

CYBERBULLYING IN SPAIN

01 NATIONAL REGULATION

Education

The most recent law regulating aspects related to cyberbullying in Spain is Ley Orgánica 8/2021 of June 4th on the comprehensive protection of children and adolescents against violence, which explicitly refers to cases of violence through information technologies:

For the purposes of this law, violence is understood as any action, omission or negligent treatment that deprives minors of their rights and well-being, that threatens or interferes with their orderly physical, psychological or social development, regardless of the form and means of its commission, including through information and communication technologies, especially digital violence.

(article 2 Ley Orgánica 8/2021)

The aim of this law is to guarantee the fundamental rights of children and adolescents and covers aspects of prevention, detection, intervention, and reparation of damages. Chapter IV delves into the educational sphere and measures for prevention and action. Some important points are the following:

Public administrations shall guarantee the full integration of students in the digital society and the learning of a use of digital media that is safe and respectful of human dignity, constitutional values, fundamental rights and, in particular, respect and guarantee of personal and family privacy and the protection of personal data. (article Ley Orgánica 8/2021)

The educational administrations shall regulate the protocols for action against abuse and mistreatment, bullying, cyberbullying, sexual harassment, gender-based violence, domestic violence, suicide and self-harm, as well as any other manifestation of violence included in the scope of application of this law. (article 34, Ley Orgánica 8/2021)

01 NATIONAL REGULATION

All educational centres where minors study, regardless of their ownership, must have a coordinator for the welfare and protection of pupils, who will act under the supervision of the person who is the director or owner of the centre. (article 35, Ley Orgánica 8/2021)

It is important to highlight that both this Law and previous ones, for example Ley Orgánica 3/2020 of December 29th, aim to create a climate of collaboration and shared responsibility in educational centres. They support the creation of figures and mechanisms that allow for the resolution of conflicts within the educational centre, without having to resort to the penal system.

Action protocols can be reviewed and established together with the students. The student welfare and protection coordinator is responsible for organising workshops and activities to prevent situations of conflict, bullying or cyberbullying, promoting respect and raising awareness among teachers and students. The coordinator also works with professionals who assist in the development of the coexistence plan, a plan developed in all schools that describes the rules of coexistence in the school and the ways of acting to resolve conflicts.

Consequently, if bullying, cyberbullying or other conflicts between students are detected, they are primarily dealt with within the school. Teachers and school management are considered a public authority and can act to correct behaviour that does not follow the stipulated rules of coexistence. The measures taken should always be proportionate to the seriousness of the act committed and aim at a peaceful resolution of the problem with an educational and restorative approach.

In cases where action within the school is not considered sufficient either due to the seriousness of the situation or because the case involves actors outside the school environment, teachers in general and the student welfare and protection teacher should alert the relevant authorities.

It is important to highlight that in the case of *grooming* in which a person, usually an adult, contacts a minor through online platforms or social networks for sexual purposes, it *is* essential not only to block this contact but ***also to report it*** immediately, as the guilty person often contacts more than one victim and reporting it could protect more victims.

01

NATIONAL
REGULATION

Criminal and civil liability of the persons involved

Before presenting the articles related to cyberbullying in the criminal code, it is important to note that the age of the aggressor is an important factor.

According to Ley Orgánica 5/2000, of January 12th Regulating the Criminal Responsibility of Minors, a person under 14 years of age is not criminally responsible. If the case is reported, the school will be responsible for taking appropriate measures for its resolution.

According to the aforementioned law, in the case of minors between 14 and 18 years of age, they may have criminal responsibility and the Juvenile Prosecutor's Office initiates a procedure to investigate the case. The measures can be financial or even lead to internment. In all cases in which the aggressor is a minor, the aim is to repair the damage and reconcile victim and aggressor. The guardians share civil responsibility with the aggressor and may have to assume a monetary sanction to repair the damages caused, although their responsibility may be reduced if they have not "favoured the conduct of the minor with malice or serious negligence" (article 61.3 Ley Orgánica 5/2000).

If the aggressor is over 18 years of age, he or she can be held criminally and civilly liable under the criminal code.

In cases of cyberbullying, if the teacher is aware of the case and does not report it, it could be considered a crime according to article 450.2 of the Criminal Code (*omission of the duty to prevent crimes or to promote their prosecution*) or a crime according to article 195 of the Criminal Code (*omission of the duty to help*). In addition, both legal guardians and teachers can be liable (fault *in vigilando* or *in educando*), usually due to negligence according to Article 1903 of the Civil Code. Public or subsidised schools according to articles 32 and the following of Law 40/15 of October 1st on the Legal Regime of Public Administrations may also have financial penalties if it is considered that the operation of the school and the action taken in the case were inadequate.

01 NATIONAL REGULATION

Articles of the Penal Code related to cyberbullying

Cyberbullying has various forms and is not covered by a single article of the criminal code but can be related to several articles depending on the characteristics of the action, its purpose, and its results. Some of the most important articles of the Criminal Code are presented here.

- In cases where cyberbullying is used to threaten or cause harm to a person (**cyberbullying, flaming**), Article 169 on threats and Articles 205 to 210 on slander and libel are relevant.
- Article 172 ter makes explicit reference to the offence of **stalking** in which the person can be punished for repeatedly and insistently carrying out some behaviours altering the normal development of the victim's life including: contacting the person through any means, misusing personal data, purchasing goods or products in their name, infringing on their freedom, etc. The person can be punished with "imprisonment of three months to two years or a fine of six to twenty-four months" (Article 172 ter of Ley Orgánica 1/2015 of March 30th, if the victim is in a situation of vulnerability for example due to their age, the minimum penalty would be six months). It also specifies that the use personal photos to create false profiles on social networks (**impersonation**) or any means of public dissemination can be punished with imprisonment of three months to one year or a fine of six to twelve months.
- Article 173.1 states that "Anyone who inflicts degrading treatment on another person, seriously undermining their moral integrity, shall be punished with a prison sentence of six months to two years". (Ley Orgánica 10/1995, of November 23rd). This article could also relate to many types of cyberbullying including **outing** (where information is published to publicly humiliate a person publishing private information).
- In some cases, Article 178 of the Penal Code on sexual freedom is also relevant: "Whoever attempts against the sexual freedom of another person, with violence or intimidation, shall be punished as responsible for sexual aggression with a prison sentence of one to four years" (Article 178 Ley Orgánica 11/1999, 30th April).

01 NATIONAL REGULATION

- Regarding sexual **cyberstalking** and **grooming**, Article 183 ter. Law 10/1995, November 23rd specifies:
"Anyone who, through the Internet, telephone or any other information and communication technology, contacts a minor under the age of sixteen and proposes to arrange a meeting with him/her in order to commit any of the offences described in articles 183 and 189, provided that such a proposal is accompanied by material acts aimed at approaching him/her, shall be punished with one to three years in prison or a fine of twelve to twenty-four months, without prejudice to the penalties corresponding to the offences committed. The penalties shall be imposed in their upper half when the approach is obtained by means of coercion, intimidation, or deception". (183 ter. 1 Ley Orgánica 10/1995, November 23rd)
 In the same article, the following is added with Law 1/2015, March 30th, which modifies Law 10/1995, of November 23rd:
"Anyone who, through the Internet, telephone or any other information and communication technology, contacts a minor under the age of sixteen and performs acts aimed at deceiving him or her into providing pornographic material or showing pornographic images in which a minor is depicted or appears, shall be punished with a prison sentence of between six months and two years". (183 ter. 2 Law 10/1995, November 23rd)
- Regarding **sexting**, Article 197.7 of Law 1/2015 of March 30th of the Criminal Code states that the dissemination of sexual content without consent can be punished with three months to one year in prison or a fine of six to twelve months, although this can be extended if the materials were acquired without the consent of the victim. In some cases, Article 189.5 of Law 10/1995 of November 23rd of the Criminal Code on the crime of knowingly possessing or accessing child pornography material may also be relevant.
- In very serious cases where cyberbullying results in the suicide of the person being bullied, Article 143.1 of the Criminal Code stipulates that a person can be punished if his or her actions are deemed to have induced the suicide of another person.

01

NATIONAL
REGULATION

Providing information and reporting

There are several ways to file a complaint through the Police, the Courts or the Juvenile Prosecutor's Office.

Complaints can also be filed online. In the case of the Civil Guard's Telematic Crimes Group, they are submitted on their website:

<https://www.gdt.guardiacivil.es/webgdt/pinformar.php> via a form. If the person simply wants to inform then this can be done anonymously. If the objective is to report the crime, then the report must be formalized after its completion by visiting a judicial or police centre.

One can also inform through the website of the Central Brigade of Technological Investigation of the police:

https://www.policia.es/es/colabora_informar.php?strTipo=CGPJD. Finally, one can inform associations or NGOs related to cyberbullying and the protection of minors if the aim is not to file a formal report or claim.

Statute of limitations

Timeframes depend on several factors. According to the information presented in the "Guía de actuación contra el ciberacoso" (Inteco, n.d.):

With regard to the statute of limitations, as Avelino Fierro explains, "it should be borne in mind that, although the time limits for filing a complaint are long in most cases, especially in the case of serious crimes, and the statute of limitations set out in Article 131 of the Criminal Code must be taken into account, according to which crimes of slander and libel are subject to a one-year statute of limitations, and in the case of misdemeanours, Article 131.2 establishes that they are subject to a six-month statute of limitations.

Most of the conducts deployed through cyberbullying are minor offences of threats, coercion, insults or harassment, and if the perpetrator is a minor, Law 5/2000, of January 12th, regulating the criminal responsibility of minors, reduces this period, when it is a minor offence, to three months, in Article 15.1.5.

Whether it is a crime or a misdemeanour depends on the seriousness of the act, but there are no fixed rules and it depends on the specific case and the assessment made by the courts". (p58, Inteco, n.d.)

02 INSTITUTIONAL MECHANISMS

As mentioned above, in cases of cyberbullying in which all the people involved are minors, the main objective is to avoid a criminal procedure and resolve the conflict at school. To this end, a coexistence plan is drawn up by each educational centre, action protocols in cases of bullying or cyberbullying are adopted and recently the figure of the coordinator for the welfare and protection of students has been created. The following sections explain each of these concepts in more detail.

Coexistence plan

The coexistence plan is a set of rules, values and strategies established in a document drawn up by the members of each school. Its purpose is to promote peaceful and respectful coexistence of students, teachers, non-teaching staff and families in the school environment. Importantly, it promotes shared responsibility among the whole community. Among the measures that can be included in a coexistence plan are the following:

- Rules of behaviour and discipline to be followed, as well as the consequences in case of non-compliance
- Mediation programmes for the peaceful resolution of conflicts
- Activities to promote values such as respect, tolerance, equality and solidarity
- Awareness-raising actions on cultural diversity, functional diversity, or gender diversity
- Action protocols in situations of bullying or cyberbullying

The coexistence plan plays a fundamental role in raising awareness about bullying and cyberbullying and can help in the prevention and early detection of specific cases. It also establishes the measures to be taken when a case of bullying or cyberbullying is detected, usually referring to specific action protocols.

Action protocols

The protocols for dealing with bullying and cyberbullying are drawn up by the Ministry of Education and the different autonomous communities in collaboration with experts in the fields of education, psychology, and law.

02 INSTITUTIONAL MECHANISMS

Once the protocols have been drawn up, they are implemented by the educational centres and are mandatory for the entire educational community. School staff are responsible for ensuring compliance with the protocols and for taking the necessary measures in the event of detecting or receiving reports of bullying or cyberbullying. Among the measures that are usually included are:

- Awareness raising and training on bullying and cyberbullying for the whole educational community
- Clear procedures when a case of bullying or cyberbullying is detected or suspected
- Measures related to protection and support for the victim and their family, but also to contact and collaboration with the offender and their family
- Steps to follow in case you consider that you should report it

Student welfare and protection coordinator

The student welfare and protection coordinator is a recently introduced figure who complements other actions such as the coexistence plan. The coordinator is a member of the school staff. Their functions include the following:

- Design and implement measures to improve the climate of coexistence in the school
- Coordinate and collaborate with the teaching staff and other professionals to ensure comprehensive care for students
- Organise activities and training related to awareness-raising against bullying and cyberbullying for the whole educational community
- Promoting respect for diversity in schools
- Respond to reports of bullying or cyberbullying and be responsible for implementing the relevant protocols
- Facilitate mediation and conflict resolution among students

03 LEGAL CASES

Cyberbullying case

In one case, a girl showed a sudden change in behaviour and a drop in her school performance. The mother suspected a problem and found threatening personal messages on Whatsapp as well as derogatory messages on her Instagram account. Some of the student's classmates also had access to her Instagram account.

In this case the mother complained to the school, but the school was not aware of any bullying or cyber-bullying. As a result, the mother tried to transfer her daughter to another school but encountered bureaucratic problems in doing so. Given the difficulty in resolving the case at the school and the doubts that arose about the evidence of bullying and cyberbullying, the case was transferred to the Juvenile Prosecutor's Office and the National Police and is being investigated.

Grooming case

In this case, an adult man was sentenced to three years' imprisonment for the offences of corruption of minors and sexual abuse. The court sentenced him to one year in prison for the offence of cyberstalking (which included sending videos with sexual content to a minor) and two years for sexual abuse of a minor. In addition, he was disqualified from any profession involving contact with minors for the next thirteen years. The man has a restraining order and may not approach the minor at a distance of less than 500 metres for ten years and may not communicate with her by any means for the same period of time. The man will be on probation for six years after serving his prison sentence and will be prohibited from engaging in certain activities that could contribute to committing criminal acts of a similar nature while he will be obliged to also take a sex education course.

There have also been other cases where the perpetrator of cyberbullying, an adult, has been arrested following a complaint by a victim's legal guardian. In one case the aggressor used a fake profile and impersonated a minor, shared videos and images and gave gifts. In another case it was a minor who was arrested with similar charges. He created many fake profiles on social networks, contacted other minors, gained their trust, and started asking them for images or videos with sexual content. When people started to refuse, he threatened to share the material obtained previously and did so in some cases. The complaint was made by one of the victims and the Economic and Technological Crimes Group obtained the necessary authorisation to search the defendant's home and find the necessary evidence.

BIBLIOGRAPHY

SPAIN-cited works

- Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. Boletín Oficial del Estado 281, de 24 de noviembre de 1995. <https://www.boe.es/eli/es/lo/1995/11/23/10/con>
- Ley Orgánica 11/1999, de 30 de abril, de modificación del Título VIII del Libro II del Código Penal, aprobado por Ley Orgánica 10/1995, de 23 de noviembre. Boletín Oficial del Estado 104, de 1 de mayo de 1999. <https://www.boe.es/eli/es/lo/1999/04/30/11>
- Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores. Boletín Oficial del Estado 11, de 13 de septiembre de 2000. <https://www.boe.es/eli/es/lo/2000/01/12/5/con>
- Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. Boletín Oficial del Estado 77, de 31 de marzo de 2015. <https://www.boe.es/eli/es/lo/2015/03/30/1>
- Ley Orgánica 3/2020, de 29 de diciembre, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación. Boletín Oficial del Estado 340, de 30 de diciembre de 2020. <https://www.boe.es/eli/es/lo/2020/12/29/3>
- Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia. Boletín Oficial del Estado 134, de 5 de junio de 2021. <https://www.boe.es/eli/es/lo/2021/06/04/8/con>
- National Institute of Communication Technologies -Inteco (October 2012). Guía de actuación contra el ciberacoso. Parents and educators. <http://www.injuve.es/sites/default/files/Gu%C3%ADa%20de%20actuaci%C3%B3n%20contra%20el%20ciberacoso.pdf>

BIBLIOGRAPHY

ESPAÑA-consulted works

- ABC (14 de marzo de 2022). Detienen en Azuqueca a un hombre de 41 años que acosaba a una menor por internet mediante 'grooming'. ABC.
https://www.abc.es/espana/castilla-la-mancha/abci-detienen-hombre-41-anos-acosaba-menor-internet-mediante-grooming-202203141302_noticia.html
- Aguayo Llanos, A. (9 de septiembre de 2019). *Aspectos Legales y Jurídicos del acoso y ciberacoso escolar. Te pongo un Reto*.
<http://www.tepongounreto.org/2019/09/aspectos-legales-y-juridicos-del-acoso-y-ciberacoso-escolar/>
- Ciberintocables (s.f) El Ciberacoso en el Código Penal. CiberIntocables.
<https://ciberintocables.com/ciberacoso-codigo-penal/#:~:text=Ser%C3%A1%20penado%20con%20prisi%C3%B3n%20de,integridad%20sexual%20de%20la%20misma>
- Encinas, A.G.(1 de marzo 2018). Investigan en Valladolid un caso de ciberacoso a una menor de 13 años. El Norte de Castilla.
<https://www.elnortedecastilla.es/valladolid/investigan-ciberacoso-nina-20180228173408-nt.html>
- Mata Mayrand. L. (abril de 2017). Aspectos jurídicos del acoso y ciberacoso escolar. INJUVE.
https://www.injuve.es/sites/default/files/2017/42/publicaciones/documentos_1._aspectos_juridicos_del_acoso_y_ciberacoso_escolar.pdf
- 20minutos (17 de abril de 2022). Detienen a un menor por varios delitos relacionados con el 'Child Grooming' en Palma.
<https://www.20minutos.es/noticia/4986652/0/detienen-menor-por-varios-delitos-relacionados-con-el-child-grooming-en-palma/>