage suffered by the minor. Regardless of the intention caused by the aggressor.

3) The causal link between conducts and harm. But the ruling distinguishes in the case that the school is claimed as a legal entity, will be assess the omissions of care that caused the wrongful act in the center, which is, the negligence of the school. To claim damage of the center it should be assessed: the existence of bullying, neglect of school to respond to bullying, physical or psychological harm and the causal link between negligence and injury.⁴⁹

In the case of bullying, the principle of superior interest requires all state authorities to protect the rights of the child through "reinforced" or "aggravated" measures, and that the interests of children be protected with greater intensity, in agreement with the International Treaties signed by Mexico must be considered. In cases where the subject of a particular type of violence is a minor, the state's diligence must be particularly intense, because of the particularly vulnerable situation in which children are usually located, and because of the devastating effects that violence and/or intimidation may occur in developing people.⁵⁰ In

⁴⁷ Owen, David W. Punitive damages in products liability litigation, "Michigan Law Review", 1976, June, vol. 74, no. 7, p. 1279.

⁴⁸ Amparo Directo 35/2014, sentence handed down on May 15, 2015, First Chamber of the Supreme Court of Justice of the Nation, Minister Rapporteur: Arturo Zaldivar Lelo de Larrea.

⁴⁹ Cf. Thesis: 1a. CCCXIV / 2015, Tenth Period, First Chamber, Gazette of the Federal Judicial Seminary, Book 23, October 2015, Volume II, p. 1643, under the heading: SCHOOL BULLYING. TEST TO EVALUATE THE RESPONSIBILITY DERIVED FROM THAT.

⁵⁰ Cf. Direct Amparo Trial 35/2014.

this sense, the fight against bullying is an imperative derived from the recognition of the human rights of children and from the reinforced protection required of children due to their particular situation of vulnerability. On the other hand, in a field of social responsibility, the negative effects of school violence go beyond the impact on the affected minor. This situation affects the lives of those who observe it, creating an atmosphere of insecurity and anxiety incompatible with learning. The importance that the State guarantee respect for all human rights of the child in the school, and that promotes a culture of respect for them. Meaning education must be provided in a safe and stimulating environment for the child.⁵¹ In accordance with the best interests of the child expressly provided for in the Constitution, private schools must also be governed by the rules that guarantee the protection of the rights of the child. Regarding the type of civil responsibility that causes the bullying, the Judicial Power of the Federation has determined that it is subjective. Although in comparative law the doctrine of the Spanish Supreme Court fixes that in the bullying we are in the presence of a practically objective responsibility.⁵²

The tests used, according to the test to which the bullying is subjected, are the following:

The burden of proof of moral damage must be demonstrate by the claimant with respect to the following elements in case of compensation:

A) Degree of affectation.

B) Degree of responsibility. The degree of responsibility can be given in three modes: mild, medium and high. To this end, consideration should be given to: the asset placed at risk by negligent conduct; The degree of negligence and its aggravating factors, and the social importance of unfulfilled duties in the light of the type of activity performed by the responsible party; Inter alia.

C) Economic situation of the person in charge and of the victim.⁵³ When assessing the patrimonial or quantitative aspect from the point of view of the victim, the following must be determined. The accrued expenses derived from moral damages; these can be medical expenses derived from psychic affectations, which can lead to depression, for example, expenses for accruing to resolving the emotional situation of the child. Future damages such as the cost of future medical treatment derived from the wrongful act. The cost of

⁵¹ General Comment No. 1, The Objectives of Education, UN Committee on the Rights of the Child, CRG / GC / 2001/1, 2001, p. 2.

⁵² Judgment of the Supreme Court from March 10th1997.

⁵³ Although most of the Civil Codes have fixed these three elements as determinants for setting an amount of moral damages, for example, Article 7.159 of the Civil Code of the State of Mexico, precisely the paradigmatic change in the constitution of civil liability, implies a fair and effective reparation not subject to economic highs and lows, or what is the same, the qualitative and quantitative changes of the damage.

psychological therapies during the time recommended by the physician to treat the minor's problems or unrealized gains derived from affectation of moral rights and property.⁵⁴

As already mentioned, some of the psychological affections related to school bullying can be depression, low grades, among others. However, the highest court of justice in Mexico has established the quality of subjective harm, when it is stated that liability for negligence shall be deemed to be incurred if it is shown that the fulfillment of his or her duties of care would have prevented the impairment of the rights of the child. In relation to the causal nexus, the actor must prove that the damage caused is the behavior of the agent, that is, the affected students must prove responsibility for negligence of the schools in such a way as to show that the fulfillment of the school duties of care would have avoided the affectation of the rights as minors.⁵⁵

VII. CASE STUDIES

INTERNATIONAL CASE.

In Madrid, Messrs. F and R on behalf of their son M file a complaint against the Swiss College for the bullying suffered by their son and the lack of diligence of the defendant Center in the surveillance, attention and care and immediate and forceful response to such harassment of the child.

In the Court of Instance, the complaint is dismissed in its entirety in the absence of appreciation of culpable conduct attributable to the school. So that the appellant parents lodge an appeal against the judgment of the court denouncing the erroneous assessment of the evidence made by the Judge of the facts happened one day in which a video was recorded as evidence where the child was mocked in full class. As well as the record of the Defender of the child, a testimonial of another father who said he knew the bullying situation against the child M, as well as the psychological report in action.

In the Audience, the doctrine of the Supreme Court, which includes the judgment of March 10, 1997, states that "The new wording of Article 1903 of the Spanish Civil Code, hereinafter CCE, establishes, according to the general sense of doctrine and Jurisprudence of this

⁵⁴ Cf. Thesis: 1a. CCCLIII / 2015, Tenth Period, First Chamber, Gazette of the Federal Judicial Seminary, book 24, November 2015, Volume I, p. 954, under the heading: SCHOOL BULLYING. ELEMENTS THAT INCLUDE THE PATRIMONIAL OR QUANTITATIVE ASPECT OF THE VIEW OF THE VICTIM, WHEN DETERMINING THE DAMAGE CAUSED.

⁵⁵ Thesis: 1a. CCCXXV / 2015, Tenth Period, First Chamber, Gazette of the Federal Judicial Seminary, book 24, November 2015, Volume I, p. 955, under the category: BULLYING SCHOOL. STANDARD TO BELIEVE THE CAUSAL NEXUS BETWEEN THE CONDUCT AND DAMAGE CAUSED TO A MINOR.

chamber, a virtually objective responsibility, inasmuch as it indicates that the persons or entities that are holders of a non-higher educational institution, will be liable for damages and damages caused by their minor students during the periods of time in which they are under the control and supervision of the teachers of the Center, whether they are school children or extracurricular and complementary, thus avoiding practically the element of guilt."

This means that the declarations of the Director of the College, of the tutor and of the mathematics teacher, in the sense that the school was not aware that there was any problem of adaptation of the student M in the class were not enough.

The Provincial Court assesses the facts with the following response:

First. The mere fact that the minor aggressors went to school with a camera denotes a strategy that leaves little room for the spontaneity of a mere and isolated child confrontation. Second. The recording involved the act of dissemination, that is to say, that the act recorded against M was not reduced to the scope of the class reason why the minor advised his parents, but the testimony of the witness indicates that the fact was not isolated considering that it is another parent who engages in deeds of your child's school. There is also the statement of the psychologist who explained the circumstance of the degree of affection of the child which indicated that the fact was not isolated, also alerted the psychologist that being a professional she would have noticed any simulation of the child M.

Finally, the evaluation of the evidence is considered the report of the Ombudsman for the child, which includes among other conclusions, that: in the case of M the situation lived conforms to the parameters that are defined as bullying.

The Provincial Court declares that this is an assumption of non-contractual liability, so that, produced and tested, the harmful event, i.e. harassment, corresponds to the Education Center to certify that it has used all diligence in its prevention and control and not the other way around, This is that it is not the parents of the minor who have to prove the lack of diligence of the Center. This means that, in the face of conflicting statements, the parents and the affected minor should be given greater credibility and not the Center considering the objective evidence that has been described.

It is very interesting the necessary consideration of the reversal of the test, it means that it is up to the College demanded to prove that it did have the diligence in the care of the minors in their charge because the harassment occurs in the facilities and classroom of said Center, Which must be concluded that the defendant College did not exhaust all precautionary measures within its reach, to avoid a harmful event such as that which occurred. Pursuant to Article 1903 of the CEC, the Center has in no way shown that it has exhausted all measures

of vigilance and precaution aimed at preventing an aggression such as that which occurred, and from all the above, it follows that it did not adopt No action in this regard, not even after the recording, the aggression had no response punishment.

The Court of Appeal follows the guidelines of the Utrecht Conference of February 1997, which ratified as necessary and urgent that European schools implement and implement measures to prevent school violence; so it was considered that the school did not use the due diligence in prevention to avoid the damage caused to M.

In relation to the amount claimed for moral damages, the Tribunal understood that, since it is difficult to obtain an economic settlement for the amount requested for moral damages, compensation is not excessive and fulfills the reparative function of the damage caused by which it also proceeds to estimate the claim as To the claimed amount of 30,000 Euros.

NATIONAL CASE.

In a printed newspaper in Southeastern Mexico, it was reported that four students leave the ABC primary in a locality for cases of teacher mistreatment of students. In the newspaper, it was reported that the Director of XYZ campus held a meeting and when the parents began to complain he suspended the meeting. The note adds: In a visit to the newspaper ASG and AAL commented that the cases of school abuse started after the teacher MA arrived at the campus. The student's mother said that the teacher had mistreated her son because she did not like her hair to be curly. One day the teacher put a pin on his hair and placed him in the middle of the room so that his other companions made fun of.

The parents of the minor then sent a letter to the director of the School for his intervention, and by means an official, he replied that the head of the sector was asked to turn the necessary instructions to the school supervisor to carry out an investigation into the facts and of equal Instructed school staff to seek harmony, respect, and good relationships between staff and parents seeking the well-being and physical and emotional integrity of learners.

Based on the journalistic note, the parents of the child, on behalf of the child (seven years) sue the teacher for civil liability because the moral integrity of their child was affected. In response to this demand, the teacher MA presents a counterclaim demanding moral damages for affect all of the above to the reputation as a teacher.

SUMMARY (EVALUTING FACTS)

In this case different questions arise:

1. Can a plaintiff sue the teacher for bullying?

In this regard, it should be noted that the concept of bullying, also known as school harassment or school violence, and refers to any form of psychological, verbal or physical abuse repeatedly repeated throughout schoolchildren for a certain time. Bullying⁵⁶ implies a repeated illicit attitude among peers, or between equals; understanding students, however, in repeated theses of the Judiciary of the Federation,⁵⁷ it is valued the possibility that the illicit act is executed by a teacher or teacher as in this case. The characteristics of bullying can be summarized as follows: a) That it is an aggressive and intentionally harmful action; B) That it occurs repeatedly; C) That occurs in a relationship in which there is an imbalance of power between the parties involved, although this difference is not real but perceived by the attacked; D) That it be given without provocation of the victim; E) That causes emotional damage. The First Chamber of the Supreme Court of Justice of the Nation considers that school bullying is any act or omission that repeatedly assaults physical, psych emotional, property or sexually a girl, child, or adolescent; Conducted under the care of school institutions, whether public or private.

2. What type of civil liability damage repair can be argued in the parental claim and what are its requirements?

You can claim moral damages and the requirements appear in the development of this work.

3. Can the Director of the School be sued as representative of the School for these events? In this case the Director can be sued for omission or wrongful acts caused by third parties. It is of the utmost importance that the educational institutions and the persons who carry out the teaching comply with the due diligence the duties to their charge, while at the conventional and legal level there is an obligation of the authorities, educational institutions, parents, legal representatives or any Another person in charge of a child, to protect him from any form of physical or mental injury or abuse, neglect or negligent treatment, ill-treatment or exploitation, including sexual abuse.

In this way, the negligent behavior of both the institute and its teaching staff is reprehensible, nevertheless it was their obligation to create an adequate school environment and to create instruments of conduct that protect students against abuse and harassment by other

⁵⁶ Román, Marcela and Murillo, F. Javier, Latin America: violence among students and school performance, CEPALI Review, 104, August 2011. Available at:
<http://www.eclac.org/publicaciones/xml/3/44073/RVE104RomanMurillo.pdf>

⁵⁷ We refer to the text of the work where these statements are indicated.

students or staff, were totally ignored, and allowed such violence, placing not only the child in a situation of risk, but creating an inappropriate environment for all students.⁵⁸

In the case of requesting civil liability to the school, the Judicial Branch of the Federation has also indicated the three elements required for any civil liability for bullying suffered by a minor,⁵⁹ when it is demanded to the school, must also prove a quarter Element consisting of negligence of the school.

Regarding the burden of proof of moral damage, this must be proven by the complainant, showing that he presents some of the psychological affections related to school bullying; such as depression, low grades, and low self-esteem. In short, a wide catalog of symptoms related to bullying, as has already been established by the Judiciary of the Federation, in order to prove such affectations, it is enough that experts in psychology are established.

In the quantification of moral damages derived from bullying or bullying in the case of the responsible person outside the school, the following elements, their degree of responsibility and their economic situation should be weighed. The degree of responsibility can be given in mild, medium and high. To this end, we must consider: the legal asset put at risk by negligent behavior. The degree of negligence and its aggravating factors, the social importance of unfulfilled duties in the light of the type of activity performed by the responsible party, Inter alia.⁶⁰

RESULTS AND CONCLUSIONS

Mobbing is psychological harassment that includes attitudes and behaviors of disrespect towards the person and their right to enjoy an environment free of violence and harassment. However, bullying refers to harassment and violence at school but exercised through abuse and physical aggression. Although mobbing does not produce physical violence, the psychological and clinical consequences are much more serious.

Harassment or bullying consists of any act or omission that repeatedly assaults physical, psych emotional, property or sexually to a child, child or adolescent. Conducted under the care of school institutions, whether public or private, this concept establishes as acts

⁵⁸ Cf. Thesis: 1a. CCCLII / 2015, Tenth Period, First Chamber, *Judicial Weekly of the Federation and its Gazette*, book 24, November 2015, Volume I, p. 952, under the heading: SCHOOL BULLYING. CONSTITUTES OF THE GREATER SOCIAL RELEVANCE THE COMPLIANCE OF DUTIES OF DILIGENCE OF THE SCHOOL CENTERS.

⁵⁹ . It should be corroborated: 1) the existence of bullying; 2) physical or psychological damage; And 3) the causal link between bullying and harm.

⁶⁰ Cf. thesis: 1a. CCCXLIX / 2015, Tenth Period, First Chamber, *Gazette of the Judicial Weekly of the Federation*, book 24, November 2015, Volume I, p. 954, under the heading: SCHOOL BULLYING. CRITERIA FOR ASSESSING THE DEGREE OF RESPONSIBILITY OF THE SCHOOL CENTER.

constituting bullying. Those acts or omissions which, having a reiterated character, can lead to a pattern of harassment or harassment, point to the children and adolescents as the receiving subject of the aggression.

Given the complexity involved in characterizing and identifying the phenomenon of school bullying and the diversity of existing criteria for it in the specialized literature. It is possible to highlight at least two characteristics that fully satisfy the legal and constitutional framework of child protection:

A) An action of school harassment. It implies negative actions that may take several forms: physical contact, words, grimaces, obscene gestures, or deliberate exclusion of a student from the group.

B) Occurs repeatedly over time. This element makes it possible to distinguish the phenomenon of bullying as a pattern of behavior that generates an environment of violence, a single isolated act of aggression.

It is also important identify bullying; are the essentially casuistic nature of the phenomenon which must be taken into account. Not all social conflicts within the school will be school bullying, nor will all bullying behaviors be equally serious in terms of harm and consequences. The integral analysis of the facts will correspond to the judge before the circumstances of the concrete case.⁶¹

In quantifying the moral damages derived from bullying or bullying, the following elements must be weighed against the person responsible: their degree of responsibility and their economic situation.

As far as the victim is concerned, the following factors must be taken into account to quantify the qualitative aspect of the moral damage, the type of right or injured interest, and the existence of the damage and its severity level. Although it is not possible to indicate that the rights or interests are more or less valuable, it is possible to determine the importance of the value or interest affected. In this sense, a mild, medium or high affectation can be assigned as quantifier of this aspect. To this end, we must consider the legal asset put at risk by negligent behavior, the degree of negligence and its aggravating factors, the social importance of unfulfilled duties in light of the type of activity carried out by the responsible party, among other factors.

⁶¹ Cf. Thesis: 1a. CCXCIX / 2015, Tenth Period, First Chamber, Gazette of the Judicial Weekly of the Federation, book 24, November 2015, Volume I, p. 954, under the heading: SCHOOL BULLYING. CRITERIA FOR ASSESSING THE DEGREE OF RESPONSIBILITY OF THE SCHOOL CENTER.

There are currently ten special local laws on bullying in Mexico. However, none of them reaches or implies a reform of the scope of civil liability, due to the legal framework of bullying is reduced to Article 3 of the Constitution as a principle for the General Education Act.

For its part, the Judiciary of the Federation has considered bullying as a cause of civil liability because the concept includes as a consequence to analyze the type of damage that is generated by this illegal act, which can be of different nature: physical, Psycho-emotional, sexual and / or patrimonial. Finally, the definition denotes the area where harassment is propitious, one that takes place in spaces where the child is under the care of the school, whether public or private.

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