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‘FEELING LIKE A NOTHING’: LEGAL AND PSYCHOLOGICAL ASPECTS OF BULLYING BY CHILDREN AND ADOLESCENTS AS UNDERSTOOD UNDER POLISH LAW

*You, with your words like knives and swords
... Got me feeling like a nothing
You, with your voice like nails on a chalkboard
Calling me out when I'm wounded*

Taylor Swift, lyrics to “Mean”

1. INTRODUCTION

Perhaps it's unusual to start an academic paper with the words of a pop song, nonetheless the lyrics of Taylor Swift's song “Mean” offer a good motto that captures the essential features of bullying, a common phenomenon of the modern teenage world. 37% of the 13-17 age group in Poland were affected by bullying in 2020.¹ The lyrics Taylor Swift composed in 2010 put in a nutshell the emotions experienced by young people who have been bullied. Listening to music like this song constitutes one of the psychological mechanisms enabling victims to cope with peer violence.² The popularity of the song sheds light on the scale of the

¹ M. PUZIO, *Share of people affected by bullying in Poland 2020, by generation*, Statista, 2 December 2022, available online at Poland: people affected by bullying, by generation 2020| Statista [accessed 27 October 2024].

² L. CHEN, *Influence of music on the hearing and mental health of adolescents and countermeasures*, «Frontiers in Neuroscience» 17/2023, p. 1236638.

problem of peer violence – not only worldwide, but also in the European context. The problem of bullying among children in Poland needs special attention, since Polish psychiatric hospitals are overcrowded and have to cope with staff shortages.³

Bullying is an extensively applied term in psychology, mostly with reference to peer violence among children and adolescents. Although Polish law penalises acts that professional publications in psychology describe as bullying, the Polish legislator has not provided a legal definition of the term “bullying” as such. The aim of this article is to present the legal mechanism used in Poland to deal with bullying, taking into account the fact that Polish law does not define the term with reference to children and adolescents. To examine the legal mechanisms of tackling bullying under Polish law, I will take an interdisciplinary approach, not only due to the need to address professional publications in the field of law and psychology, literature, but also to consider different branches of law. In most cases, penalties for bullying are defined by the Polish Penal Code (*Kodeks Karny*; hereinafter PPC),⁴ the provisions of which may be applicable to minors with reference to the Juvenile Support and Rehabilitation Act (JSRA),⁵ but the right to claim damages for such offences falls within the scope of civil law and is subject to different provisions regarding the attribution of liability and fault under Polish civil law. This article is limited to an analysis only of Polish law and focuses on behaviour interpreted in the jurisprudence of Polish courts as persistent harassment in the context of Article 190a of the PPC and with reference to children of school age. I contend that this is the most challenging aspect of bullying among children and adolescents that needs to be defined. The issue is too complex and multifaceted to be reviewed within

³ L. MIKOŁAJCZYK, *Fatalny stan polskiej psychiatrii Dostęp do szybkiej opieki nie istnieje*, «WP Wiadomości» of 28 October 2022, available at <https://wiadomosci.wp.pl/fatalny-stan-polskiej-psychiatrii-dostep-do-szybkiej-opieki-nie-istnieje-6827535441820192a> [access 28 October 2024].

⁴ Ustawa z 6 czerwca 1997 r. - Kodeks karny, (Polish Penal Code of 6 June 1997), Dziennik Ustaw 88, item 553.

⁵ Ustawa z 9 czerwca 2022 r. o wspieraniu i resocjalizacji nieletnich (Juvenile Support and Rehabilitation Act of 9 June 2022), Dziennik Ustaw, 2022 *Item 1700*.

the present study. However, the phenomenon encompasses a broad spectrum of behaviours which may be classified as bullying, insult, battery or many different forms of abuse.⁶

This article addresses the psychological aspects of peer violence from the perspective of Polish law, but with reference to the structure of the problem in society, rather than by considering the different legal measures one by one. The civil law reference to damages will be treated in the part on parental responsibility for bringing up children, while the problem of liability borne by schools for bullying among pupils is presented in the part on case law confirming that schools not only have the right to introduce the educational measures provided in JSRA and their school statute, but also the duty to prevent bullies from harassing other pupils. The provisions of JSRA give a mixture of measures drawn from Polish civil and criminal law, which gives rise to the problems addressed in this article. I have decided to apply this structure to consider the various terms and meanings of bullying as used both in the law and in psychology.

2. DEFINITIONS OF BULLYING IN THE POLISH PSYCHOLOGICAL RESEARCH AND LEGAL DOCTRINE

Although “bullying” is a widely recognised term in psychology used to denote the repeated and deliberate harm caused to children by their peers, it rarely occurs in the Polish legal doctrine and jurisprudence. In psychological publications, bullying refers to a number of phenomena connected with direct or indirect physical or psychological abuse.⁷ According to Dan Olweus, “bullying is when someone repeatedly and on purpose says or does mean or hurtful things to another person who has a hard time defending himself or herself.”⁸ It is characterised by an

⁶ See especially, but not only, Articles: 157, 158, 190, 191, 216, 217 of the PPC.

⁷ K.S. WHITTED, D.R. DUPPER, *Best Practices for Preventing or Reducing Bullying in Schools*, «Children & Schools» 27.3/2005, pp. 167-175.

⁸ D. OLWEUS, *Aggression and peer acceptance in adolescent boys: two short-term longitudinal studies of ratings*, «Child development» 48/1978, pp. 1301-1313.

asymmetry of power between the persecutor and the victim.⁹ In contemporary discourse, bullying is increasingly understood as a form of aggressive behaviour that is designed to cause harm to another individual, either physically or emotionally. While it is typically characterised by a pattern of repeated behaviour, it may also manifest as a single incident, such as the creation of a humiliating meme that continues to impact over an extended period of time.¹⁰

The term “bullying,” understood as school violence from peers, is often linked with the definition of persistent harassment of another person, as regulated in section 1 of Article 190a of PPC, according to which

“Anyone who, through persistent harassment of another person or their close relative, causes that person to feel justifiably threatened, humiliated or tormented, or who grossly violates their privacy, shall be subject to imprisonment for a period from six months to eight years.”

Polish courts apply Article 190a PPC to incidents of bullying among children, but the term “bullying” does not appear in their judgements. They have tended to interpret a wide range of activities manifesting acts of peer violence as falling within the scope of bullying with reference to minors, i.e. with reference to Article 190a PPC in connection with JSRA or its predecessor. The most common forms of bullying referenced in the Polish psychological doctrine are direct and indirect bullying. However, there are also more detailed approaches to defining the phenomenon. In the research on bullying, M. Wójcik and other Polish psychologists have proposed a comprehensive conceptualisation of bullying as a disturbance of peer relationships, manifesting in both online and offline contexts.¹¹ Polish jurisprudence seems to follow this approach, acknowledging that minor acts of misbehaviour intended to cause distress to another person may constitute an act of bullying if considered more broadly and taking into account other behaviour with

⁹ D. OLWEUS, *Bullying prevention program: Schoolwide guide*. Center City: Hazelden Information & Educational Services, 2007.

¹⁰ J.T. MRÓZ, M. WÓJCIK, J. PYŻAŁSKI, *Bullying – prześladowanie rówieśnicze. Prawdy i mity na temat zjawiska*, «Dziecko krzywdzone. Teoria, badania, praktyka» 4/2022, pp. 34-85.

¹¹ *Ibid.*

a similar purpose. That is often the case if the bully has used psychological or emotional violence: Polish courts have admitted acts such as hiding a school colleague's sports gear as an example of emotional violence.¹² In another case, involving verbal abuse of a peer at school, a Polish court considered the abuse bullying in the meaning of Article 190a PPC. The victim used to hear offensive comments every day from her classmates, saying that she was "fat" and "shouldn't dress the way she did." She was too afraid to report this misbehaviour to her teachers, fearing reprisals from her bullies.¹³

3. APPLICABILITY OF ARTICLE 190A PPC TO CASES OF BULLYING AMONG CHILDREN

Under Polish law, a minor is a person who was under 17 at the time when an act prohibited by criminal law was committed. In general, minors are not liable under PPC, except for acts specified in Article 10 § 2 PPC, since minority is a circumstance that excludes guilt. Therefore, the only judicial procedure that can be applied in such cases is the juvenile procedure on grounds of the relevant law.

In 2022, a considerable novelty was introduced in Polish criminal law with reference to minors. JSRA replaced the Polish Juvenile Justice Act, which had applied to offences and acts of demoralisation involving minors since 1983. One of the reasons for the amendment was the need to improve the efficiency of proceedings in juvenile cases and standardise procedures.¹⁴ There was not much change as regards the applicability of the provisions of Article 190a PPC to bullies, but a lot changed with reference to legal instruments intended to create conditions for a return

¹² Judgement of the Warsaw Voivodeship Administrative Court of 28 March 2024, VII SA/Wa 2945/23.

¹³ Judgement of the Warsaw Voivodeship Administrative Court of 30 January 2018, VI Nkd 100/16.

¹⁴ *Uzasadnienie rządowego projektu ustawy o wspieraniu i resocjalizacji nieletnich, Sejm IX kadencji, druk sejmowy nr 2183* <<https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=2183>> [accessed 12 August 2023].

to normal life for minors who had broken the law or infringed the principles of social coexistence.¹⁵ First of all, the definition of criminal acts with reference to minors (under JSRA)¹⁶ was expanded to all actions penalised by Polish criminal law. This means that, under JSRA, all offences, no matter whether minor or major (other than those under the previously applicable Polish Juvenile Justice Act, where only some of the most severe criminal acts were penalised if conducted by minors), and therefore also petty offences committed by minors (like the one mentioned above, to which Article 107 of the Polish Code of Petty Offences applies) may be subject to proceedings to support and foster the social rehabilitation of minors.

Like its predecessor, JSRA has a different aim from the aim of PPC. Both JSRA and the Juvenile Justice Act refer to criminal acts committed by minors, i.e. persons in the 13 to 17 age group (though in special circumstances, persons in this age group may be liable on the grounds of PPC, just as older persons may be prosecuted on the grounds of JSRA).¹⁷ JSRA also applies to proceedings connected with “demoralisation” with reference to persons in the 10-18 age group. This is a new definition of the age limits of minors liable to proceedings under JSRA for demoralisation, considered a situation when a minor becomes involved in behaviour which does not comply with social norms or rules and provides grounds for the intervention of the family court.¹⁸ Demoralisation may be considered to have occurred in situations involving alcohol or drug abuse, habitual truancy or disrespectful conduct to teachers.¹⁹ Violetta Konarska-Wrzosek gives the example of “mocking or making fun of a . . . disabled person in their presence and in the presence of other people”²⁰ as one of the manifestations of behaviour in breach of the principles of social coexistence, constituting an aspect of demoralisation as described

¹⁵ Preamble to the AJSR.

¹⁶ Art. 1 Par. 2 AJSR.

¹⁷ Art. 1 Par. 1 AJSR, Art. 10 Par. 2 and 2a PPC.

¹⁸ Art. 23 AJSR.

¹⁹ Art. 4 Par. 1 AJSR.

²⁰ V. KONARSKA-WRZOSEK, *Prawny system postępowania z nieletnimi w Polsce*, Warszawa 2013, p. 56.

in Article 4 JSRA, which covers behaviour falling within the scope of school bullying. The previously applicable Polish Juvenile Justice Act did not specify a lower age limit for the initiation of proceedings involving a child showing signs of demoralisation. This made it possible to react institutionally whenever a child showed signs of demoralisation, even in early childhood.²¹ Currently, 10-year-olds are the youngest children liable to proceedings for demoralisation.

Under JSRA, i.e. since 2022, the only way to counteract signs of demoralisation in a child under 10 is to interfere with parental authority, since it is assumed that problematic behaviour at this age is caused not by the child itself but by parents or guardians not exercising adequate parental authority and needing to be supported or controlled.²² Pursuant to Article 109 of the Polish Family and Guardianship Code, this may be done by the Family Court issuing relevant orders where the child's interest is deemed to be at risk. This attitude is consistent with the view of child psychologists who say that children under 10 are unable to internalise social and moral norms.²³

It is important to understand the aim of JSRA, and other legislation relating to measures intended to deal with criminal acts committed by children and adolescents. The focus is on supporting and resocialising juveniles, which the Polish dictionary defines as a set of educational and therapeutic procedures intended to help socially maladjusted individuals adopt or return to behaviour facilitating acceptable contact with society.²⁴ Therefore, JSRA concentrates on solutions based on applying educational, therapeutic and corrective measures to minors,²⁵ whereas penalties may be imposed only in strictly defined cases, once other measures are deemed unable to ensure resocialisation.²⁶ JSRA does not

²¹ V. KONARSKA-WRZOSEK, *Art 1 [in:] Wspieranie i resocjalizacja nieletnich. Komentarz online*, P. GÓRECKI, P. KOBES, V. KONARSKA-WRZOSEK, Warszawa 2023.

²² *Ibid.*

²³ Art. 1 Par. 1 AJSR, Art. 10 Par. 2 and 2a PPC.

²⁴ See "Resocjalizacja" [in] Polish Encyclopedia PWN, available online at <<https://encyklopedia.pwn.pl/haslo/resocjalizacja;3967295.html>> [accessed 19 October 2024].

²⁵ Art. 6 AJSR.

²⁶ Art. 7 AJSR.

provide for compensation for any damage caused by a minor, which may be subject to civil law proceedings.

Thus, children cannot be held liable until it can be established that they have reached a certain level of maturity that enables them to understand that their behaviour was wrong and caused harm to the injured party, according to the concept of culpability under Polish law, involving a reprehensible decision to commit an unlawful act, taken with due consideration of its meaning and consequences.²⁷

4. WHO IS LIABLE FOR BULLYING BY SCHOOLCHILDREN – THE SCHOOL, PARENTS OR THE CHILDREN THEMSELVES?

The protection of children against other children can be derived from the definition of parental authority in Article 87 of the Polish Family and Guardianship Code, which refers to parental duty to bring up the child, “with respect for its dignity and rights.” The doctrine directly links Article 87 of the Polish Family and Guardianship Code with the parent’s obligation to respect the child in its contacts with its peers, teachers, etc.²⁸ Although it is not certain whether this moral obligation may lead to a parent’s liability for not taking action against third parties who have treated their child disrespectfully, it most certainly constitutes grounds for their right to act for the child’s well-being. Thus, in my opinion, the parent (or legal guardian) is not only legally entitled, but also morally obliged to take action in order to protect the dignity and self-esteem of their child and, if necessary, also to inform the school, police or even file an application to the Family Court against another child for their child’s well-being. This is also what the Polish Family and Guardianship Code says in its Articles 95-96,²⁹ which state that parental authority involves

²⁷ Judgement of the Polish Supreme Court of 10 January 2017, V «CSK» 155/16.

²⁸ A. SYLWESTRZAK, Art 87 [in:] *Komentarz do wybranych przepisów Kodeksu rodzinnego i opiekuńczego*, «Lex»; P. WICHEREK, Art. 87, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz aktualizowany* «Lex», M. FRAS, M. HABDAS.

²⁹ Polish Family and Guardianship Code of 25 February 1964, (Kodeks rodzinny i opiekuńczy, Dziennik Ustaw z 25 lutego 1964 r. 9, item 59).

the right and obligation of parents to raise their child with due respect for its rights and dignity, as well as to ensure its physical and spiritual development and duly prepare it to work to the best of its abilities for the benefit of society. Hence, if bullying occurs among primary school children, the obligation to counteract such instances of peer violence lies above all on their parents and the school.

4.1. POLISH CASE LAW ON THE RESPONSIBILITY OF SCHOOLS FOR THE PREVENTION OF PEER VIOLENCE

JSRA says that the prevention of peer violence constitutes one of the duties of schools and allows schools to use educational procedures to resocialise minors.³⁰ Other Polish legislative acts concur with this position.³¹ Unfortunately, sometimes teachers treat bullying and cyberbullying as a natural part of growing up and do not react until the bullying reaches a more serious phase.³² Consequently, all too often they only respond after a lapse of time, once the abusive behaviour has reached an advanced stage, when the severest countermeasures may be necessary. Some educationalists argue that such incidents could be forestalled if there had been a sufficient response before the bullying had escalated to a "full-scale" condition.³³ Moreover, just like the duty to expel disorderly pupils who refuse to abide by the rules of social coexistence, so too the duty to apply measures to counteract bullying among schoolchildren rests with the school's head teacher, and is an example of an isolative

³⁰ Art. 4 AJSR.

³¹ See, for example, Prawo oświatowe (the Polish Education law), and Karta nauczyciela (Polish Teacher's Charter).

³² F. MISHNA, I. SCARECELLO, D. PEPLER, J. WIENER, *Teachers' understanding of bullying*. «Canadian Journal of Education/Revue canadienne de l'éducation» 28(4)/2005, pp. 718-738; S. STAUFFER, M.A. HEATH, S. COYNE, S. FERRIN, *High school teachers' perceptions of cyberbullying prevention and intervention strategies*. «Psychology in the Schools» 49(4)/2012, pp. 352-367.

³³ For the different stages of bullying, see R. THORNBURG, *School bullying as a collective action: Stigma processes and identity struggling*. «Children & Society» 29(4)/2015, pp. 310-320; M. WÓJCIK, R. THORNBURG, W. FLAK, J. LEŚNIEWSKI, *Downward spiral of bullying: Victimization timeline from former victims' perspective*. «Journal of Interpersonal Violence» 37(13-14)/2022.

measure regulated in Article 68 Par 2 of the Polish Education Law. This position has been upheld in the Polish jurisprudence. In 2023, the Warsaw Voivodeshop Administrative Court ruled that to expel a minor, it was sufficient for the school to establish that the said minor was in breach of the rules of social coexistence.³⁴

However, schools not only have the right to introduce educational measures prescribed in JSRA and the school statute, but also the duty to counteract bullying and protect victims. In 2017, the Warsaw Appellate Court had to address the problem of a school's liability for failing to support a victim of bullying at school. Interestingly, the arguments proffered in the case were based on the institution of personal rights: bodily integrity, dignity, honour and privacy, which were violated on school premises in connection with the victim's homosexual orientation. The court found the municipal authority, which was the institution responsible for the school's activities, liable for the fact that "the claimant did not receive adequate emotional support and protection at school, and what protection he received was marginal and ineffective."³⁵ Although the student expected the school to provide him with adequate support, yet apart from the fact that some of the teachers made verbal appeals to other students who were harassing the claimant during classes, no other action was taken by the school. This shows the crucial importance of school support for victims of peer violence and sheds light on how important it is for teachers to enjoy their pupils' respect in order to succeed in bringing up and educating young people, and fostering and developing their moral attitudes. These are the first of only a few cases of bullying and the liability of Polish schools for failing to protect their pupils, but it is worth remembering that this problem affects all countries on a similar scale. An example is the infamous case of a Spanish boy who was continuously bullied at school from the age of 7 until he was 10. The school failed to provide adequate protection, suggesting that the boy was lying, and did not transfer him to a different class, or even

³⁴ Judgement of the Warsaw Voivodeshop Administrative Court of 28 March 2024, VII SA/Wa 2945/23.

³⁵ Judgment of the Warsaw Appellate Court of 17 November 2017, I ACa 1372/16.

inform the bully's parents, and as a result, the claimant was awarded damages of 40 thousand euros against Congregación Hermanas del Amor de Dios School.³⁶

Under Polish law, in cases where a minor shows signs of demoralisation, or has committed a criminal act on school premises, or in connection with the implementation of compulsory education or schooling and with the consent of the parents or legal guardians of the child and the minor himself, the school's head teacher may implement one or more educational measures (i.e. a caution, an oral or written warning, an apology to the aggrieved party, the restoration of the status quo or an order for the offender to perform specific work for the school, e.g. cleaning or tidying up, or expel a pupil in accordance with the school's statute).³⁷ However, what is most important is to be vigilant and react as soon as the first signs of bullying appear. Thus, under Polish law the structure of the liability for the harm to the victim shows that teachers are the first who can prevent a tragedy – especially as bullying often leads to a young person attempting to commit suicide.³⁸ Therefore, there should be a uniform set of rules to be applied as soon as the first signs of bullying are spotted. However, specialists suggest that schools might be better served by focusing less on labels like “bully” and more on particular forms of behaviour that must be taken seriously by students, teachers, staff members, and head teachers.³⁹

³⁶ Judgement of the Madrid Provincial Court, section 25 no 00241/2012, appeal no 502/2011.

³⁷ Art. 4.4 of the AJSR.

³⁸ C. YEN, T. LIU, P. YANG, H. HU, *Risk and protective factors of suicidal ideation and attempt among adolescents with different types of school bullying involvement*, «Archives of Suicide Research: official Journal of the International Academy for Suicide Research» 19.4/2015, pp. 435-452.

³⁹ B. HARGER, *You Say Bully, I Say Bullied: School Culture and Definitions of Bullying in Two Elementary Schools* [in:] *Education and Youth Today [Sociological Studies of Children and Youth, XX]*, Y. BESEN-CASSINO, Leeds 2016, pp. 91-121.

4.2. POLISH CASE LAW ON PARENTAL RESPONSIBILITY FOR THE PREVENTION OF PEER VIOLENCE

Monetary compensation for non-monetary harm is an institution of civil law. Alongside the punishment of the offender in criminal proceedings (also with reference to JSRA), it is one of the most effective ways of compensating the injured party. Therefore, in criminal proceedings it is also possible to request that the defendant be ordered to pay compensation for the damage sustained by the victim.

On the grounds of Polish civil law, children under 13 are not considered liable for their actions due to lack of legal capacity.⁴⁰ The same holds for cases under criminal law, except for demoralisation, where under JSRA the age for the lower limit is 10. Hence, under-13s usually fall in the group where fault cannot be attributed. In such cases, others may be found at fault for failing to provide adequate supervision. Under Article 415 of the Polish Civil Code (PCC), minors over 13 may be held responsible for their actions causing monetary or non-monetary harm to another person,⁴¹ on the grounds of the general civil law rule that “anyone who, through their fault causes harm to another person will be bound to redress it.” However, this does not exclude the application of Article 427 of the PCC in the rare situations in which a lack of discernment is proven on the part of a minor over the age of 13.⁴² This happens in situations where the parents are in breach of their duty to supervise the child and where there is a causal link with the harm sustained by the injured party.⁴³ In accordance with the PCC doctrine, the liability of the supervisor is twofold. Firstly, he is liable for the actions of the person under his supervision and may be held to account for any harm caused by the supervised person’s actions. Secondly, the supervisor is liable for

⁴⁰ Art. 426 of the PCC.

⁴¹ Ustawa z 23 kwietnia 1964 r. Kodeks Cywilny (Polish Civil Code of 23 April 1964, *Dziennik Ustaw* 16, item 93).

⁴² I. DŁUGOSZEWSKA-KRUK, *Art 427 KC*, [in:] *Kodeks cywilny. Komentarz*, red. M. ZAŁUCKI, Warszawa 2024.

⁴³ Findings of the court in the Judgement of the Warsaw Appellate Court of 19 May 2016, I ACa 1078/15, being the previous judgement connected with the Polish Supreme Court case V CSK 155/16 cited below.

his own actions regarding his inadequate supervision of a person who cannot be held culpable, due to his age, mental or physical condition.⁴⁴

The Polish Supreme Court considered a situation of this kind in Case V CSK 155/16, where the perpetrator was 14 but had not reached a sufficient level of maturity to allow him to understand the wrongfulness of his behaviour towards the victim, which excluded the possibility of a judgement that the boy had acted with sufficient discernment.⁴⁵ Although Case V CSK 155/16 involved sexual abuse of a child by a minor, there was also harassment in a general sense, which makes it worth mentioning here. The Supreme Court found that the defendant's parents were guilty of unlawful and culpable conduct consisting of irregularities in the care and upbringing of their son. They did not devote enough time or attention to him, and did not provide the necessary control and support in view of his age, development, school problems and the difficult situation he was in as a result of their divorce.

On assessing the degree of parental negligence, the Supreme Court concluded that there was a causal link between the parental negligence and the sexual abuse committed by their 14-year-old son against a 6-year-old. As a result, the court held the parents jointly and severally liable to pay compensation to the victim in accordance with Articles 445 and 448 of the PCC for the violation of the victim's personal goods – health, dignity and freedom. However, it should be noted that in this case the criminal act committed by a minor occurred outside the school environment, i.e. in the timeframe where the parents were liable for their child.

Nonetheless, in contrast to the twofold theory for the supervisor's liability, parents may not be held liable under Article 427 of the PCC

⁴⁴ W. CZACHÓRSKI, Art. 427, [in:] *System Prawa Cywilnego*, III.1, Wrocław 1981; G. BIENIEK, Art. 427, [in:] *Komentarz do Kodeksu cywilnego*, «Legalis», G. BIENIEK Warszawa 2011; G. BIENIEK, J. GUDOWSKI, Art. 427 [in:] *Kodeks cywilny. Komentarz online*, J. GUDOWSKI, III, Warszawa 2013; A. ŚMIEJA, Art. 427 [in:] *System Prawa Prywatnego* A. OLEJNICZAK, VI, Warszawa 2014; M. SAFJAN, Art. 427, [in:] *Kodeks cywilny. Komentarz do artykułów 1-449*, «Legalis»; K. PIETRZYKOWSKI, I, Warszawa 2015; W. DUBIS, Art. 427, [in:] *Kodeks cywilny. Komentarz*, E. GNIEWEK, P. MACHNIKOWSKI, Warszawa 2016; A. OLEJNICZAK, Art. 427, [in:] *Kodeks cywilny. Komentarz*, A. KIDYBA, III, «Lex».

⁴⁵ Judgement of the Polish Supreme Court of 10 January 2017, V «CSK» 155/16.

if no fault can be attributed to them for failing to exercise adequate supervision. In 2013, a case of this type (which did not concern peer violence) led to the judgement handed down by Kalisz Regional Court (Sąd Okręgowy w Kaliszu),⁴⁶ where no fault could be attributed either to the minors involved or to their parents, who had exercised adequate supervision. The reason the parents could not have been found liable in this case was that there was no prior intervention by the school or courts, so the parents were unlikely to perceive any cause for concern regarding their child's behaviour, and therefore consider the need for additional custodial measures in addition to those typically applied in such circumstances. Nonetheless, the Family and Juvenile Court applied educational measures with respect to the minors (a warning and probationary supervision),⁴⁷ which may be exercised irrespectively of civil proceedings relating to harm caused by a minor. Different measures prescribed in juvenile proceedings were ordered in a case involving bullying in school, where every day the victim used to get offensive comments from her classmates that she was "fat" and "shouldn't dress the way she did."⁴⁸ As a result, the victim began to "believe that what her peers were saying about her was true; she stopped accepting herself, had low self-esteem, was nervous, anxious, tearful, had suicidal thoughts and started to do harm to herself,"⁴⁹ which led to maladjustment and depression. The two bullies were in the 13-17 age group, i.e. minors in the meaning of Polish penal law. The judgement in the case against them was handed down pursuant to the Polish Juvenile Justice Act,⁵⁰ which was applicable before the JSRA came into force. The two offenders were sentenced to 10 hours of community service. Although there is no available data on the amount of damages that could have been awarded to

⁴⁶ Judgement of the Kalisz Regional Court (Sąd Okręgowy w Kaliszu) of 21 November 2013, II Ca 445/13.

⁴⁷ Judgement of the Ostrów Wielkopolski Family and Juvenile Court of 7 September 2011, III Now 73/11.

⁴⁸ Judgement of the Warsaw Voivodeship Administrative Court of 30 January 2018, VI Nkd 100/16.

⁴⁹ *Ibid.*

⁵⁰ Art. 4.4 of the AJSR.

the victim if the court had found the teenagers' supervisors at fault, one can only speculate that it would have been a more severe legal measure than that the sentence handed down under the JSRA.

Hence, parents are held liable for harm caused by a minor under 13, or older if the minor does not have discernment, and where it can be proven that they were negligent in their supervision (Article 427 of the PCC), and that their actions resulted directly in the harm done. Although pursuant to JSRA teenagers over 13 may be found liable, the courts still underline the role that parents play in bringing up their children, including adolescents.

5. BULLYING AMONG YOUNGER CHILDREN

While Polish courts apply educational measures against "arrogant and selfish adolescents," offering parents support in the character formation of their children, they also consider this a problem "for the parents to handle."⁵¹ Counteracting aggressive behaviour by children under 10 is left entirely to parents to deal with. Children attending kindergarten may be covered by a national programme designed to support the development of children who need additional specialist support,⁵² which includes support with the development of social skills such as group social skills training, dog therapy, music therapy, etc. Unfortunately, by definition the WWR programme lasts until the child reaches the age at which he is eligible to commence his first year of primary school. However, with many children that is the moment when more significant social challenges emerge, which may have been partially hidden due to problems with socialisation if the child attended only a limited extent of kindergarten. In Poland pre-school education is not compulsory. The Polish State does not provide a system of intuitional support for the

⁵¹ Judgement of the Warsaw Voivodeship Administrative Court of 30 January 2018, VI Nkd 100/16.

⁵² Regulation issued on 24 August 2017 by the Minister of National Education on the organisation of early childhood development support, Dziennik Ustaw, 30 August 2017, item 1635.

treatment of behavioural, including aggressive, disorders in children aged 7-10, which leaves parents with not much choice. The only alternative sources of assistance are the school and the parents' own financial resources for the provision of psychotherapy for a child with aggressive behaviour. So it comes as no surprise that busy parents with no pedagogical experience may be inclined to overlook the issue. The same is true for teachers, who are deprived of the opportunity to influence children, since the educational measures against child demoralisation which the JSRA provides for head teachers are not applicable to children under 10. In particular, the heads of schools operating in the school district system, where there is no selective admission, have their hands tied if they come up against uncooperative parents.

It is a fact that the educational measures envisaged for demoralised children are not suitable for children under 10. Nevertheless, there is no institutional support for the parents of children of this age who show the first signs of peer violence. This is particularly worrying if we consider the aspect of social acceptance in this age group. Research based on the KIDSCREEN questionnaire conducted in the early 2000s, entailing a comparison of three different age groups, indicated a gradual decline in the assessment of quality of life with age.⁵³ However, while children in the 8-11 age group said their quality of life was generally at the best possible level, they made one exception – social acceptance. The project showed that, although average quality of life decreases with age, the 8-11s gave the lowest assessment for social acceptance.⁵⁴ This shows that bullying among children in the first years of primary education is a problem that cannot be ignored. Joanna Mazur and her colleagues see this age group as a time when children are most at risk of bullying.⁵⁵

⁵³ J. MAZUR, A. MAŁKOWSKA-SZKUTNIK, A. DZIELSKA, I. TABAK, *Polska wersja kwestionariuszy do badania jakości życia związanej ze zdrowiem dzieci i młodzieży (KIDSCREEN)*, Warszawa 2008, p. 26.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

6. CONCLUSIONS

Bullying by children in the 13-17 age group falls under the scope of Article 190a PPC, though only in the scope of the educational, therapeutic and corrective measures referred to in the JSRA.⁵⁶ Children aged 10 to 13 may fall within the scope of the JSRA only with regard to severe demoralisation, and children under 10 cannot be held liable in the meaning of Polish criminal law at all.

Harm done to a victim of bullying may be compensated under the PCC, which pursuant to Article 415 allows fault to be attributed only to a person over 13. For minors under 13, or older if there is a proven want of discernment on their part, other persons may be found at fault on grounds of inadequate supervision of the minor pursuant to Article 427 of the PCC.

In general, responsibility for supervision falls upon parents or guardians, as well as teachers, employees of care institutions, and so forth. Consequently, parents cannot be held liable for damages if the harm occurred on school premises, that is, when the minor was under the supervision of teachers. However, liability can only be attributed to the school or parents if they are at fault, i.e. if they provided inadequate supervision for a minor who was bullying other children.

This shows that parents and schools bear a vast amount of responsibility for the development of children's character and teaching them acceptable social behaviour, and in the case of schools – for reacting immediately to protect and support victims of bullying. Anyone who notices a child under 13 being bullied has a social duty to report the fact to the parents or guardian, the school, the family court, the police or any other relevant authority, and if the bullied child is over 13, the authority to be notified is the family court or the police.⁵⁷

According to the Polish Supreme Audit Office [NIK, Najwyższa Izba Kontroli],⁵⁸ between 2020 and 2022, the psychiatric services provided

⁵⁶ Art. 6 AJSR.

⁵⁷ Art. 4.1 and 4.2 of the AJSR.

⁵⁸ NIK is the supreme and independent Polish state audit body for the review of the work of state institutions and the management of public funds.

to children and adolescents rose from 1.8 million to 3.8 million cases, with 1 million in the first quarter of 2023 alone.⁵⁹ In 2022, only 3.5 per cent of the child and adolescent population received the required care, whereas 9 to 14 per cent of young people were estimated to need it. While bullying is not the only factor leading to a risk of suicide, it is definitely one of the reasons why children and adolescents attempt suicide.⁶⁰

There are no official recommendations in Poland for measures to counteract bullying among children and no national preventive programmes. To protect the mental well-being of Polish children and adolescents it is necessary not only to react if there is an emergency, i.e. to ensure that there is no shortage of staff and places in children's psychiatric hospitals. But above all, it is necessary to stop bullying in its initial phase where it is most likely to occur – in the schools. Teachers must be granted enough paid hours to educate children, stimulate integration and be aware of any worrying signs of social exclusion among children. Private entities and non-governmental organisations involved in counteracting aggressive behaviour among children are implementing anti-bullying programmes, giving talks to children in schools, training teachers and creating tools to help combat the problem. One of these examples might be the introduction of RESQL, a mobile app with a system to help schools handle peer violence, where pupils can send an anonymous report of an act of violence at school, so that the school management can deal with the problem immediately. RESQL also provides a support service for the victim. Of course, bullying is a problem to which victims are the most sensitive, but Polish educational entities do not seem to be treating it seriously enough to actively introduce measures like RESQL in schools.

⁵⁹ Najwyższa Izba Kontroli, *Psychiatria dziecięca do poprawy*, 10 September 2024, <https://www.nik.gov.pl/najnowsze-informacje-o-wynikach-kontroli/psychiatria-dzieciecia.html> [accessed 26 October 2024].

⁶⁰ N. ALAVI et al, *Relationship between Bullying and Suicidal Behaviour in Youth presenting to the Emergency Department*, «Journal of the Canadian Academy of Child and Adolescent Psychiatry» 26.2/2017, pp. 70-77; T. YANG, L. GUO, F. HONG, Z. WANG, Y. YU, C. LU, *Association Between Bullying and Suicidal Behavior Among Chinese Adolescents: An Analysis of Gender Differences*, «Psychology Research and Behavior Management» 13/2020, pp. 89-96.

However, the designers of the RESQL system say it was introduced in primary and secondary schools across the country in 2021, but most schools have still not heard of it.⁶¹

'FEELING LIKE A NOTHING': LEGAL AND PSYCHOLOGICAL ASPECTS OF
BULLYING BY CHILDREN AND ADOLESCENTS AS UNDERSTOOD UNDER
UNDER POLISH LAW

Summary

Bullying is an extensively applied term in psychology, mostly with reference to peer violence among children and adolescents. Although Polish law penalises acts that professional publications in psychology describe as bullying, the Polish legislator has not provided a legal definition of the term "bullying" as such. The aim of this article is to present the legal mechanism used in Poland to deal with bullying, which calls for an interdisciplinary approach, not only due to the need to consider the legal and psychological literature, but also when analysing different fields of law. Hence, most instances of bullying are subject to prosecution under the Polish Penal Code (PPC), the provisions of which may be applicable to minors in reference to the Polish Act on Juvenile Support and Rehabilitation (JSRA), but the right to damages for such actions falls within the scope of civil law and is subject to different provisions regarding the attribution of liability and fault under Polish civil law. This empirical article confirms that parents and schools bear the responsibility for the development of children's characters and for teaching them the right social behaviour. It also emphasises the importance of schools reacting immediately to protect and support victims of school bullying.

⁶¹ R. KACZAN, P. RYCIELSKI, M. WÓJCIK, P. CISZEK, K. RZEŃCA, *Innowacyjny system zapobiegania przemocy szkolnej RESQL – doświadczenia z wdrożeń ogólnopolskich*, «Przegląd Psychologiczny» 64.2/2021, p. 25-33.

**KIEDY CZUJESZ SIĘ BEZWARTOŚCIOWY – PRAWNE I PSYCHOLOGICZNE
ASPEKTY DOŚWIADCZANIA ZJAWISKA BULLYINGU WŚRÓD DZIECI
I MŁODZIEŻY Z PERSPEKTYWY ARTYKUŁU 190A POLSKIEGO KODEKSU
KARNEGO**

Streszczenie

Bullying jest terminem szeroko stosowanym w psychologii, głównie w odniesieniu do przemocy rówieśniczej wśród dzieci i młodzieży. Choć czyny definiowane w literaturze psychologicznej jako przejawy bullyingu są penalizowane przez polskie prawo, brak jest legalnej definicji tego pojęcia. Artykuł koncentruje się na analizie zachowań interpretowanych w orzecznictwie polskich sądów jako uporczywe nękanie w kontekście art. 190a k.k. i w odniesieniu do dzieci w wieku szkolnym, co wymaga podejścia interdyscyplinarnego, zarówno w odniesieniu do różnych dziedzin nauki (prawa i psychologii), jak i różnych gałęzi samego prawa. O ile czyny definiowane jako bullying penalizowane są przepisami polskiego Kodeksu karnego, to w przypadku ich zastosowania do osób małoletnich prawo do odszkodowania za te czyny mieści się już w zakresie prawa cywilnego i podlega zasadom przypisania odpowiedzialności i winy w polskim prawie cywilnym. Prawno-psychologiczna analiza zjawiska bullyingu w Polsce potwierdza, że rodzice i placówki edukacyjne ponoszą ogromną odpowiedzialność za kształtowanie charakteru i nauczanie prawidłowych zachowań społecznych, a także za dokonywanie natychmiastowych reakcji w celu ochrony i wsparcia ofiar nękania szkolnego.

Keywords: bullying; civil law; criminal law; psychology; children; young people.

Słowa kluczowe: bullying; prawo cywilne; prawo karne; psychologia; dzieci; młodzież.

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