

## BULLYING AND THE RIGHT TO EDUCATION: LEGAL AND FACTUAL RELEVANCE

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**Annotation:** School is an institution that ensures implementation of the right to education as a fundamental right of every child. It is an environment where children develop, excel, and acquire skills and knowledge with dignity, confidence and self-esteem. Education has a unique potential where non-violent behavior can be learned and attitude condoning violence ousted.<sup>1</sup> However, ordinary school days of millions of children are marred with by acts of violence and school, thus, the prospect of the right to education provided by the school system becomes rather a disillusion than an opportunity for many. Bullying, as form of violence among children, occurs anywhere where peers gather. However, due to obligatory duty to attend school until a certain age, school is precisely the environment where quantitatively children experience bullying the most, because it is the place where most children by way of imperative choice spend most of their time.<sup>2</sup>

The daunting reality supported by extensive statistical data and studies worldwide shows that bullying is a global phenomenon<sup>3</sup> and it remains the most common form of violence in schools,<sup>4</sup> is consistently related to each violence-related behavior among peers at school.<sup>5</sup> Thus, the article offers factual analysis and legal insight into the correlation between the rights to education as both the right and a duty of the learner, and the right of the learner to acquire an education and attend a safe school, with particular focus on the issue of bullying at school among children. The structure of the correlation between the child, the school and bullying provides a strong background for discussion. The correlation provides basis for legal rationale and structure of the article, which includes an analysis of individual rights and duties related to compulsory education, as well as through factual analysis (on international and national levels) in regard to the prevalence of bullying among children at schools both, with particular focus on the case study of Lithuania.

**Keywords:** right to education, duty to acquire education, school violence, bullying.

<sup>1</sup> Council of Europe, "Tackling Violence in Schools," (June, 2011) //

[http://www.coe.int/t/dg3/children/violence/OsloReport\\_en.pdf](http://www.coe.int/t/dg3/children/violence/OsloReport_en.pdf) (accessed September 25, 2015).

<sup>2</sup> Robertas Povilaitis, Jurgita Smiltė Jasiulionė, „Mokykla gali įveikti patyčias“ [„Schools can overcome bullying“] (2008) // [http://www.bepatyciu.lt/media/files/downloadable/6\\_mokykla\\_gali\\_iveikti\\_patycias.pdf](http://www.bepatyciu.lt/media/files/downloadable/6_mokykla_gali_iveikti_patycias.pdf) (accessed April 28, 2015).

<sup>3</sup> UNESCO, "Monitoring Progress for all 2015," (2015) // <http://unesdoc.unesco.org/images/0023/002322/2322-05e.pdf> (accessed September 21, 2015).

<sup>4</sup> John Dayton, Anne Proffitt Dupre and Ann Elizabeth Blankenship, "Model Anti Bullying Legislation: Promoting Student Safety, Civility, and Achievement through Law and Policy Reform," *Education Law Reporter* 272 (2011): 19. [19 – 37]

<sup>5</sup> Tonja R. Nansel, Mary D. Overpeck, Denise L. Haynie, W. June Ruan and Peter C. Scheidt, "Relationships Between Bullying and Violence Among US Youth," *Archives of Pediatrics & Adolescent Medicine* Vol 157, No. 4 (April 2003): 348. [doi:10.1001/archpedi.157.4.348.]

## INTRODUCTION

Some authors refer to school as one of the main institutions of modern society that is to some degree affected by school violence as a global phenomenon in virtually all nation-states.<sup>6</sup> Arguably, the topic of bullying as a form of school violence *per se* is hardly a new topic, since popular, theoretical discourse and research on social, psychological, behavioral, health implications of bullying on a child are truly abundant in both popular and academic presses.<sup>7</sup> **However, proportionally considerably less of the volumes of extensive school violence related research actually deal with the legal aspects of bullying.**

One of the supporting arguments for the relevance of the topic of the article is, first of all, the analysis of the factual situation, which clearly implicates that cases of bullying are up to this day not unique. For example, it is estimated that approximately 160 000 of learners (in the United States solely) skip school every day, because of fear of bullying.<sup>89</sup> Bullying was the cause of some the most extreme cases of deathly violence at schools in the modern day history.<sup>1011</sup> The statement is also backed by statistical research, review of individual bullying cases covered by the media in different countries of the world, analysis of numerous leading empirical studies that examine and monitor school violence and bullying worldwide. Factual situation in the context of bullying at school is supported on the findings of the research

<sup>6</sup> Rami Benbenishty, Ron Avi Astor, "School Violence in an International Context," *International Journal of Violence and School* 7 (December, 2008): 60. [59-80]

<sup>7</sup> Charles J. Russo, J.D., Ed.D., *Bullying and New School Violence: An American Perspective*.

<sup>8</sup> Kathleen Vail, "Words That Wound," *The American School Board Journal* (September 1999): 37-40.

<sup>9</sup> Nadya Labi, "Let Bullies Beware," (March 2001) // <http://content.time.com/time/nation/article/0,8599,103822-00.html> (accessed September 18, 2015).

<sup>10</sup> In 2000, an analysis by officials at the U.S. Secret Service of 37 premeditated school shootings found that bullying, played a major role in more than two-thirds of the attacks.- The Washington Post, "Gifted and Tormented," (May, 2006) // <http://www.washingtonpost.com/wpdyn/content/article/2006/05/15/AR20060515-01103.html> (accessed September 24, 2015).

<sup>11</sup> All three school shootings in Finland (2 casualties in Raumanmeri school in 1984, 8 casualties in Jokela school in 2007, 10 casualties in Kauhajoki vocational college in 2008) were related to negative and violent school experiences. All three young adults who individually committed these severe crimes suffered from bullying in their adolescent years (one of them directly pointed out that he wanted to get even with the two school mates that bullied him). The executors of the last two consecutive school shootings were both fascinated by Columbine school shooting, posted violent videos of their intentions on the internet, both committed suicide at the shooting scenes.- Tomi Kiilakoski and Atte Oksanen, "Cultural and peer influences on homicidal violence: A Finnish perspective," *New Directions for Youth Development*, Volume 2011, Issue 129 (2011):31, 33-34. [31-42. DOI: 10.1002/yd.385.]

reports carried out in as many as 40 countries,<sup>12</sup> reports in academic journals and of authoritative bodies such as the World Health Organization, UNESCO.

The cross-country comparison allows evaluating the perspective on how extreme or less severe the situation regarding bullying and its prevalence at school is on national levels in specific countries. Among other surveyed countries, Lithuania stands out as the country where bullying at school has been the most prevalent for a period of over two decades now, despite extensive joint individual, local, national and international effort to improve the situation and make school environment safer. School is where children still experience most cases of bullying in Lithuania.<sup>13</sup> This factor was the determinant in supporting the relevance of the article based on the national context of Lithuania, and devoting substantial part of the content of the article to the case study of Lithuania.

The second argument supporting the relevance of the topic of the article is the correlation between two constitutional rights – the right to education and the right to integrity (by acquiring the education in the safe school environment) in the context of the constitutional duty to learn. The legal rationale of the article is raised from the following questions, that help support the relevance of the topic – for instance, can a state impose an *imperative choice* (a duty to acquire compulsory education and, thus, to attend school) on a child and place a child in any particular (depending on the national system of compulsory education) learning environment? The answer is, predominantly and in most cases, yes, meaning that a child cannot avoid involvement of the state and has to accept and comply with the ways and means of implementation of the right to compulsory education prescribed by law, and even in cases of home schooling one cannot avoid government oversight.<sup>14</sup> How does bullying affect the right to education or other rights of children? Or are the right to education and its implementation more important than other rights of the child? The answer, of course, is - no,

<sup>12</sup> The HBSC currently surveys at least 44 countries and regions worldwide - Albania, Armenia, Austria, Belgium (Flemish and French regions), Bulgaria, Canada, Croatia, Czech Republic, Denmark, England, Estonia, Finland, France, Germany, Greece, Greenland, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, TFYR Macedonia, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Scotland, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, USA, Wales – HBSC, “Member Countries” // <http://www.hbsc.org/membership/countries/index.html> (accessed October 5, 2015).

<sup>13</sup> Ministry of Education and Science of Republic of Lithuania, “Bullying in Schools of Lithuania: Problems and Solutions,” (December 2009) // [http://iamnotscared.pixelonline.org/data/database/publications/271\\_18%20-School%20bullying%20in%20Lithuania%20problems%20and%20solutions.pdf](http://iamnotscared.pixelonline.org/data/database/publications/271_18%20-School%20bullying%20in%20Lithuania%20problems%20and%20solutions.pdf) (accessed September 30, 2015).

<sup>14</sup> Charles Glenn, “The Concept of Educational Autonomy”: 42; in Walter Berka, Jan De Groof and Hilde Penneman, eds., *Autonomy in Education. Yearbook of the European Association for Education Law and Policy. Volume III* (the Hague/London/Boston: Kluwer Law International 2000).

it is not. However, in the legal reality and daily lives of young learners we circle back to the inevitable – in order to enjoy his or her right to education, a child has to attend school, by way imposed by the state, because it carries on obligation to provide a system of (at least) compulsory education, and it is obvious that school and different forms of school violence (focus being on bullying) go hand in hand for at least one third of the student body population of compulsory education system. Thus, by ensuring the right to education through obligatory attendance of institutions of compulsory education, the state, in cases where it cannot ensure a safe learning environment, puts the integrity of the child at stake.

**The aim** of the article is to:

- present the analysis of the correlation between the right to education, the duty to acquire education in the context of bullying as the most prevalent form of school violence among children;
- present the summary on the findings of six consecutive international HBSC studies of prevalence of bullying and

**Methodology** of the article - methods of systemic and analytical-critical, comparative analysis were applied for the research of the article. In addition, methods of documentary and statistical analysis and generalization were used.

## **BULLYING AND THE RIGHT TO EDUCATION**

The scope this research in regard of bullying at school and its implications on integrity of the child is limited to bullying that takes place in school environment. First of all, the rationale of this scope is supported by legal interconnectedness of the child and the school *vis-à-vis* the right to education. The right to education is a universally accepted right, that is embedded in legal norms of international human rights law,<sup>15</sup> regional documents,<sup>16</sup> and national laws.<sup>17</sup> The right to education as an individual right carries one unique feature that makes it an exceptional right in comparison to other individual rights – the right to education does not fall under the category of rights that individuals are entitled to and are free to choose

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<sup>15</sup> UN, Article 26 (1) of the Universal Declaration of Human Rights (1948) // <http://www.un.org/en/documents/udhr/> (accessed September 18, 2015).

<sup>16</sup> European Court of Human Rights, Article 2 of the Protocol to the Convention for Protection of Human Rights and Fundamental Freedoms (1952) // [https://ec.europa.eu/digitalagenda/sites/digitalagenda/files/Convention\\_ENG.pdf](https://ec.europa.eu/digitalagenda/sites/digitalagenda/files/Convention_ENG.pdf) (accessed September 18, 2015).

<sup>17</sup> Many jurisdictions of the world make the right to education a constitutional right, or embed the right to education to legal acts.

entirely at their own disposition. Some levels of education (depending on legal systems of national jurisdictions) are made mandatory by law, thus making the right of education not only a right of choice, but also an obligation by law. For example, Article 41(1) of the Constitution of Lithuania expressly states that education until the age of sixteen is compulsory.<sup>18</sup> Furthermore, Article 26(1) of the Universal Declaration of Human Rights in the manner of *expressis verbis* states that “elementary education shall be compulsory.”<sup>19</sup> In the context of subjective rights and obligations between the state and an individual, both are put in the position of implementing an obligation - to provide a system of education (by the state) so that an individual right to education is ensured, and to attend school to comply with the legal constitutional duty (by an individual).

The notion of legal (democratic) state, in legal theory, does not support an overbearing legal regulation of the life of an individual, but recognizes natural human rights and, thus, the autonomy of individual rights.<sup>20</sup> Indeed, some authors oppose the imposition by the state to attend school and acquire compulsory education until a certain age limit, arguing that the right to education is an individual right and should be used individually,<sup>21</sup> compulsory education infringes individual rights of parents, because the state imposes an educational system upon the without allowing to chose, the right to education is perceived as an unearned benefit for children by expropriation of wealth of others. However, the imperative requirement for an individual to ‘choose’ a right is not considered an overbearing of power by the state, because education is perceived not only as a human right but also as a force for social change—it is described as the single most vital element in combating poverty, exploitation, and promoting democracy and human rights.<sup>22</sup>

The UNCHR sets a principal requirement of the minimum level of compulsory education (elementary), and that the state shall provide free education at least in elementary and fundamental stages.<sup>23</sup> Most countries of the world by legal regulation of their national

<sup>18</sup> *Constitution of Republic of Lithuania*, Official Gazette (1992, no. 33-1014), Art. 41.

<sup>19</sup> UN, Article 26 (1) of the Universal Declaration of Human Rights (1948) // <http://www.un.org/en/documents/udhr/> (accessed September 18, 2015).

<sup>20</sup> Alfonsas Vaišvila, *Teisės teorija [Theory of Law]*, ed. Genovaitė Bbachinaitė, Saulius Katuoka (Justitia, Vilnius, 2004), p.200.

<sup>21</sup> John Holt, *Freedom and Beyond*, Dutton, 1972, Heinemann, 1995, 2013.

<sup>22</sup> UNICEF, “State of the World’s Children” (1999) // <http://www.unicef.org/sowc99/sowc99a.pdf> (accessed September 18, 2015).

<sup>23</sup> UN, Article 26 (1) of the Universal Declaration of Human Rights (1948) // <http://www.un.org/en/documents/udhr/> (accessed September 18, 2015).

jurisdictions have raised this minimum standard by making education free and accessible, but, in turn, mandatory for children until the age of sixteen, some to eighteen years of age. In the vast majority of European countries education is compulsory until 16 years of age.<sup>24</sup>

By exercising their right to education children are given an imperative choice to attend schools where some of them encounter violence. It is a universally known fact that schools are susceptible to different forms of violence resulting in physical and emotional harm, injuries or even death. The rationale of the article is based on the findings that prove bullying to be the most prevalent acts of school violence,<sup>25</sup> thus the article is focused on bullying rather than a broader notion of school violence. Apart from its prevalence, another important supporting factor for excluding bullying as an object of research, is the increasing pattern of cyber bullying that is school related, but carries well outside the school property<sup>26</sup> generating spinoffs of impressive magnitudes thus increasing the harm suffered by the victims.<sup>27</sup> An incident in a school in one corner of the world may carry a devastating effect on many worldwide, because of internet, media and changing social behavior.<sup>28</sup>

Based on the brief analysis of international, regional and national acts, it can be concluded that a child, as an individual, is not given a free, but rather an *imperative choice*. Thus, school attendance or acquiring an education is not an option *per se* for a child, at least for a definite period of his or her life time. The right and duty to education carries an impressive multidimensional character and provides us with an extensive amount of issues to back the research. The list is not exhaustive. The main issue that backs this research is related to the dual character of the right to education as an individual right and as a duty in the

<sup>24</sup> European Commission. Compulsory Education in Europe 2014/2015 // [http://eacea.ec.europa.eu/education/eurydice/documents/facts\\_and\\_figures/compulsory\\_education\\_EN.pdf](http://eacea.ec.europa.eu/education/eurydice/documents/facts_and_figures/compulsory_education_EN.pdf) (accessed September 21, 2015);

<sup>25</sup> Morbidity and Mortality Weekly Report 2014; 63 (No.4), "Youth Risk Behavior Surveillance – United States, 2013," (June 2014) // [http://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=youth-risk-behavior-surveillance-united-states-2013-pdf](http://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf?utm_source=rss&utm_medium=rss&utm_campaign=youth-risk-behavior-surveillance-united-states-2013-pdf) (accessed September 22, 2015).

<sup>26</sup> Centers for Disease Control and Prevention, "Understanding School Violence. Fact Sheet 2015," (2015) // [http://www.cdc.gov/violenceprevention/pdf/school\\_violence\\_fact\\_sheet-a.pdf](http://www.cdc.gov/violenceprevention/pdf/school_violence_fact_sheet-a.pdf) (accessed September 22, 2015).

<sup>27</sup> For example, the reported case of Jessica Logan - an 18-year-old Sycamore High School senior who sent nude photo of herself to her boyfriend, but the Cincinnati Enquirer reported that the photo was sent to hundreds of teenagers in at least seven Cincinnati-area high schools after the couple broke up. Jessica hanged herself. Another school related bullying is the reported case of Hope Sitwell - a 13-year-old, who hanged herself after a picture of her breasts that she "sexted" to her boyfriend was shared amongst students at six different schools in area of Ruskin, Florida. There reportedly also was a "Hope Hater Page" that was started on MySpace that led to additional cyber bullying: Nobullying.com, "The Top Six Unforgettable Cyber Bullying Cases Ever," (September, 2015) // <http://nobullying.com/six-unforgettable-cyber-bullying-cases/> (accessed September 22, 2015).

<sup>28</sup> Rami Benbenishty, Ron Avi Astor, "School Violence in an International Context," *International Journal of Violence and School* 7 (December, 2008): 59 [59-80]



context of unsafe school environment. National legal systems obligate a child (as an individual) to exercise his or her universally recognized right to education by acquiring compulsory education within an imposed system of education. Based on statistics, it is evident that schools (universally), that constitute the main institutional body of educational system, are not able to provide a safe school environment and children suffer from inflicted harm through different forms of violence daily, bullying being its one of the most frequent forms. Therefore, through implementation of one right of the child other rights of the child are violated, putting the integrity of the child at stake.

The discourse above proves the fact that for a large proportion of the student body of compulsory education bullying, paradoxically, is inevitable due to legal regulation. This brings us to the next logical question – of why should that matter? In fact, statistics show that there are opinions that support the notion of bullying being a part of growing up and that it is a sphere of peer relations where grownups should not interfere, that it helps to develop a more resistant self-esteem.<sup>29</sup> Other authors argue that the public realm of risk aversion is extremely exaggerated, playground quarrels among peers are blown out of proportion, and unless behavior has to do with outcomes of victimization and involves relationships of apparent imbalance of power it should not be referred to as bullying.<sup>30</sup> In his book Tim Gill points out the trend of sanctioning and criminalizing children for petty offences, that merely consist of antisocial behavior by children and that could be dealt with informally by instruction of children and talking to their parents.<sup>31</sup>

Therefore, it is important to reiterate not only the legal interconnectedness of bullying with the right to education *per se*, but also to the status of the child as a whole human being. It is necessary to show what other individual rights of the child, as a whole, are impaired due to phenomenon of bullying among peers in school environment. The spectrum of the rights impaired varies from inflictions of immaterial nature. For example, skipping school due to fear of being bullied results in impairment of the right to education, but may help to avoid more serious consequences. Bullying can also cause consequences of a very tangible nature.

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<sup>29</sup> Public organization “Child Line”, “Public opinion survey on bullying in 2014,” (February, 2014) // <http://www.bepatyciu.lt/kampanija-be-patyciu/tyrimai-apie-patycias/> (accessed September 23, 2015).

<sup>30</sup> Laura Clark, “Coping with the bullies 'is part of growing up', says child expert,” (September, 2007) // <http://www.dailymail.co.uk/news/article-490250/Coping-bullies-growing-says-childexpert.html#ixzz3mYCaE8-mw> (accessed September 23, 2015).

<sup>31</sup> Tim Gill, *No Fear: Growing up in a Risk Averse Society* (Calouste Gulbenkian Foundation, 2007), p.40.

For example, the child might still suffer extreme psychological pain, and by being obliged to attend school may not avoid a more serious victimization, that might lead to impairment of property, health or, as some of the bullying cases show, even the right to life. Despite the decreasing pattern, bullying at school still remains a worldwide<sup>32</sup> detrimental phenomenon among adolescent peers that results in tangible outcomes, such as, poor academic performance, absence in school, health problems, in many cases even suicide, as well as outcomes intangible in nature, such as, emotional and physical pain, hurt, fear, diminished dignity, to name a few. It is a devastating global phenomenon that due to peculiarities of social behavior of modern day society, influenced by information technologies and cyber space, extends well beyond the actual walls of educational institutions, resulting in even more confounding consequences in the lives of those who are affected by it.<sup>33</sup> Thus, it is evident that integrity of the child a whole is put at stake due to an unsafe learning environment at schools, raising the conflict between the right and the duty to learn.

Bullying at school clearly infringes the whole array of rights that children as individual have in regard to compulsory education. Distinguishing the right to education and the rights in education shows that school is not an institution of its own right and status, and that is it intertwined with other individual rights of learners, parents, teachers, the state, and legal regulations as well as institutions that guarantee, implement and protect those individual rights. When a system, such as the system of compulsory education, or a school within such system, is faced with a disruptive problem of bullying, it must use all resources that are made available through legal regulation, and involve all institutional bodies that can and may be instrumental in solving that problem, for the sake of all those whose rights in the process of compulsory education due to bullying are being violated. It is apparent, thus, that prevention and effective ways of elimination bullying at school cannot be contained solely within the system of compulsory education *per se*. The tools for solving of the problem reach beyond the boundaries of school as an institution and must involve all appropriate legal instruments and institutional bodies of the system of protection of the rights of the child.

<sup>32</sup> World Health Organization Regional Office for Europe, "Health Behavior in School-Aged Children: The School Experience" (June 2000) // <http://www.hbsc.org/documents/HealthofYouth3.pdf> (accessed September 30, 2015).

<sup>33</sup> Rami Benbenishty, Ron Avi Astor, "School Violence in an International Context," *International Journal of Violence* 7 (December, 2008): 59-60. [59-80]



## THE FACTUAL RELEVANCE: INTERNATIONAL AND NATIONAL LEVEL

Six consecutive cycle research studies carried out by the Health Behavior in School-aged Children (HBSC) research network<sup>34</sup> in Europe and North America (total of 32 countries) show that an overall trend over time is a decreased number of bullying cases among school aged children: occasional bullying (once or more per couple months) for both genders has decreased from 33,5 % in 2001/2002 to 29,2 % in 2009/2010, chronic bullying (2-3 or more times per month) has decreased from 12,7% to 11,3% consecutively. However, this does not represent a consistent downward trend for all countries.<sup>35</sup> The HBSC survey applies a well established and validated method of assessment of prevalence of bullying at school<sup>36</sup> in 44 countries.<sup>37</sup> Thorough comparative analysis of the data of three consecutive survey cycles of the HBSC shows that only 12 out of 32 participating countries demonstrated a consistent improvement, i.e., the number of school-aged children who were bullied has decreased gradually and consistently over the period of survey cycles from 2001 until 2010, whereas the remaining 20 countries continue to demonstrate a fluctuating pattern, which means that one third of the school-age children still experience bullying every two months and one tenth – more than two times a month.<sup>38, 39</sup> Due to its enduring nature, bullying remains a pattern of negative social behavior among adolescent peers that is hard to break and

<sup>34</sup> The Health Behaviour in School-aged Children (HBSC) research network that collects data every four years on 11-, 13- and 15-year-old boys' and girls' health and well-being, social environments and health behaviors through a school-based survey. A Research Protocol is produced every HBSC survey cycle (last survey cycle was carried out in 2013/2014, previous survey cycles were in 2009/2010, 2005/2006, 2001/2002, 1997/1998, 1993/1994). Each protocol includes scientific rationales for the survey items, such as bullying – HBSC, “Survey Methods” (2015) // <http://www.hbsc.org/methods/index.html> (accessed September 16, 2015).

<sup>35</sup> Kayleigh L. Chester, Mary Callaghan, Alina Cosma, Peter Donnelly, Wendy Craig, Sophie Walsh and Michal Molcho, “Cross-national time trends in bullying victimization in 33 countries among children aged 11, 13 and 15 from 2002 to 2010,” *European Journal of Public Health* Vol. 25 (Supplement 2, 2015): 62. [DOI: doi:10.1093/eurpub/ckv029 p.61-64]

<sup>36</sup> World Health Organization Regional Office for Europe, “Health Policy for Children and Adolescents No.4,” (2004) // [http://www.euro.who.int/\\_data/assets/pdf\\_file/0008/110231/e82923.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0008/110231/e82923.pdf?ua=1) (accessed September 30, 2015).

<sup>37</sup> The HBSC currently surveys at least 44 countries and regions worldwide - Albania, Armenia, Austria, Belgium (Flemish and French regions), Bulgaria, Canada, Croatia, Czech Republic, Denmark, England, Estonia, Finland, France, Germany, Greece, Greenland, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, TFYR Macedonia, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Scotland, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, USA, Wales – HBSC, “Member Countries” // <http://www.hbsc.org/membership/countries/index.html> (accessed October 5, 2015).

<sup>38</sup> World Health Organization Regional Office for Europe, “Health Policy for Children and Adolescents No.4,” (2004) // [http://www.euro.who.int/\\_data/assets/pdf\\_file/0008/110231/e82923.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0008/110231/e82923.pdf?ua=1) (accessed September 30, 2015).

<sup>39</sup> World Health Organization Regional Office for Europe, “Health Policy for Children and Adolescents No.5,” (2008) // [http://www.euro.who.int/\\_data/assets/pdf\\_file/0005/53852/E91416.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0005/53852/E91416.pdf?ua=1) (accessed September 30, 2015).

that continues to affect up to one third of the population of the school aged children in Europe and North America.<sup>40</sup>

International surveying provides an opportunity to evaluate a country not only within the national limits, but within a broader context when compared to other countries. The pattern on a comparative scale in case of Lithuania has been and continues to be clearly negative— statistically, among other HBSC surveyed countries, Lithuania continues to be the number one country where children experience bullying at school most frequently. It is extremely disturbing that violence against and among children has been prevalent in Lithuanian society for decades now. In 2009 27% of pupils in Lithuania stated that they experienced acts of bullying at least 2-3 times a week.<sup>41</sup> And even though statistical numbers show a fairly positive shift in the situation over an extended period of time, Lithuania, in comparison to other HBSC countries, is nowhere close to being on the single digit indicator level.

The preamble of the Law on Education recognizes the right to education as natural right of every individual.<sup>42</sup> The right to education in Lithuania is a constitutional right and duty, making education compulsory until age 16, and the state is obliged to provide compulsory education for free.<sup>43</sup> These constitutional norms set grounds for legal acts that establish and regulate the system of compulsory education in Lithuania. In the most general scope, compulsory education in Lithuania is compatible with the internationally recognized principles of availability, accessibility,<sup>44</sup> acceptability and adaptability. Of course, no system is perfect and just as any educational system, the system of compulsory education of Lithuania, arguably, does carry shortcomings within the system in light of each of the principles, and the discourse on those would be voluminous. The article focuses on bullying at school as one of the most relevant shortcomings of the system of compulsory education of

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<sup>40</sup> World Health Organization Regional Office for Europe, “Health Policy for Children and Adolescents No.6,” (2012) // [http://www.euro.who.int/\\_data/assets/pdf\\_file/0003/163857/Social-determinants-of-health-and-well-being-among-young-people.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0003/163857/Social-determinants-of-health-and-well-being-among-young-people.pdf?ua=1) (accessed September 30, 2015).

<sup>41</sup> Ministry of Education and Science of Republic of Lithuania, “Bullying in Schools of Lithuania: Problems and Solutions,” (December 2009) // [http://www.smm.lt/uploads/documents/kiti/sv\\_prob11\\_Patycios\\_mokykloje.pdf](http://www.smm.lt/uploads/documents/kiti/sv_prob11_Patycios_mokykloje.pdf) (accessed April 28, 2015).

<sup>42</sup> *Law of Amendment of the Law on Education*, Official Gazette (2011, no. 38-1804), Art. 1.

<sup>43</sup> *Constitution of Republic of Lithuania*, Official Gazette (1992, no. 33-1014), Art. 41.

<sup>44</sup> Birutė Pranevičienė and Agnė Margevičiūtė, “Challenges to the Implementation of Institutional Reform in the Lithuanian General Education System,” *Baltic Journal of Law & Politics* 8:1 (2015): 127. [DOI: 10.1515/bjlp-2015-0013 108-140]

Lithuania. Undeniably, bullying at school through its consequences causes more or less serious infringements of individual rights of children as learners.

Even though bullying is discussed more widely in Lithuania, interest in the issue by society continues to be rather limited and sporadic, spiked by media coverage of the more resonant cases of bullying. Over time a rather superficial approach towards problems such as bullying, violence, discrimination and suicide has developed, without acknowledging the true magnitude, scope and in many cases even interrelatedness and correlations of the issues, and, according to experts, the problem of bullying is still not effectively addressed on the national level.<sup>45</sup>

For instance, according to the social survey that was carried out in 2014 in Lithuania, 9% of the adult respondents support the notion that in cases of bullying adults should not intervene and adolescents should solve the matters on their own; as well as the notions that bullying is a valuable experience that helps a child to learn how to stand up for him or herself (9% of respondents), or that bullying is a natural stage of development of the child that he or she grows out of later in life (8% of respondents), or that bullying constitutes simple childish jokes and games (6% of respondents).<sup>46</sup> 58% of adult respondents of another survey carried out in 2014 hold school staff responsible for solving bullying cases at school, 36% of respondents agree that bullying can be stopped by “fighting back,” 19% of respondents agree that children who have experienced bullying should not complain about that to others, because nobody likes complainers.<sup>47</sup>

Prevalence of bullying among school-aged children in Lithuania has been monitored by the international survey carried out by the HBSC network and coordinated by the Regional Office for Europe of the World Health Organization. Lithuania has become a member of the HBSC network since 1992. Six consecutive complex surveys related to the health behavior of young people have been carried out by HBSC in Lithuania every four years for the reporting periods of 1993/94, 1997/98, 2001/02, 2005/06, 2009/10, 2013/14. The latter survey so far is the only and most important consistent monitoring instrument on a national level, that allows

<sup>45</sup> Milda Kniežaitė, „Europos dugne: nelaimingi ir apsvaigę,“ [On the Bottom of Europe: Unhappy and Intoxicated] (March, 2016) // <http://lzinios.lt/lzinios/Mokslas-ir-svietimas/europos-dugne-nelaimingi-irapsvaige/-220444> (accessed April 4, 2016);

<sup>46</sup> Public organization “Child Line”, “Public opinion survey on bullying in 2014,” (February, 2014) // <http://www.bepatyciu.lt/kampanija-be-patyciu/tyrimai-apie-patycias/> (accessed September 17, 2015).

<sup>47</sup> *Ibid.*

evaluating the prevalence of bullying in Lithuania. There are no other consistent methodologies and or procedures that would be carried out throughout the country with the aim to actually evaluate to overall scope of the problem of bullying.

The HBSC survey applies a standard methodology that is used to measure the proportions of bullying in each surveyed country. The instrument of the methodology is an anonymous questionnaire for groups of school-aged children in categories of 11, 13 and 15 years, originally developed by Dr.Dan Olweus and adopted by the HBSC. It always consists of two questions of: (1) how often children had been bullied at school (which is always preceded by a uniform definition of bullying, also based on Olweus), and (2) how often have children taken part in bullying another student or students, both questions given the time frame of the past couple of months.<sup>48</sup> The response options for both questions were almost the same, ranging from: I haven't been bullied (or bullied another student(s) at school in the past couple of months; it has only happened once or twice; 2 or 3 times a month; about once a week, several times a week.<sup>49</sup> The latter response options allow classifying cases of being bullied and bullying others into occasional and chronic. The standard international reporting proportion set at being bullied or bullied others at least two or three times at school in the past couple of months. Such method of assessment of prevalence of bullying chosen by HBSC has been well established in research and also validated by other HBSC surveys.<sup>50</sup>

The relevance of the topic of bullying in the context of infringement of integrity of children that attend school (in case of Lithuania) can very well be based on the relevant data provided by the HBSC surveys. First of all, it must be noted that there has been an immense improvement of the situation related to number of survey reported cases of being bullied or bullying others since Lithuania has first reported to HBSC in 1993 until 2014 (the last reporting period). The overall decline in cases of being bullied among boys has gone down from 41,7% to 31,2% among boys, and from 39,5% to 27,7% among girls. Respectively the number of cases of bullying others has gone down from 40,3% to 29,8% among boys, and

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<sup>48</sup> World Health Organization Regional Office for Europe, "Health Policy for Children and Adolescents No.5," (2008) // [http://www.euro.who.int/\\_data/assets/pdf\\_file/0005/53852/E91416.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0005/53852/E91416.pdf?ua=1) (accessed September 30, 2015). [P. 159, 163]

<sup>49</sup> World Health Organization Regional Office for Europe, "Health Policy for Children and Adolescents No.4," (2004) // [http://www.euro.who.int/\\_data/assets/pdf\\_file/0008/110231/e82923.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0008/110231/e82923.pdf?ua=1) (accessed September 30, 2015). [P. 134]

<sup>50</sup> *Ibid.*

27,9% to 15,3% among girls.<sup>51</sup> This is a vast improvement on a national scale, since roughly one tenth (of the former victims of bullying) of the school-aged children no longer suffer crippling consequences of consistent infringement of their rights at school, and roughly the same amount of wrongdoers have changed the way they treat their peers at school.

However, as is depicted in the tables below, the consistent downward positive pattern of proportions of being bullied at school continued until 2005. As of 2005 there has been an increase of the latter proportions by 3,2% for boys, a consistent increase of approximately 1,5-1,7% per reporting period until 2014. As of 2009 there has been a constant increase of 4,3% per reporting period of being bullied at school cases among girls.

**Table 1:** Prevalence of being bullied at least two or three times at school in the past couple of months among school aged children in Lithuania, by gender and HBSC survey year.<sup>52 53</sup>

Lithuania											
Boys (%)						Girls (%)					
1993/ 1994	1997/ 1998	2001/ 2002	2005/ 2006	2009/ 2010	2013/ 2014	1993/ 1994	1997/ 1998	2001/ 2002	2005/ 2006	2009/ 2010	2013/ 2014
41,7	42	36,4	28	28,5	31,2	39,5	38,4	32,3	26,5	23,4	27,7

Despite the general decrease in numbers of school age students who bully others at school, it is important to observe that over the period between 1993 and 2014 the actual consistent decrease of the said proportions took place from 2001 to 2010, with an increase in cases of bullying others by 2,2% and 0,5% for boys and girls respectively over the last reporting period of 2013/2014.

<sup>51</sup> Prof. Apolinaras Zaborskas, "Patyčių tarp mokinių paplitimas HBSC tyrimo duomenimis: pokyčiai Lietuvoje ir tarptautinis palyginimas [Prevalence of Bullying Among Learners According to HBSC: Changes in Lithuania and International Comparison]", (October, 2014) // [http://vaikulinija.lt/media/filer\\_public/b5/00/b5007589-d5fa-4184-88ab-b8a1a986e6f3/apolinaras\\_zaborskis.pdf](http://vaikulinija.lt/media/filer_public/b5/00/b5007589-d5fa-4184-88ab-b8a1a986e6f3/apolinaras_zaborskis.pdf) (accessed October 1, 2015).

<sup>52</sup> Kayleigh L. Chester, Mary Callaghan, Alina Cosma, Peter Donnelly, Wendy Craig, Sophie Walsh and Michal Molcho, "Cross-national time trends in bullying victimization in 33 countries among children aged 11, 13 and 15 from 2002 to 2010," *European Journal of Public Health* Vol. 25, Supplement 2 (2015): 61-64. DOI: <http://dx.doi.org/10.1093/eurpub/ckv029>

<sup>53</sup> Prof. Apolinaras Zaborskas, "Patyčių tarp mokinių paplitimas HBSC tyrimo duomenimis: pokyčiai Lietuvoje ir tarptautinis palyginimas [Prevalence of Bullying Among Learners According to HBSC: Changes in Lithuania and International Comparison]", (October, 2014) // [http://vaikulinija.lt/media/filer\\_public/b5/00/b5007589-d5fa-4184-88ab-b8a1a986e6f3/apolinaras\\_zaborskis.pdf](http://vaikulinija.lt/media/filer_public/b5/00/b5007589-d5fa-4184-88ab-b8a1a986e6f3/apolinaras_zaborskis.pdf) (accessed October 1, 2015).

**Table 2:** Prevalence of bullying others at least two or three times at school in the past couple of months among school aged children in Lithuania, by gender and HBSC survey year.<sup>54,55</sup>

Lithuania											
Boys (%)						Girls (%)					
1993/ 1994	1997/ 1998	2001/ 2002	2005/ 2006	2009/ 2010	2013/ 2014	1993/ 1994	1997/ 1998	2001/ 2002	2005/ 2006	2009/ 2010	2013/ 2014
40,3	40,3	41,3	30,3	27,6	29,8	27,9	29,1	26,6	16,6	14,8	15,3

There has been an impressive decrease in prevalence of bullying of others over the twenty year period (11% decrease among boys and 12,6% decrease among girls), but the pattern as of 2009 for both boys and girls is, again, on the increase.

Analysis of statistical findings of the six consecutive HBSC surveys allow to make three important conclusions regarding bullying among school-aged children at schools in Lithuania:

- 1) There has been an overall significant fluctuating decrease in rates of being bullied and bullying others over the period of 1993-2014;
- 2) The rate of being bullied has been increasing consistently since 2005;
- 3) Lithuania remains the country among European and Northern American countries with the highest rate of bullying against school-aged children.

The issue of bullying at school poses an interesting relation between the rights of the child, because by implementing their right, as well as a duty, to education children are obliged to attend school where their rights are infringed due to the acts of bullying. According to the latest data related to bullying at school in Lithuania by the HBSC survey for the period of 2013/2014, 31,2% of boys and 27,7% of girls experience bullying at school by their peers. Respectively 29,8% of school aged boys and 15,3% of school aged girls bully other peers at school.<sup>56</sup> Total number of students of the compulsory education system for the school year of

<sup>54</sup> *Ibid.*

<sup>55</sup> Kayleigh L. Chester, Mary Callaghan, Alina Cosma, Peter Donnelly, Wendy Craig, Sophie Walsh and Michal Molcho, "Cross-national time trends in bullying victimization in 33 countries among children aged 11, 13 and 15 from 2002 to 2010," *European Journal of Public Health* Vol. 25, Supplement 2 (2015): 61-64. DOI: <http://dx.doi.org/10.1093/eurpub/ckv029>

<sup>56</sup> Prof. Apolinaras Zaborskas, "Patyčių tarp mokinių paplitimas HBSC tyrimo duomenimis: pokyčiai Lietuvoje ir tarptautinis palyginimas [Prevalence of Bullying Among Learners According to HBSC: Changes in Lithuania and International Comparison]," (October, 2014) // [http://vaikulinija.lt/media/filer\\_public/b5/00/b5007589-d5fa-4184-88ab-b8a1a986e6f3/apolinaras\\_zaborskis.pdf](http://vaikulinija.lt/media/filer_public/b5/00/b5007589-d5fa-4184-88ab-b8a1a986e6f3/apolinaras_zaborskis.pdf) (accessed October 1, 2015).



2013/2014 was 365 524.<sup>57</sup> According to the HBSC survey, around one third of the whole student body population in Lithuania (121 841 school aged children) experience bullying. These numbers in the context of the infringement of individual rights of the bullied children make the relevance of the issue of bullying at school unquestionable and also increases its relevance on the on the state level.

## CONCLUSIONS

For a large proportion of the student body of compulsory education bullying, paradoxically, is inevitable due to legal regulation, because national legal systems obligate a child (as an individual) to exercise his or her universally recognized right to education by acquiring compulsory education within an imposed system of education. Based on statistics, it is evident that schools (universally), that constitute the main institutional body of educational system, are not able to provide a safe school environment and children suffer from inflicted harm through different forms of violence daily, bullying being its one of the most frequent forms.

Through implementation of one right of the child other rights of the child are violated, putting the integrity of the child at stake. Not only the legal interconnectedness of bullying with the right to education *per se*, but also to the status of the child as a whole human being are of relevance within the context of several conflicting rights of the child. Thus, the tools for solving of the problem reach beyond the boundaries of school as an institution and must involve all appropriate legal instruments and institutional bodies of the system of protection of the rights of the child.

Analysis of statistical findings of the six consecutive HBSC surveys allow to make three important conclusions regarding bullying among school-aged children at schools in Lithuania: there has been an overall significant fluctuating decrease in rates of being bullied and bullying others over the period of 1993-2014; the rate of being bullied has been increasing consistently

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<sup>57</sup> Švietimo valdymo informacinė sistema [Information System of Education Management], „Klasės ir mokiniai rugsėjo 1 d. 2013/2014 [Classes and Students on September 1, 2013/2014]” // [http://rsvis.emokykla.lt/cognos8-/cgibin/cognosisapi.dll?b\\_action=cognosViewer&ui.action=run&ui.object=%2fcontent%2ffolder\[%40name%3d%27Bendrasis%20ugdymas%27\]%2ffolder\[%40name%3d%271mokykla%27\]%2freport\[%40name%3d%271.%20Klas%C4%97s%20ir%20mokiniai%20rugs%C4%97jo%201%20d.%27\]&ui.name=1.%20Klas%C4%97s%20ir%20mokiniai%20rugs%C4%97jo%201%20d.&run.outputFormat=&run.prompt=true&cv.toolbar=false&cv.header=false#](http://rsvis.emokykla.lt/cognos8-/cgibin/cognosisapi.dll?b_action=cognosViewer&ui.action=run&ui.object=%2fcontent%2ffolder[%40name%3d%27Bendrasis%20ugdymas%27]%2ffolder[%40name%3d%271mokykla%27]%2freport[%40name%3d%271.%20Klas%C4%97s%20ir%20mokiniai%20rugs%C4%97jo%201%20d.%27]&ui.name=1.%20Klas%C4%97s%20ir%20mokiniai%20rugs%C4%97jo%201%20d.&run.outputFormat=&run.prompt=true&cv.toolbar=false&cv.header=false#) (accessed October 6, 2015).

since 2005; Lithuania remains the country among European and Northern American countries with the highest rate of bullying against school-aged children.

The issue of bullying at school poses an interesting relation between the rights of the child, because by implementing their right, as well as a duty, to education children are obliged to attend school where their rights are infringed due to the acts of bullying. The findings of the latest data translate into concrete numbers of children that suffer from bullying during compulsory education in Lithuania and that is 121 841 learners respectively.

Even though bullying is discussed more widely in Lithuania, interest in the issue by society continues to be rather limited and sporadic, spiked by media coverage of the more resonant cases of bullying. Over time a rather superficial approach towards problems such as bullying, violence, discrimination and suicide has developed, without acknowledging the true magnitude, scope and in many cases even interrelatedness and correlations of the issues, and the problem of bullying is still not effectively addressed on the national level.

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## PATYČIOS IR TEISĖ Į IŠSILAVINIMĄ: TEISINIS IR FAKTINIS AKTUALUMAS

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Mykolas Romeris Universitetas

### Santrauka

Mokykla - tai institucija, kuri užtikrina vaiko teisės į išsilavinimą, kaip vienos iš pagrindinių teisių, įgyvendimą. Tai aplinka, kurioje vaikas vystosi, tampa pranašus, įgija įgūdžius ir žinias oriai, pasitikėdamas aplinka ir pačiu savimi. Tačiau milijonams vaikų visame pasaulyje, įskaitant ir Lietuvą, mokyklinio gyvenimo kasdienybė yra nuolatos temdoma įvairių smurto apraiškų, todėl teisės į išsilavinimą menama perspektyva daugeliui suteikia, greičiau, mirazą nei galimybę. Patyčios, kaip

viena iš smurto mokykloje apraiškos formų, vyksta aplikoje, kurioje buriasi bendraamžiai. Mokyklos aplinka netampa išimtimi, kadangi joje vaikai, dėl pareigos lankyti mokyklą ir įgyti išsilavinimą iki tam tikro amžiaus, yra būtent ta aplinka, kurioje vaikai patiria kiekybiškai daugiausia patyčių apraiškų.

Gluminanti šio laikmečio realybė, paremta nuosekliais ir ilgalaikiais tarptautinio lygmens tyrimais, rodo, kad patyčios tarp vaikų mokykloje yra globalus reiškinys, išliekantis labiausiai paplitusia smurto mokykloje apraiškos forma, o taip pat yra nuosekliai susijusios su apskritai visais smurtinio pobūdžio elgesio tarp bendraamžių atvejais.

Straipsnis pristato nuoseklią faktinės situacijos, susijusios su patyčių paplitimu mokykloje, apžvalgą tarptautiniu ir nacionaliniu lygmeniu. Siūlo teisinę įžvalgą, aptariant teisę į išsilavinimą asmens teisės ir pareigos, o taip pat mokinio teisės įgyvendinti šią teisę ir įgyti išsilavinimą saugioje aplinkoje, kontekste. Ypatingas dėmesys šiame straipsnyje yra skiriamas būtent patyčių tarp mokinių mokykloje paplitimo problematikai. Vaiko ir mokinio teisių bei pareigų koreliacija pateikia tvirtą pagrindą straipsnio teisei diskusijai, suponuojančiai straipsnio turinį, kuris apima individualių teisių ir pareigų, susijusių su privalomuoju išsilavinimu analizę, taip pat faktinės situacijos dėl patyčių mokykloje paplitimo (tarptautiniu ir nacionaliniu lygmeniu) pristatymą, skiriant ypatingą dėmesį situacijai Lietuvoje.

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**Pagrindinės sąvokos:** teisė į išsilavinimą, pareiga mokytis, smurtas mokykloje, patyčios.

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