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CYBERBULLYING LEGISLATION: THE ROLE OF CYBERBULLYING LAW

ABSTRACT: Faced with the increasing number of cases of cyberbullying and its consequences, states are trying to find the best way of its sanctioning. The latest tragic event, in which a young man from Republika Srpska committed suicide because he was mocked on one of the social networks, has triggered a public debate on whether cyberbullying is adequately sanctioned in our country. Based on the way individual countries sanction cyberbullying, we can divide them into two groups. The first group includes those countries that sanction cyberbullying through the application of one of the existing criminal offenses (insult, defamation, persecution, unauthorised filming, hate speech). The second one refers to those countries where cyberbullying has been treated as a special criminal offense. The aim of this paper is to make suggestions for possible changes, based on an analysis of the existing legislation on cyberbullying in our country as well as in some European countries, in order to protect the victims of cyberbullying more effectively. In the paper, the authors have used a normative-legal method for the analysis of legal regulations including a comparative method for a comparative presentation of a legal regulation of cyberbullying in other countries. On the grounds of the

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analysis conducted, there is a conclusion that a legal protection against digital violence in our country does not provide adequate remedies for the victims of cyberbullying.

Keywords: *cyberbullying, social networks, criminal law, legislation.*

1.Introduction

“The Internet is a tool with two faces: complete freedom and a source of knowledge on the one hand, a source of degradation and destruction on the other hand”.
(Chassin, 2017).

In addition to the benefits that the Internet offers us, such as a great source of useful information and literature, electronic banking, shopping from home, working from home, the Internet can also be a tool for criminal activity and violence. The increasing number of cases of cyberbullying is also confirmed by a survey conducted in 2016 in America, which found that 34% of students were victims of cyberbullying and 12% of students admitted to having committed cyberbullying (Bostanci Bozbayindir, 2019, p. 426). Cyberbullying is increasing every year, so the numbers are much higher today than in 2016.

Today, there is no universally accepted definition of cyberbullying and most countries treat cyberbullying as one of the forms of traditional violence (insult, defamation, unauthorised filming and photographing, stalking) perpetrated on the Internet (Bostanci Bozbayindir, 2019, p. 427). “Cyberbullying is a crime that is an extension of traditional bullying. Cyberbullying takes the form of a verbal offence in cyberspace” (Syaidi & Suparno, 2022, p. 2).

The fight against cyberbullying takes place with legal and extra-legal methods. The non-legal methods are various awareness campaigns for children, staff in educational institutions and parents (Child Safety on the Internet, Stop Digital Violence, Choose Your Words, Prevent Hate), the legal methods refer to the legal sanctioning of cyberbullying. The question arises whether traditional laws are able to adequately protect victims of cyberbullying. The subject of this paper’s analysis is the legal regulation of cyberbullying as a type of violence perpetrated on social networks and the Internet.

Social networks as a place where cyberbullying takes place and the large number of users who are often witnesses and participants of cyberbullying make the consequences of cyberbullying more severe for victims compared

to traditional forms of violence “...the virtual characteristic of these spaces is only an additional feature, because their consequences are felt in the physical, real world” (Bjelajac & Filipović, 2021, p. 16). Offensive pictures, videos and comments posted on the internet become accessible to a large number of people, some of whom also participate in cyberbullying by making offensive comments. The fact that posts on the internet cannot be deleted and that cyberbullying, once committed, remains on the internet forever (Filipović, 2022, p. 116), is one of the features that distinguish traditional violence from cyberbullying. The possibility of re-viewing and new comments makes cyberbullying endless, where the victim is exposed to daily humiliation as long as the material is available (Bostanci Bozbayindir, 2019, p. 430). In some countries, repetition is a constitutive element of cyberbullying, such as in the USA, while in other countries (England) repetition is not a constitutive element of cyberbullying (Bostanci Bozbayindir, 2019, p. 431). In the latest in a series of tragic cases of cyberbullying, in which a 22-year-old young man in Republika Srpska committed suicide in October this year after a video was posted taunting the public in Serbia and Republika Srpska, the cruelty of the comments individuals left under the video shocked. “They scre*ed you”, “Now just kill yourself”, “What an idiot you are”, “Ha-ha-ha, you should kill yourself right now” (published in the newspaper Kurir, 2022a). The problem of cyberbullying as a result of the digital society is a global problem. In France, a young man committed suicide because he had to pay a certain amount of money to prevent his intimate photos from being published. According to French jurisprudence, it is a criminal offence to upload recordings and images made-created without a person’s consent. If the picture or image was taken with the person’s consent, no criminal proceedings can be initiated. Problematic are cases where people are blackmailed on the basis of images and videos they have sent voluntarily. Then it is only possible to initiate proceedings for incitement to suicide, and even then it is difficult to trace the people who sent the pictures or recordings, as in this case it was done from an internet café. However, in one of the cases where an image was published even though consent was given for the image, the French court considered that publishing an image with intimate content is punishable (Chassin, 2017).

2. Types and statistics of Cyberbullying

And if we talk about a type of violence that is a novelty compared to the traditional types of violence, as well as the fact that with the rapid development of technology, new types of cyberbullying can be expected (Filipović, 2022, p. 116), we can conclude, based on the research so far, that:

insults, ridicule, recording and posting of recordings and pictures, stalking, formation of hate groups, offensive comments on other people's pictures and videos are the most common forms of cyberbullying (Žunić Cicvarić & Kalajdžić, 2021, pp. 12-13). An international survey from UNICEF, which examined the rights of children and young people aged 9-17 online, found that "37% of primary school students and 66% of secondary school students have experienced digital violence, 22% of primary school students and 30% of high school students have seen or heard that their peers suffer from digital violence" (Mirković, 2019, str. 6).

Young people who use social networks witness cruel behaviour on social networks every day. According to a 2011 international study, 95% of children aged 8-17 said they witness cyberbullying and ignoring others, and as many as 55% said they frequently witness cyberbullying and ignoring others. Despite the worrying data on the percentage of observers who do not respond to cyberbullying, it is encouraging that 84% of respondents said they had seen people defend a person who was being harassed or bullied, and 27% said they saw this often. Worryingly, 21% of respondents said they had joined in the violence. Another worrying statistic relates to parents' lack of knowledge about the extent of cyberbullying, such that only 7% of parents said they were concerned about cyberbullying, and 33% of children said they had been a victim of cyberbullying (Vasyaev & Shestak, 2020, p. 145). According to data, 58.4% (4.62 billion people) of the world's population use social networks, spending an average of 2 hours and 27 minutes there. Last year alone, the number of social network users increased by 424 million new users. In Europe, the number of social network users is higher compared to the global population and stands at 85% (published in the newspaper *Danas*, 2022). An international survey organised by UNICEF to investigate the rights of children and young people on the internet concluded that "94% of primary school students and 99% of high school students own a mobile phone, 89% of primary school students and 92% of high school students have access to the internet" (Mirković, 2019, p. 6). In Serbia, "schoolchildren spend between 3 and 4.5 hours on the internet, and between 4 and 7 hours on weekends, and 74% of children and adolescents have a profile on a social network ..., of which 72% are between 11 and 12 years old, and the same is true for children under 13" (United Nations Children's Fund – UNICEF, 2019). The large number of children who start using the internet at an early age is also evidenced by a London School survey conducted in European countries, which found that 50% of children aged 6-7 use the internet and the percentage of children using the internet aged 12-13 is 94% (Vasyaev & Shestak, 2020, p. 141).

3. Legal Consequences of Cyberbullying

In the latest of a series of tragic cases in which a young person in Republika Srpska committed suicide due to cyberbullying, the public was unhappy with the way the relevant authorities acted after the young man reported to the police that a video in which he was mocked had been circulated on the internet, posted by people who had secretly recorded it. ACLording to information that appeared in some media outlets, the prosecution said it had received information from the police that it was a hoax. In the text published in Kurir (2022b) about this tragic event and after the reaction of the public that the Prosecutor's Office did not issue an order to remove the video after the young man reported it, but that this happened after the young man had taken his own life, the Prosecutor's Office stated in its response that the criminal offence of endangering security from the Criminal Law of the Republic of Srpska could not be applied to a specific case of cyberbullying, as there were no elements for this offence. Further evidence of the inadequacy of the regulations is the fact that in its response to the allegations that it did not take the prescribed measures, the prosecution states that "the order to remove recordings from social networks is not prescribed as such at all" (Kurir, 2022b). In some countries, including the Republic of Serbia, there is a problem with initiating proceedings for cyberbullying, as it is not provided for as a separate criminal offence. Previous events have shown that criminal acts of cyberbullying are classified under the offences already provided for in the Criminal code, and such a situation often leads to victims being forced to initiate a private prosecution lawsuit for ridicule on social networks, referring to the offence of insult, and to the perpetrators being charged with the crime of unauthorised recording, for which the punishment cannot possibly be commensurate with the consequences of the offence committed, despite the fact that a person committed suicide as a result of his or her violent act. At the last event, the Association of Judges and Prosecutors of the Republic of Serbia announced an initiative calling for amending the existing criminal law and introducing a criminal offence for cyberbullying, prosecuted *ex officio*, "which adequately punishes the perpetrators and actors of cyberbullying, which is increasingly present" (published in Kurir, 2022c).

When analysing the application of the Criminal Code (hereinafter CC) of the Republic of Serbia to cases of cyberbullying, we must first emphasise that Article 1 of CC states that "no one can be convicted for an act that has not been determined to be a criminal offence". This is exactly the problem that the prosecutor's office in Banja Luka pointed out when it stated that it

could not apply the criminal offence of endangering security to a specific case of cyberbullying in order to give consent to the removal of the video. In the Republic of Srpska, perpetrators of cyberbullying were arrested for unauthorised recording after a young man who was the victim of their taunting on a social network committed suicide. Our legal system (Article 143 of CC) stipulates that a fine or imprisonment of three months to three years can be imposed for this offence. Unauthorised publication of recordings and images is also a common form of cyberbullying (Article 145 CC), and this also carries a fine or imprisonment of up to two years. For insult as one of the most common forms of cyberbullying (Article 170 of the CC), it is prescribed that the proceedings be initiated by a private prosecution, which further complicates the position of the victim of cyberbullying, and a fine is provided for. Comments emerged in public that violent persons should be prosecuted for the offence of inciting and assisting suicide (Article 119 of the CC). The analysis of the constituent elements of this offence suggests that perpetrators would be convicted of this offence due to its constituent elements (subordinate position of the victim in relation to the instigator). Certain forms of cyberbullying are punishable under the offence of persecution (Article 138a CC). Finally, defamation, another common form of cyberbullying, is not provided for in the Criminal Code, but the victim may invoke the Law of obligations (Article 200) when initiating proceedings for non-material damage. Cyberbullying is not the same as traditional violence and has some peculiarities, so sometimes we cannot refer to prescribed acts or we refer to acts whose sanctions the legislator would certainly not prescribe if he had in mind the consequences of cyberbullying.

4. Cyberbullying legislation comparative review

With the emergence of cyber nations, legislation is also needed to sanction cyberbullying. Based on the legislation governing cyberbullying, countries can be divided into two groups. The first group consists of countries that sanction cyberbullying through the application of one of the existing criminal offences (insult, defamation, persecution, unauthorised recording, hate speech). The second group includes those countries that have provided for cyberbullying as a separate offence, as well as more serious forms of offences, such as the case of cyberbullying due to which a person commits suicide, or aggravating circumstances considering the vulnerability of the person due to his or her age or the existence of emotional closeness between the perpetrator and the victim. In this group of countries, we can again make a division between those

that have enacted specific laws for cyberbullying against minors and those that sanction cyberbullying as a separate offence regardless of age (Bostanci Bozbayindir, 2019, p. 435).

4.1. England

The first group of countries to apply existing laws to cyberbullying includes England, where cyberbullying is not a crime in its own right. In England, depending on the type of cyberbullying, some of the four existing laws are applied to acts of cyberbullying, namely: the Protection from Harassment Act 1997; the Communications Act 2003, which makes it an offence to transmit harmful messages; the Law on Malicious Communications Act 1988; the Offences Against the Person Act 1861; the Communications Act 2003; or the Criminal Justice and Public Order Act 1994 (Franco & Ghanayim, 2019, p. 21; Bostanci Bozbayindir, 2019, p. 435).

4.2. US

The group of states that have decided to enact laws making cyberbullying a separate criminal offence in response to cyberbullying includes 49 US states (Bostanci Bozbayindir, 2019, p. 435). The state of Missouri was one of the first to define cyberbullying as a separate crime (Franco & Ghanayim, 2019, p. 25). In the US, all states except Montana have passed laws on cyberbullying that require schools to take certain measures to prevent and punish instances of cyberbullying among students. The definition of cyberbullying and the level of punishment varies from state to state. For example, in some states such as Louisiana, the penalty for cyberbullying is defined as “an act in which a text, image, or recording is transmitted electronically with the malicious intent to coerce, torment, intimidate, and injure a minor under the age of 18 and is punishable by a fine of \$500 or six months in prison” (Franco & Ghanayim, 2019, p. 24). In Arkansas, cyberbullying is an offence for which the penalty is not limited to minors and is defined as “electronic communication intended to intimidate, coerce, abuse, terrorise, or harass another person” (Franco & Ghanayim, 2019, p. 25).

4.3. Austria

After it was found that Austria is the country with the highest rate of cyberbullying in the European Union, that every second child in Austria has been exposed to some form of cyberbullying and the opinion that the existing

penalties for cyberbullying (insult, defamation, harassment, stalking) did not provide the necessary protection for victims of cyberbullying, in 2016, Austria amended the Criminal Law to provide for a prison sentence of up to one year or a fine for cyberbullying for a person who “damages the reputation of another person in front of a large number of people or makes information or images of an intimate nature available to a large number of people without their consent and through a telecommunications system with the intention of causing serious harm to a person’s life over a prolonged period of time” (Franco & Ghanayim, 2019, p. 23). An offence in which the victim of cyberbullying commits or attempts to commit suicide is considered a more serious form, and in this case a sentence of three years’ imprisonment is provided (Franco & Ghanayim, 2019, p. 23).

4.4. Italy

Italy is one of the countries that passed a law in 2017 banning online harassment, the publication of insults and defamation, and the blackmail of minors. We conclude that in Italy, as in some states in the US, protection against cyberbullying is limited to minors by a specific law, which we cannot consider the best solution, considering that the victims of cyberbullying are often younger adults. The law in Italy “is dedicated to the first victim of cyberbullying in Italy”, Carolina Picchio (14 years old), who killed herself by jumping out of a window after being abused by posting a video online showing herself drunk. This video was subsequently published on Facebook and triggered an avalanche of online abuse by her ex-boyfriend and peers. (Bostanci Bozbayindir, 2019. p. 437; Franco & Ghanayim, 2019, p. 24). Italian law provides for the right of victims of cyberbullying and their parents to demand that the website remove the offending content within 48 hours (Bostanci Bozbayindir, 2019. p. 437). The law in Italy is characterised by the fact that it does not provide for any punishment for an offence or crime committed by the person who commits cyberbullying, but only allows for the removal of texts, images or videos from the internet (Franco & Ghanayim, 2019, p. 24).

4.5. Germany

Germany is one of the countries where cyberbullying is not considered a crime in its own right, but falls under other criminal offences such as insult, stalking, violation of privacy by publishing photos, distribution of violent

videos, threats and defamation (Bostanci Bozbayindir, 2019. p. 438). In Germany, every third child between the ages of 10 and 18 has been a victim of some form of cyberbullying. This situation led the authorities to reflect on the existing legal solutions at the conference on cyberbullying. After the analysis, it was concluded that the existing Criminal Law does not sufficiently cover acts of cyberbullying, i.e. its application is not adequate, and that there is a need to adopt a law that provides for violence, i.e. its types, as a separate criminal offence that allows the victim to report the crime more easily and quickly (Bostanci Bozbayindir, 2019, p. 438). In Germany, in response to cyberbullying, existing laws have been adapted to apply to cases of cyberbullying: Penalties are also provided for offences that occur on the internet, protection against defamation on social networks and the internet has been improved, in line with the consequences suffered by the victim in terms of wide and unrestricted publicity (Franco & Ghanayim, 2019, p. 33).

5. Conclusion

In view of the increasing percentage of cyberbullying, especially among children and adolescents, the consequences of which for the victims are serious mental disorders and, in the most serious cases, even suicide, all countries have taken certain measures, both illegal and legal. In response to cyberbullying, in addition to preventive measures and campaigns highlighting the harms of cyberbullying (Keep Children Safe Online, Let us Stop Digital Violence, Choose Your Words, Prevent Hate), it is necessary to harmonise laws to sanction cyberbullying appropriately.

In response to cyberbullying, states have chosen one of the models for sanctioning cyberbullying, providing for cyberbullying as a separate criminal offence or sanctioning cyberbullying by applying existing provisions on criminal offences (libel, defamation, unauthorised recording, photography, unauthorised publication of recordings and images, etc.).

Serbia is one of the countries that have decided to sanction cyberbullying through the application of existing criminal offences. In practice, this model has proven to be insufficient, as certain forms of digital violence cannot be responded to in the right way by applying the sanctions prescribed for existing acts. Furthermore, it is necessary to consider the issue of responsibility not only for those who post comments, pictures and videos, but also for those who leave inappropriate comments, jokes or hate. The conclusion from all this is that the legal regulation of cyberbullying in Serbia is not sufficient to protect victims of cyberbullying and that it is necessary to consider adopting a law on

protection against cyberbullying that takes into account all the specific features of cyberbullying that distinguish it from ordinary, traditional violence.

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ZAKONODAVSTVO O SAJBER NASILJU: ULOGA ZAKONA O SAJBER NASILJU

REZIME: Suočene sa sve većim brojem slučajeva sajber nasilja i njegovim posledicama države pokušavaju da pronađu najbolje rešenje za njegovo sankcionisanje. Poslednji tragični događaj u kome je mladić iz Republike Srpske zbog ismejavanja na jednoj od društvenih mreža izvršio samoubistvo pokrenulo je raspravu u javnosti da li je u našoj zemlji sajber nasilje na adekvatan način sankcionisano. Na osnovu načina na koji pojedine države sankcionišu sajber nasilje možemo ih podeliti u dve grupe. U prvoj grupi su zemlje koje sajber nasilje sankcionišu primenom nekog od postojećih kaznenih dela (uvreda, kleveta, proganjanje, neovlašćeno snimanje, govor mržnje). U drugoj grupi su zemlje koje su sajber nasilje predvidele kao posebno krivično delo. Cilj rada je da se na osnovu analize postojeće zakonske regulative sajber nasilja kod nas i u pojedinim zemljama Evrope daju predlozi za eventualne izmene, a kako bi se pružila efikasnija zaštita žrtvama sajber nasilja. U radu je korišćen normativno-pravni metod za analizu pravnih propisa kao i komparativni metod za uporedni prikaz zakonskog regulisanja sajber nasilja u drugim zemljama. Na osnovu sprovedene analize zaključak je da pravna zaštita od digitalnog nasilja u našoj zemlji ne obezbeđuje adekvatne pravne lekove za žrtve sajber nasilja.

Ključne reči: Sajber nasilje, društvene mreže, krivični zakon, zakonodavstvo.

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