

GSU DRAFT MODULE – DISCIPLINARY PROCEDURES IN SCHOOLS AND THE DUTY OF CARE, NEGLIGENCE AND THE DUTY OF CARE AND LIABILITY LAW (VERSION SEPTEMBER 2017)

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INTRODUCTION

Teaching module “Disciplinary procedures in schools and the duty of care, negligence and the duty of care and liability law” was developed as a part of international project “Introducing modules on law and rights in programmes of teacher training and educational sciences: a contribution to building rights-based education systems in countries in transition” (EduLA) under European Commission ERASMUS + program.

The module is an educational guidance designed for the teacher-training programs at higher educational institutions.

The aim of the module is to equip teachers with theoretical knowledge and practical skills, build necessary competences in both pedagogical and legal aspects connected with the correct use of disciplinary procedures at school, interaction of the stakeholders in educational process at school, ensuring interests of stakeholders in educational process at school, the responsibility of stakeholders at modern school, legal basics of responsibility at school and duty of care.

Learning objectives of the module: The student: - understands the theoretical concepts of the topic; - understands the importance of disciplinary procedures at school and procedural requirements applicable in educational process at secondary education establishment; - understands the general principles of administrative and criminal law applicable in interaction of school stakeholders regarding disciplinary procedures; understands the concepts of corporal punishment, moral and legal aspects of the topic; - can explain and apply the general principles of administrative and criminal law and procedural; requirements applicable in disciplinary procedures dealt with by the courts of his/her; country.

The work is elaborated as a multidisciplinary teaching aid, created by educational scientists, psychologists and lawyers. The Module is created in close cooperation of scholars from Albania, Belarus, Belgium, Lithuania, Poland, South Africa, Russia.

Following the aim of the Module, it includes subchapters: Subchapter 1 Disciplinary procedures at school is a theoretical one. It gives definitions and describes the essence, meaning of discipline at school and analyses legal framework of teachers and students’ everyday activity. Subchapter 2 Disciplinary procedures, protection of rights and corporal punishment gives definitions of corporal punishment, promotes historical view on the problem, analyzes legal acts on the use or prohibition of corporal punishment and shows country cases on corporal punishment. Subchapter 3. Ensuring interests of the participants of the educational process at school provides information on social, psychological, pedagogical and legal aspects of protecting interests of the main stakeholders of the educational process at school. Subchapter 4. Legal basics of responsibility at school and duty of care analyzes Legal base of responsibility of the school stakeholders, educational liability, legal liability of educators and analyzes several cases on the topic.

The authors believe that the Module will be helpful for teachers and students in forming full understanding of the legal, educational and moral aspects of relations at school and supply them with necessary tools in their practice.

CHAPTER 1

DISCIPLINARY PROCEDURES AT SCHOOL. GENERAL CONCEPTS

1.1. Disciplinary procedures at school, definitions

Discipline (lat. disciplina) is a certain order of people's behavior, which corresponds to the norms of law and morals that have developed in the society, as well as to the requirements of this or that organization.

Discipline is the desire and ability of a person to control their behavior in accordance with the social norms and requirements of the rules of conduct.

School is an educational establishment, which carries out general education and upbringing.

Disciplinary procedures are an internal and administrative mechanism for effective disciplinary standards. In practice, good disciplinary procedures usually contain expected "rules of behavior".

Disciplinary reprimand is a measure of responsibility for committing a disciplinary offence (disciplinary responsibility).

Voluntary discipline is the conscious and responsible activity and behavior of a person in accordance with the norms of law and morals that have developed in society, as well as the requirements of this or that organization.

A modern school is a sociocultural institution, which has a complex structure and functioning mechanism. The most important element of the school's activity as a pedagogical system is the institutional and management activity of its administration. At the same time the inadmissibility of authoritarian administration style, which suppresses the initiative, the activity of the staff and personal freedom, is emphasised. Moreover, everywhere the importance of discipline, the need to combine monocracy and collegiality in the school administration, the role of pedagogical council, the trade union, PTA (Parent-Teacher Association), the activities of children's councils are stressed. In modern school the problem of violation of school discipline is one of the most acute and urgent, and quite difficult in terms of ways to solve it. Violations are presented in different forms: from fear of answering at the board to insulting the teacher. Different teachers offer a variety of ways of establishing the order during teaching and educational process, but as, at the heart of all violations there are different causes and motives, then there is no an all-purpose method for solving this problem.

Discipline (lat. disciplina) is a certain order of people's behavior, which corresponds to the norms of law and morals that have developed in society, as well as to the requirements of this or that organization. It is a necessary condition for the normal existence of society; due to the discipline people's behavior becomes organized, which provides collective activity and the functioning of social organizations. In today's society, there is a generally binding discipline and a special discipline, which is only for members of certain organizations (educational, labor, political, military, etc.). In addition, there is internal discipline or self-discipline. Self-discipline is a character trait, or a habitual tendency of a person to observe the rules of work and the standards of conduct. It is connected with the psychological concept of self-control. The outstanding teacher A. S. Makarenko told about the importance of discipline and being disciplined at school. He claimed that it is always necessary to observe a discipline, to do what is unpleasant, but necessary to do, as it is a high level of discipline. School is an educational establishment which carries out general education and upbringing. School discipline is a certain behavior of school children, caused by the need for successful organization of the teaching and educational process. It also provides the pupil's faithful implementation of the requirements and instructions of teachers, the school authorities and student organizations and obliges everyone to strictly follow the rules concerning their attitude to other people, as well as expressing claims to themselves. School discipline manifests itself in the requirement from students to carefully attend training sessions, to do homework conscientiously, to observe the order during lessons and breaks, as well as full implementation of all educational instructions. It serves for solving internal problems of the school. There is an external and internal compulsion at school, the presence of external children's compulsion gives reason for raising the issue of school discipline, as

discipline is considered the main rule of the internal structure of the school. The contents of school discipline and the culture of conduct of learners include the following rules: not to be late and not to skip classes; to do homework conscientiously; to handle textbooks, notebooks and tutorials with due care; to observe order and to be quiet in class; not to cheat; to care about school property and personal items; to respect teachers; to take part in school life and different competitions, to avoid rude and offensive words, to care about your outward appearance, to maintain the dignity of your class and school in general, etc.

1.2. The essence and meaning of discipline at school

In the basis of discipline there is a desire and ability of the individual to control his behavior in accordance with social norms and the requirements of the rules of conduct. Obligation is an individually perceived system of social and moral demands dictated by social needs and particular goals, and tasks of a certain historical stage of development. Responsibility is the quality of a person characterized by the desire and ability to estimate their behavior from the point of view of its expediency or harm to society, to commensurate their actions with the prevailing requirements in society, norms, and laws, guided by the interests of social progress.

School discipline is a condition for the normal educational and upbringing activities of the school. Discipline contributes to raising the educational effectiveness of students, allows to limit and to inhibit the reckless actions of particular students. The work of teachers regarding the students' mastery of the rules of conduct at school plays an important role in the development of a sense of duty and responsibility. It is necessary to teach them to follow these rules, to form the need for their constant observance, to remind about their essence and requirements. It is inappropriate to divide the rules of conduct into basic and secondary, when for the violation of some the student is responsible, and non-observance of others remains unnoticed. The corresponding work should also be done with the parents of students. After all, the rules cover the basic duties of schoolchildren, faithful implementation of which indicates their general upbringing. In order to help the school in developing the students' qualities stipulated by these rules, parents should know it, possess elementary pedagogical methods for the formation of these qualities. The developing of the habit to observe the rules of conduct and discipline begins with the first days of the student's life at school. The school regime (the organization of school life), and the rules that regulate the organization of school life play an important role. A diary plays an important role in the discipline of students. A teacher should require from them to keep a diary. In evaluating the behavior of a pupil during the week, one should also take into account his appearance and participation in classroom cleaning, being on duty in the dining room, his attitude towards comrades and adults. Systematic control over the behavior of students at school and outside makes them observe the discipline every day. Therefore, in education, it is necessary to achieve a reasonable combination of external and internal control over the behavior of pupils, to teach them "To do it right when no one hears, no one sees and no one will know".

School loses a lot in the upbringing of voluntary discipline, as it doesn't always adhere to strict rules of the students' life and activities. A. S. Makarenko told that school from the first day must set in front of students the firm, undeniable requirements of society, to tell children about standards of conduct, so that children can know, what can be done and what can't be done and what is praiseworthy and for what they will not be praised. This regulation is determined by the rights and duties of schoolchildren, stipulated by the Code of the Republic of Belarus about education: Chapter 5. Students, the legal representatives of underage students. Social protection of students; Article 31. Fundamental rights of students; Article 32. General Responsibilities of students. Pupils have all the conditions for studying and working at school, that's why each of them must conscientiously and knowingly carry out their duties. Pupils' respect to the law involves conscientious observance of rules of conduct, discipline, struggle against violations of the requirements of the school regime, assistance to the teaching staff in the organization of the teaching and educational process.

In case of violation of the discipline at school, the school authorities take measures to bring the violator to disciplinary responsibility of different kinds. Disciplinary procedures are an internal and

administrative mechanism for applying such rules and the implementation of effective disciplinary measures. In practice good disciplinary procedures usually contain the expected rules of conduct. In its implementation there is a minimum of steps that should be implemented, it is known as "the procedure of state minimum". The employer is obliged to comply with this procedure, otherwise, dismissal (expelling) is considered to be "automatically unfair". Disciplinary procedure should be performed according to the following model. The first step in the procedure of the state minimum is a written declaration of the employer, describing the circumstances (for example, behavior), which were the reason for taking disciplinary action against the participant in the educational process. The reasons for which they believe that there are grounds for a disciplinary procedure can also be explained. The employer will have to investigate the existing complaint about the participant of the educational process. The employer is obliged to invite the participant of the educational process to a meeting to discuss the problem. The meeting must be held before the start of disciplinary proceedings. The participant of the educational process has the legitimate right to invite a colleague, parents or a representative of the trade union to attend the meeting. The employer must inform the participant of the educational process of his rights to appeal against the decision. The appeal procedure is similar to a disciplinary procedure. The participant of the educational process must write a letter indicating the reasons for the appeal. Usually a meeting is held with the participation of a more senior leader than the one who participated in the first meeting- the participant of the educational process is entitled to attend the meeting accompanied by another person. Ultimate decision-making.

1. 3. Legal framework of teachers and students' everyday activity

Disciplinary procedures for students are prescribed in the Code of the Republic of Belarus about education: Section V. Disciplinary responsibility of students; Chapter 14. Grounds for attracting students to disciplinary responsibility. Measures of disciplinary action; Article 118. Grounds for attracting students to disciplinary responsibility; Article 119. The age when disciplinary responsibility comes into force; Article 120. Measures of disciplinary action.

In accordance with Article 118. "Grounds for bringing students to disciplinary responsibility", these grounds are unlawful, guilty (willful or inadvertent) failure to perform or improperly perform the duties assigned to them by acts of legislation, constituent documents and other local regulatory legal acts of the educational institution (hereinafter - disciplinary offence), in the form of the following acts (inaction): being late or absent without valid reasons in class; violation of discipline in the course of the educational process; non-compliance with the working time regime in the training period and the production training, determined by the rules of the internal labor regulations of the given organization; non-fulfillment without valid reasons of the requirements of a pedagogic employee based on an act of legislation, a constituent document or other local normative legal act of an educational institution; insulting the participants of the educational process; damage to capital structures (buildings, structures), equipment or other property of the educational institution; drinking alcoholic, low-alcohol beverages, beer, consumption of drugs, psychotropic substances, their analogues, toxic or other intoxicating substances on the territory of the educational institution, or being present in the state of alcohol, narcotic or toxic intoxication; smoking (consumption) of tobacco products on the territory of the educational institution; other illegal actions (inaction).

In accordance with Article 119 " The age when disciplinary responsibility comes into force". A student is brought to disciplinary responsibility for committing a disciplinary offence at the age of 14, and a student with peculiarities of psychophysical development at the age of 17.

the following measures of pedagogical influence may be applied to a student who has committed a disciplinary offence and isn't of the particular age at which disciplinary responsibility comes into force, as well as to a student with severe and (or) multiple physical and (or) mental disorders, who committed a disciplinary offence: conversation, discussion at the teachers' meeting and other measures of pedagogical influence that do not contradict the law.

According to Article 120 "Disciplinary measures", the following measures can be applied to a student for committing an offence: remark, reprimand, expelling.

In Chapter 15 " The application of disciplinary action. "The given disciplinary procedure is described according to the following scheme:

- the presumption of innocence of the student who is brought to disciplinary responsibility (Article 122);
- the rights of the student who is brought to disciplinary responsibility, as well as the rights of the legal representative of the underage student who is brought to disciplinary responsibility (Article 123);
- the procedure for applying measures of disciplinary action (Article 124);
- the period for the application of measures of disciplinary action (Article 125);
- the announcement of a verdict on the application of a measure of disciplinary action to a student (Article 126);
- the appeal against the verdict on the application of a measure of disciplinary action to a student (Article 127);
- the procedure of the removal and repayment of measures of disciplinary action in the form of a remark or reprimand (Article 128).

Disciplinary procedures for teachers are carried out in accordance with the legal framework concerning labor and the corresponding relationships, as well as regulating the professional activity of the teacher at school. First of all, it's the Code of the Republic of Belarus about Education and the Labor Code of the Republic of Belarus, as well as various normative legal documents of a general and local character.

In the Code of Education of the Republic of Belarus, these issues are considered in Chapter 6. «Pedagogic employees and other employees of educational institutions", Article 51. Requirements for pedagogic employees, Article 52. Rights of pedagogic employees, Article 53. Duties of pedagogic employees.

The reason for the "launching" of disciplinary procedures against teachers is a disciplinary offence, which is regarded as a failure or improper performance of the employee's duties. The constituent element of a disciplinary offence includes two components: objectively unlawful behavior of the employee, which is expressed in the fact of non-fulfillment or improper performance of his labor duties and can involve both action (for example, coming to work in a state of intoxication), and inaction (for example, failure to come to work) (the objective side of a disciplinary offence); the fault of the employee in the non-performance or inadequate performance of his labor duties (the subjective side of the disciplinary offence). The given components are necessary and at the same time sufficient for bringing the employee to disciplinary responsibility. The material damage and causal connection between it and the unlawful violation of labor discipline are not included in the disciplinary offence and can only affect the choice of the type of disciplinary action or serve, together with other conditions, as the reason for the material responsibility of the employee. Disciplinary responsibility is the implementation of one of the following disciplinary actions (remark; reprimand; dismissal) by the employer to the employee.

Therefore, the observance of disciplinary procedures in the school will increase its effectiveness due to the proper carrying out of the educational process.

BIBLIOGRAPHY

1. Dmitriev, Y.A. The basics of law pedagogics as a branch of pedagogics as a science and a subject, Education and Law, 2010, № 8, pp.7-23.
2. The Code of the Republic of Belarus about Education 2.12.2010 (revised and amended as of 13.01.2011) / Minsk, Amalpheya, 2013, 469 p.
3. Makarenko, A.S. How to bring up children right? Moscow, AST, 2013, 150 p.
4. Pevcova, E.A. The basics of law, Moscow, Vados, 2010, 212 p.
5. Sahipgareeva, L.A. The problem of school discipline, Innovation pedagogical technologies: the materials of the international scientific conference Kazan, October 2014, Kazan, Buk, 2014, 205 p.

CHAPTER 2

DISCIPLINARY PROCEDURES, PROTECTION OF RIGHTS AND CORPORAL PUNISHMENT

2.1. Definitions

Corporal punishment or physical punishment is a punishment intended to cause physical pain on a person. It is most often used where there is a substantial disparity of power between punisher and punished. Corporal punishment is most often practiced on minors, especially in home and also school settings, usually employing more modest forms. Common methods in this regard often include spanking or paddling.

By the late 20th century, corporal punishment had been eliminated from the legal systems of most developed countries. The legality in the 21st century of corporal punishment in various settings differs by jurisdiction. Internationally, the late 20th century and early 21st century saw the application of human rights law to the question of corporal punishment in a number of contexts:

School corporal punishment—of students by teachers or school administrators—has been banned in many countries, including Canada, Kenya, South Africa, New Zealand and nearly all of Europe. It remains legal, if increasingly less common, in the United States.

Other uses of corporal punishment have existed, for instance as once practised on apprentices by their masters. In many Western countries, medical and human-rights organizations oppose corporal punishment of children. Campaigns against corporal punishment have aimed to bring about legal reform to ban the use of corporal punishment against minors in homes and schools.

Corporal punishment of children has traditionally been used in the Western world by adults in authority roles. Beating one's child as a punishment was recommended as early as c. the 10th century BC in the book of Proverbs attributed to Solomon:

It was certainly present in classical civilizations, being used in Greece, Rome, and Egypt for both judicial and educational discipline. Some states gained a reputation for using such punishments cruelly; Sparta, in particular, used them as part of a disciplinary regime designed to build willpower and physical strength. Although the Spartan example was extreme, corporal punishment was possibly the most frequent type of punishment. In the Roman Empire, the maximum penalty that a Roman citizen could receive under the law was 40 "lashes" or "strokes" with a whip applied to the back and shoulders, or with the "fasces" (similar to a birch rod, but consisting of 8–10 lengths of willow rather than birch) applied to the buttocks. Such punishments could draw blood, and were frequently inflicted in public.

Key developments related to corporal punishment occurred in the late 20th century. Years with particular significance to the prohibition of corporal punishment are emphasised.

2.2. Legal acts on the use or prohibition of corporal punishment

1950: European Convention of Human Rights, Council of Europe Article 3 bars "inhuman or degrading treatment or punishment". 1978: European Court of Human Rights, overseeing its implementation, rules that judicial birching of a juvenile breaches Article 3.

1985: Standard Minimum Rules for the Administration of Juvenile Justice, or Beijing Rules, United Nations (UN). Rule 17.3: "Juveniles shall not be subject to corporal punishment." 1990 Supplement: Rules for the Protection of Juveniles Deprived of their Liberty. Rule 67: "...all disciplinary measures constituting cruel, inhumane or degrading treatment shall be strictly prohibited, including corporal punishment..."

1990: Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines, UN. Paragraph 21(h): education systems should avoid "harsh disciplinary measures, particularly corporal punishment."

1966: International Covenant on Civil and Political Rights, UN, with currently 167 parties, 74 signatories. Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment..." 1992: Human Rights Committee, overseeing its implementation, comments: "the

prohibition must extend to corporal punishment . . . in this regard . . . article 7 protects, in particular, children, . . ."

1984: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN, with currently 150 parties and 78 signatories. 1996: Committee Against Torture, overseeing its implementation, condemns corporal punishment.

1966: International Covenant on Economic, Social and Cultural Rights, UN, with currently 160 parties, and 70 signatories. Article 13(1): "education shall be directed to the full development of the human personality and the sense of its dignity..." 1999: Committee on Economic, Social and Cultural Rights, overseeing its implementation, comments: "corporal punishment is inconsistent with the fundamental guiding principle of international human rights law . . . the dignity of the individual."

1961: European Social Charter, Council of Europe. 2001: European Committee of Social Rights, overseeing its implementation, concludes: it is not "acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence."

The notion of children's rights in the Western world developed in the 20th century, but the issue of corporal punishment was not addressed generally before mid-century. Years with particular significance to the prohibition of corporal punishment of children are emphasised.

1923: Children's Rights Proclamation by Save the Children founder. (5 articles). 1924 Adopted as the World Child Welfare Charter, League of Nations (non-enforceable).

1959: Declaration of the Rights of the Child, (UN) (10 articles; non-binding).

1989: Convention on the Rights of the Child, UN (54 articles; binding treaty), with currently 193 parties and 140 signatories. Article 19.1: "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation" 2006: Committee on the Rights of the Child, overseeing its implementation, comments: there is an "obligation of all States Party to move quickly to prohibit and eliminate all corporal punishment."

2011: Optional Protocol on a Communications Procedure allowing individual children to submit complaints regarding specific violations of their rights.

Many European countries, including all Nordic countries, have prohibited any corporal punishment of children. The earliest recorded attempt to prohibit corporal punishment of children by a state dates back to Poland in 1783. :31–2 However, its prohibition in all spheres of life – in homes, schools, the penal system and alternative care settings – occurred first in 1979 in Sweden. The new Swedish Parental Code reads: "Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment."

In Canada, spanking by parents or legal guardians (but nobody else) is legal, as long as the child is not under 2 years or over 12 years of age, and no implement other than an open, bare hand is used (belts, paddles, etc. are strictly prohibited).

In the UK, spanking or smacking is legal, but it must not cause an injury amounting to Actual Bodily Harm (a "serious" injury such as visible bruising, breaking of the whole skin etc.); in Scotland since October 2003 it has been illegal to use any implement or chastise to the head when disciplining a child. In England and Wales slipping (i.e. striking the buttocks repeatedly with the sole of a slipper) has been the traditional method of punishing children in the home. It is assumed still to be legal, provided that no long-lasting bruises are caused.

In Pakistan, Section 89 of Pakistan Penal Code allows corporal punishment.

2.3. Corporal punishment at schools

Corporal punishment of school students for misbehaviour has been outlawed in many countries. It often involves striking the student on the buttocks or the palm of the hand with an implement kept for the purpose such as a rattan cane or spanking paddle, or with the open hand. There may be restrictions in some jurisdictions, e.g. in Singapore caning is permitted for boys only. Medical professionals have urged

an end to the practice, noting the danger of injury to children's hands especially. In India corporal punishment has been abolished by law. However, corporal punishment continues to exist and practised in many Indian Schools. Cultural perception of corporal punishment has rarely been studied and researched. One study carried out by Arijit Ghosh and Madhumathi Pasupathi discusses how corporal punishment is perceived among parents and students, with a representative sample size, in the Indian context.

2.4. Cases on corporal punishment

2.4.1. Cases of the United Kingdom

Case 1

Tyrer v. the United Kingdom

25 April 1978

In the Isle of Man, a 15-year-old boy was subjected to judicial corporal punishment for assault causing actual bodily harm of a senior pupil at his school. He was required to take off his trousers and underpants and bend over a table. He was then held down by two police officers while a third police officer struck him three times with a birch.

The European Court of Human Rights considered such punishment to be “institutionalised violence”, in violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) of the European Convention on Human Rights.

Case 2

A. v. the United Kingdom (application no. 25599/94)

23 September 1998

A supposedly “difficult” nine-year-old was caned several times and with considerable force by his step-father, causing bruising and suffering. His step-father was tried for assault causing actual bodily harm, but acquitted, as English law at the time allowed for a defence of “reasonable punishment”.

The Court considered that children and other vulnerable individuals in particular were entitled to protection, in the form of effective deterrence, from such forms of ill-treatment. It found a violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) of the Convention, as English law did not adequately protect the boy.

2.4.2. Cases of Albania

Case 1

Decision of the Administrative Court on dismissing the Administrative Act of School Niket Dardani on teacher V. P. professional performance, 2015

Field and level of education of the case

Disciplinary Procedures against staff/ pre-university education

Case description

Ondt. 16.09.2015 the teacher V.P. opened a judiciary case in order to declare illegal the administrative case that the School Niket Dardani in which she works has compiled regarding her professional performance.

- The school directorate has taken some disciplinary acts based on the findings of the Ethics Committee and Disciplinary committee of the school due to irregularities in implementing the Code of Ethics, violations of the Normative Dispositions of the Preuniversity Education for the school year 2013-2014.

- The plaintiff claims that this administrative act is illegal. Based on the plaintiff, the facts are not correct, they are not based on the personal portfolio of the teacher, due to the fact that the documents of her personal portfolio are archived in the Regional Education Authority of Tirana, which is the competent superior. As such, the information are not correct and not based in facts. As such, the plaintiff has submitted a non-pecuniary, but a professional damage, as well as an encroachment of her personality.

- The defendant arguments that the work reference compiled for the professional performance of the plaintiff does not bring consequences or demand execution of decision, but it is an opinion of the superior for the employee.

- An administrative act are those compiled by the administrative organ, bringing about judiciary consequences for the plaintiff.
- Based on the Law 69/2012 the school directory does not have a legal authority, but is a managerial structure of the educational institute Administrative Court decision on the case The Court rejects the request of the plaintiff, as it does not find legal space to support the demand for reward based on these arguments:
 1. The difference between the real and the administrative act lies in the lack of will to create, change or abolish the consequences.
 2. The Real Act (Article 5 Code of Administrative Procedures) does not have Sanction and penalty power towards the subject, but it is directed towards an undefined number of individuals.
 3. The written statement to the teacher is not a real act in this sense, but a professional reference.
 4. The written statement is not considered an administrative act, as it has no legal penalties

Legal Basis

- Articles no. 40, 41, 42 of the Law No.. 49/2012 “On the organization and functioning of administrative courts and the adjudication of administrative disputes.
- Articles 306-310 of Code of administrative procedures.
- Article 609 of Civil Code.

Case 2

Taking measures for the non-repetition of unacceptable acts of violence among students at "Sejfulla Malëshova" School, Këlcyrë, March 2017.

The scope and level of education from which the case is taken

Disciplinary procedures for students in secondary education

Description of the Case Problem

Based on a publication in a media on 27.03.2017 titled "Scandal at the school of Këlcyra, the girls fight in the middle of the classroom", the Office of the Ombudsman registered on its own initiative the handling of the case. The video that goes with the article shows a group of students of the "Sejfulla Malëshova" School, and acts of violence between two students could be noticed.

Legal provisions and the Commissioner's recommendation

Article 54 of the Constitution of the Republic of Albania guarantees the right to a special protection for children in our country.

- "3. Every child has the right to be protected from violence, maltreatment, exploitation and use for work, and especially under the minimum age for child labor, which may harm the health, the morale, or risk their normal life and development. "

- Violence against children is unacceptable under any circumstance, in accordance with the provisions of the Convention on the Rights of the Child (CRC). The United Nations Committee on the Rights of Children emphasizes that, in pursuance of Article 28 and 29 of the CRC, schools should be friendly to children and that the concept of "school" should not be limited to teachers and its leaders but should be more inclusive in terms of all its personnel.

- The CRC, Article 19 "Member States take all legislative, administrative, social and educational measures for the protection of the child from all forms of physical or mental violence, insults or maltreatment ..." and Article 28.2 "Member States take all the necessary measures to ensure that school discipline is implemented in a manner consistent with the human dignity of the child and in accordance with this Convention."

- Law No.69 / 2012 "On the pre-university education system in the Republic of Albania" has stipulated that "In the activity of the institutions of the pre-university education system, the student's interest is primary" and also in Article 61 are provided "Rights and duties of the student

". Specifically, in point 2 of this article it is stipulated that "the student has the duty: a- to respect the rights of the all students and the employees of the institution, recognized by law".

Also in the normative provisions "On the pre-university education system" are clearly defined in Chapter XIX "Disciplinary measures, namely Article 106" II. Special discipline violations by students" which are taken by the School Discipline Commission.

On the basis of legal provisions, the Ombudsman recommends taking immediate measures to examine this very case by the disciplinary committee of the school, to issue a disciplinary measure which should specifically focus not only on the unacceptable behavior of the two students but also on the influence of this behavior in the classroom environment and beyond.

The procedure followed and the Commissioner's decision

The case is addressed to the Director of the "Sejfulla Malëshova" School and to Këlcyrë Regional Education Office.

The director of the "Sejfulla Malëshova" School in Këlcyra, Ms. A.R, informs that the Recommendation was accepted and measures were taken based on legal provisions. Concretely, the Ethics and Conduct Commission has been assembled, the two students have been taken to individual counseling by the school's psychologist in order to create the psychological and emotional balance of their behavior. The commission has also assessed the two students and as for one of them it was a repeated behavior, the issue was taken to the Disciplinary Commission for review. It was decided to "decrease the grade in student behavior for student D.H based on normative provisions (article 107 / ç) as well as in the school's internal regulation (point 2). They also conducted conversations and meetings with the students in the classroom about the awareness and the re-emphasizing of non-violent manners for conflict resolution.

On account to this positive response, the commissioner considers it reasonable to close the case treatment.

Source: Recommendation on taking measures for the non-repetition of unacceptable acts of violence among students at "Sejfulla Malëshova" School, Këlcyrë, from the Ombudsman's Office. (<http://www.gazetatema.net/2017/03/27/video-skandal-ne-shkollen-e-kelcyres-vajzat-kapen-perflokesh-ne-mes-te-klases-per-nje-djale/>).

2.4.3 Cases of Belarus

Current legality of corporal punishment

Corporal punishment is lawful in the home. Article 9 of the Law on the Rights of the Child 1993 (amended 2013) states in article 9: "Every child has the right to protect his own personality from any type of exploitation and violence. The state provides inviolability of child's personality, realizes its protection from all types of exploitation including sexual, from physical and (or) psychical violence, cruel or offensive treatment, disparage, including such treatment from parents (guardians) and relatives, from engaging into criminal activity, junction to alcoholic drinks, consumption of drugs, psychotropic substances, analogues thereof, toxic intoxicating substances, compulsion for the prostitution, gambling and making actions connected with making materials or goods of pornographic character, and also from engaging of a child in activities that his/her physical, mental or moral development. The persons, who get to know about the facts of cruel treatment, physical and (or) psychological violence toward a child, which pose a threat for child's life, health and development, shall immediately report competent state body."

The Code on Marriage and the Family 1999 states in article 65 that the family is responsible for the education, maintenance and protection of children and that the family has "the pre-emptive

right and duty to determine the forms, means and methods of childrearing”; articles 66-1, 67 and 80 protect the child from cruel treatment. The Code confirms the right of children “to live in peace, security and dignity” (art. 184) and “to defend their person, honour and dignity against all forms of exploitation and violence” (art. 189). These provisions, as well as the protections for children in the Criminal Code 1999, the Code on Administrative Offences 2003, the Crime Prevention (Principles) Act 2014 and the Constitution 1994 are not interpreted as prohibiting all corporal punishment in childrearing.

Law reform has strengthened children’s protection from violence but has not prohibited all corporal punishment. According to the national report to the Universal Periodic Review in 2015, the Code of Administrative Offences has been amended by the addition of administrative penalties for violence against family members to supplement the provisions under criminal law. In 2013, administrative liability was introduced to the Code for battery that does not cause bodily injury and deliberate infliction of pain or physical or mental suffering.¹

¹ 9 February 2015, A/HRC/WG.6/22/BLR/1, National report to the UPR, paras. 18 and 129

² <http://en.ngo.by/news/4cae424c4c31.html>, accessed 2 July 2015

A draft domestic violence law is under consideration.² We are not aware of proposals to prohibit all corporal punishment in this context.

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. Article 30 of the Law on the Rights of the Child 1993 punished “teachers and other staff of children’s homes, boarding schools and other boarding institutions who commit anti-pedagogical or immoral acts against pupils”, but this article was repealed when the Act was amended in 2008. Under the Code on Marriage and Family 1999, orphans and children left without parental care have the right to “respect for their human dignity, protection of rights and legitimate interests” (art. 177), to “live in peace, security and dignity” (art. 184) and to “defend their person, honour and dignity against all forms of exploitation and violence” (art. 189). But the Code does not explicitly prohibit corporal punishment.

Day care

There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.

Schools

Corporal punishment is unlawful, though it is not explicitly prohibited. Article 27 of the Law on the Rights of the Child 1993 (amended 2013) states: “Every child has the right on protection his honor and dignity protected by the Constitution of the Republic of Belarus. Discipline and order in educational establishments are kept by methods based on mutual respect and justice and excluding humiliation.” There is no authorisation for corporal punishment in the Code on Education 2011: students are entitled to “protection of life and health in the educational process” (arts. 31(1.7) and 31(4.6)); teaching staff have the right to “choose pedagogically sound forms and methods of training and education” (arts. 52 and 89(1.4)) and must “respect the honour and dignity of students” (art. 53).

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions under article 9 of the Law on the Rights of the Child 1993 (see under “Home”), but it is not explicitly prohibited. Article 36 of the Law on the Rights of the Child states that children in special educational or special health care institutions, which includes children in institutions for young offenders, have the right to humane treatment. Similarly, the Law on Prevention of Neglect and

Offences of Minors 2003 states that juveniles in detention have the right to be treated “humanely, without degrading treatment” (art. 8). The Criminal and Executive Code 2000 does not include corporal punishment among permitted disciplinary measures in penal institutions (arts. 55, 61, 129, 130 and 185), though it does provide for the use of physical force, including for “the prevention and suppression of offences” and with implements including “rubber sticks” (arts. 78 and 79).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not among lawful sanctions in the Criminal Code 1999 and Criminal Procedure Code 1999.

Universal Periodic Review of Belarus’ human rights record

Belarus was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). The following recommendation was made:

“Forbid corporal punishment of children and take order in that matter (Brazil)”

The Government accepted the recommendation, but stated that it was already implemented, that “there are specific provisions enshrined in Belarusian legislation prohibiting child abuse, including the corporal punishment of children” and that “the Criminal Code and the Administrative Offences Code establish criminal and administrative liability, respectively, for causing grave, moderate or minor bodily harm, torture and other forms of violence”.⁴ As noted above, according to our research there is no explicit prohibition of corporal punishment in the Law on the Rights of the Child or other legislation.

Examination in the second cycle took place in 2015 (session 22). The Government made no reference to corporal punishment in its national report.⁵ No recommendations were made specifically on corporal punishment during the review but the Government accepted a number of recommendations to combat violence against children.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(8 April 2011, CRC/C/BLR/CO/3-4, Concluding observations on third/fourth report, paras. 39 and 40)

“While noting that corporal punishment is unlawful as a sentence for a crime, and that it has been prohibited in the regulations of education establishments, the Committee, nevertheless, remains concerned that corporal punishment is lawful in the home, not explicitly prohibited in institutions, including in the penal system and alternative care settings, and is widely accepted in society.

“The Committee reiterates its recommendation (CRC/C/15/Add.180, para. 40 (d)) that the State party prohibit all forms of corporal punishment at home, in schools and other institutions and develop measures to raise awareness on the harmful effects of corporal punishment, and promote alternative forms of discipline in families, in institutions and the penal system, to be administered in a manner consistent with the child’s dignity and in conformity with the Convention. In this regard, the Committee draws the State party’s attention to its general comment No. 8 (2007) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

Committee on the Rights of the Child (13 June 2002, CRC/C/15/Add.180, Concluding observations on second report, paras. 39 and 40)

“The Committee expresses its concern about the insufficient information and awareness of the ill-treatment and abuse of children in the home, in schools and in other institutions.

“In light of article 19 of the Convention and in line with its previous recommendation (ibid., para. 40), the Committee recommends that the State party: ...

d) prohibit all forms of corporal punishment at home, in schools and other institutions and develop measures to raise awareness on the harmful effects of corporal punishment, and promote alternative forms of discipline in families to be administered in a manner consistent with the child’s dignity and in conformity with the Convention....”

Prevalence/attitudinal research in the last ten years

A survey conducted in 2012 found that two-thirds (64.5%) of children age 2-14 years were subjected to at least one form of psychological aggression or physical punishment from their parents or other adults in the household in the month preceding the survey. The majority of children experienced psychological aggression (58.7%) while a third (34.2%) were subjected to physical punishment. In contrast, only 7.9% of respondents believed children should be physically punished, reflecting contradictory opinions and practices regarding child “discipline”. Physical punishment is more common among boys than girls (37.2% compared to 31.4%).

(National Statistical Committee of the Republic of Belarus & UNICEF (2013), Multiple Indicator Cluster Survey of the Situation of Children and Women in the Republic of Belarus 2012: Final Report, Minsk, Belarus: National Statistical Committee of the Republic of Belarus & UNICEF)

2.4.4 Cases of Russian Federation

Case 1 APPEAL DEFINITION of the KRASNOYARSK REGIONAL COURT (May 26, 2014 on the case No. 33-4894/14)

The employee of social institution (boarding school) was dismissed according to Art. 336 of the Labor Code of Russian Federation, for application of the methods of education connected with mental violence over the student that was expressed in the shown fieriness in communication with colleagues and pupils and in public charge studying in an unconfirmed fact of sexual contact that has led to threat of life and health of the minor teenage girl. The court recognized dismissal as lawful and has confirmed that the boarding school for mentally retarded children is the social establishment which is carrying out training. This establishment as a type of the organization which is carrying out training provided by the law on education. Activity of the tutor is carried out according to the employment contract and duty regulations according to which the tutor carries out social and pedagogical correction, assists in education according to social programs, that is carries out obligations for education and training of pupils. Therefore, the claimant is pedagogical employee of the organization which is carrying out training and the special bases of dismissal provided by the Labor Code of the Russian Federation are applicable to him.

Case 2 APPEAL DEFINITION of the SUPREME COURT of the REPUBLIC OF BASHKORTOSTAN (March 27, 2014 on the case No. 33-4227/2014)

Dismissal of the mathematics teacher for application of the methods of education connected with physical and (or) mental abuse over the identity of the student was recognized lawful. Mental violence over the child during individual training who had made an attempt of a suicide directly after the termination of a lesson. The negative mental impact of the claimant on the student which led to humiliation of self-respect of the student and violation of the rights of the student was confirmed by the proofs provided to court.

Here are the links to the legal base, connected with disciplinary procedures at schools. Federal Law of Education of Russian Federation (2012)

http://www.lexed.ru/search/detail.php?ELEMENT_ID=830#Статья%2043
http://www.lexed.ru/obrazovatelnoepravo/analitika/obzory/detail.php?ELEMENT_ID=5863
http://www.lexed.ru/praktika/sudebnaya-praktika/baza/list.php?SECTION_ID=52
http://www.lexed.ru/praktika/sudebnaya-praktika/baza/list.php?SECTION_ID=30
http://www.lexed.ru/praktika/sudebnaya-praktika/baza/list.php?SECTION_ID=54

2.4.5. Cases of Poland

The disciplinary procedures in schools, duty of care and liability – the Polish case.

The disciplinary procedures for teachers in Poland are similar at all levels of education. For example, at the levels of primary, secondary and high schools, disciplinary proceedings against teachers are regulated by the Act of 26 January 1982 – Teacher’s Charter. According to this legal act, teacher shall be liable to disciplinary action for misconduct against the dignity of the teaching profession or in their obligations referred to in Article 6 of this legal act¹. These include the duties to:

- 1) fairly carry out tasks entrusted to him the position and basic functions: teaching, teaching and caregiving, including tasks related to ensuring the safety of students during activities organised by the school;
- 2) support each student in its development;
- 3) aim to fully own personal development;
- 4) educate and educate youth in love for the motherland, in compliance with the Constitution of the Republic of Poland, in an atmosphere of freedom of conscience and respect for every human being;
- 5) take care of shaping moral and civic attitudes of students in accordance with the idea of democracy, peace and friendship between people of different nations, races and worldviews².

In Poland the disciplinary proceedings brought against teachers are divided into two stages:

1. the **investigative proceeding**,
2. the proper disciplinary **proceedings**.

The investigative proceeding is initiated by the disciplinary spokesperson appointed to the disciplinary committee of first instance established at the voivode³. The disciplinary spokesperson notifies the initiation of the proceedings to the teacher concerned and the head of the school where the teacher is employed⁴. In case of the proceedings concerning infringements of **children’s** rights and **child welfare**, the disciplinary spokesman shall also notify the Ombudsman for Children. After the investigation, the disciplinary spokesperson directs the request to the disciplinary committee of first instance for a disciplinary action or issues a decision to discontinue the investigation.

Upon a receipt of the request for a disciplinary action from the disciplinary spokesperson, the disciplinary committee of first instance may issue a decision to initiate the disciplinary proceedings or a decision to refuse to conduct the disciplinary proceedings. In the first case, in the event of confirmation of the alleged offenses, the disciplinary commission shall impose a penalty in the form of:

- 1) reprimand with a warning;
- 2) dismissal;
- 3) dismissal with the prohibition to employ the teacher in the teacher profession within a period of 3 years from the moment of the sanction application;

¹ Art. 75, point 1, the Act of 26 January 1982 – Teachers’ Charter (uniform text, Journal of Law 2014, item 191).

² Art. 6, the Act of 26 January 1982 – Teachers’ Charter (uniform text, Journal of Law 2014, item 191).

³ The voivode is the representative of the government in the given voivodship. In turn the voivodship is the largest administrative division of the country. In Poland there is a three-tier administrative division that divides the country into 16 voivodships, 380 counties and 2478 communes.

⁴ In the case of a teacher acting as the school principal, the disciplinary spokesperson notifies the teacher and the school authority. In Poland, the governing bodies, depending on the type of a school or educational institution, are: the commune, the county, the voivodship.

4) expulsion from the teacher profession⁵.

The accused teacher in the investigation and in the disciplinary proceedings has the right to use the assistance of their lawyer. They also have the right to appeal against the disciplinary committee's decision to the second instance body which is the disciplinary board with the minister responsible for education.

Case:

The high school Principal invited girls dressed in short skirts to his office and took secret photos of them without their consent. He also provided students with confidential teaching documents.

The case got to the public prosecutor who found that no offense had been committed, but the actions described in the notice were incompatible with the dignity of the Principal's position and were morally questionable.

The Disciplinary Commission for Teachers examined the case of the accused Principal and issued the following disciplinary ruling:

- it was considered that he had acted against the dignity and duties of the teacher profession, for which he was liable to disciplinary action,
- the man was dismissed from the employment and forbidden to work in the profession within 3 years from the ruling.

BIBLIOGRAPHY

1. Corporal punishment. Encyclopædia Britannica. 9 November 2014.
http://www.endcorporalpunishment.org/pages/progress/table_q-t.html Global Initiative to End All
2. Corporal Punishment of Children. Plutarch, Moralia. The Education of Children, Loeb Classical Library. Harvard University Press, 1927.
3. Middleton, Jacob (2005). "Thomas Hopley and mid-Victorian attitudes to corporal punishment". History of Education.
4. Global Initiative to End All Corporal Punishment of Children (2012). Retrieved 1 May 2012. "Key Judgements." The ruling concerned the Isle of Man, a UK Crown Dependency.
5. UN Human Rights Committee (1992) "General Comment No. 20". HRI/GEN/1/Rev.4.: p. 108
UN (2012) "9 . Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Archived 8 November 2010 at the Wayback Machine.. United Nations Treaty Collection. Retrieved 1 May 2012.
6. UN OHCHR (2012). Committee on the Rights of the Child. Office of the United Nations High Commissioner for Human Rights. Retrieved 1 May 2012.

CHAPTER 3

ENSURING INTERESTS OF THE PARTICIPANTS OF THE EDUCATIONAL PROCESS AT SCHOOL

3.1. Social, psychological, pedagogical and legal aspects of protecting interests of the main stakeholders of the educational process at school

School is a social institution, a public-state system designed to meet the educational needs of society, the individual and the state.

Motive - the inner motivation of the individual to a particular type of activity (activity, communication, behavior) associated with the satisfaction of a certain need.

⁵ Art. 76, the Act of 26 January 1982 – Teachers' Charter (uniform text, Journal of Law 2014, item 191).

Interest - attention, curiosity, shown to someone, something, the primary focus of thought on an object.

Trainee is a person enrolled in an educational institution for a particular course or program and has begun his studies.

The participants in the educational process are students, legal representatives of underage students, pedagogical workers.

The process is a sequential change of states; A set of sequential actions to achieve any result.

Educational process - a specially organized, developing in time and within the framework of a certain educational system, the interaction of educators and pupils, aimed at achieving the stated goal and designed to lead to the transformation of personal qualities and qualities of pupils. Aspect (from Latin Aspectus - view, appearance, view, point of view) is one of the sides of the object in question, the way it is seen from a certain point of view.

In the Explanatory Dictionary of the Russian Language Ozhegov's (Tolkovi slovar ruskogo yazika Ozhgova(in Russian) concept of "secure" is defined as: "... supply something in the right amount, make it completely possible, real, certain, realizable".

Education is the most important foundation for the formation of the individual, society and the state. In turn, the socio-economic development of society entails changes in the system of educational relations and mechanisms for their regulation, which implies the improvement of the regulatory and legal framework of the state in the educational sphere. The school is an extremely complex and highly branched mechanism by its internal structure, which performs a sociocultural function in society. The educational situation as a reconstructive image of the entire amount of external factors, a set of conditions, circumstances and relations should ensure the quality of educational outcomes (in a narrow sense) at the level of state standards and government orders. General indicators of the quality of education correspond to the graduate model, taking into account the adoption of the following norms: training; The formation of general educational skills; Possession of technology, critically providing creative activity; Good breeding; The integral hypostasis of the individual in the mental, social, communicative, cultural, biological, activity and thought-activity aspects; Life security and social adaptation. The most important aspect of the interaction and interconnection of the pupil and the school is the formation of the need-motivational sphere of the individual, where the interest is one of its fundamental structural elements.

3.2. Ensuring interests of students and parents

Before proceeding to the description of the interests of participants in the educational process, we first of all need to consider the essence of the notion of "interest". In psychology, interest is understood as an emotionally colored device aimed at an activity or an object caused by a positive attitude toward the object (Vygotsky L.V). This is a specific form of manifestation of the cognitive need, ensuring the orientation of the individual to the realization of the goals of activity and thereby contributing to the orientation of the individual in the surrounding reality. The concept of interest is defined as a need-based attitude or a motivational state that induces cognitive activity, which develops primarily in the internal plane. Interest - one of the permanent and powerful motives of human activities. Interest is the real cause of action, felt by a person as a particularly important reason. Interests are classified according to their content, that is, according to their subject-matter; By breadth of subject content; By depth, by their rootedness in the system of personality needs; On stability; By force; By duration. Interest occupies an intermediate position in the increasingly complex series of the person's need for the world: it arises from the cognitive drive (desire) to this or that area of reality and, in the process of its development, can grow into a stable personal need for an active, active attitude toward one's subject, . Based on the foregoing, we can say that interest qualitatively affects the inclusion and sustainable performance of activities. The demand-motivational sphere of personality is the "trigger mechanism" for the implementation of the criterial educational process in the school. Participants in the educational process at school are students, teachers, legal representatives of students. Let's consider social and psychological-pedagogical bases of

maintenance of interests of students in educational process. In accordance with the modern pedagogical paradigm, students act as subjects of educational and cognitive activity.

Cognitive motivation is a system of motives that motivate the learner to an effective learning activity. The motivational cognitive sphere includes the affective and volitional sphere of the personality, the experience of satisfying a certain need associated with cognitive activity. Therefore, cognitive interest is of special importance at school age. Since in the school the main activity is cognitive, aimed at studying the system of knowledge. Thus, cognitive interest in the most general definition can be called the person's selective activity in the cognition of objects, phenomena, events of the surrounding world, which activates mental processes, human activity, and cognitive capabilities. A feature of cognitive interest is its ability to enrich and activate the process of not only cognitive, but also of any human activity, since the cognitive principle exists in each of them. Within the broad enough concept of "cognitive interest", one can single out a special kind of interest - interest in the subject. At present, the problem of the formation of interest in the subject has become urgent, due to the fact that there have been significant changes in society and education, which are largely determined by the specifics of the transition to an information society. The rapidly increasing volumes of educational information came into conflict with the very possibilities of its assimilation.

Education of sustainable cognitive, creative interest is a long and complex process. It needs a system of carefully thought-out techniques, which leading from curiosity to interest, from a fickle interest to more stable deep cognitive interest, which characterized by the tension of thought, effort of will, manifestation of feelings, active search, which aimed at decision of cognitive tasks, that is, to such interest which becomes a property of personality. It should be said, formation of the pupil's interest in cognitive activity, is one of the main tasks of education.

The most important factor, which directs today's educational system and which is not practically taken into account by modern pedagogy, is the student's self-order. It must be noted that at present the student's self-order is realized in the form of educational basic services and the possibilities of the variable component. We particularly emphasize this point in connection with the fact that it is very important in the secondary and senior links. In the system of professional education without its consideration, is absolutely impossible the subsequent independent productive activity of the teacher. The student's self-order is formed from their inertial educational needs, educational scenarios of parents, adults and sociocultural organizations. The most important place in this process is given to the teacher. Ideally, the student's self-order is acceptance as the guide to the activity of the quintessence of the teacher's self-order.

Therefore, the social and psychological-pedagogical bases for ensuring the interests of teachers in the educational process are the most important direction for the development of the modern type of pedagogical professionalism in the school. As you know, the order of society is constantly changing, i.e. has a sociocultural character. The closest step in the development of the education and professionalism of the teacher presupposes the creation of an artificial subject environment in the school. This means that the process of teaching each discipline should reflect the integral ontology of personality development. Ensure this integrity can only spiritual and moral figure in education - a teacher. Becoming in the position of the anthropological paradigm, he must correlate the demands of the social order with the formed autonomous self-order. His self-order as a teacher should be aimed at cultivating a person in the unity of his holistic hypostasis (close unity of much in one). Following the model of the integral hypostasis of a person's personality means the necessity to adhere to the integrative unity of the biological, social, cultural, psychological, spiritual, thought-activity, activity and communication components of the ontology of modern man in the teaching of general subjects (taking into account the requirements of this socio-cultural situation). It should be noted that these components should be transformed into the self-order of the educator as a conductor and implementer of general cultural values.

3.3. Ensuring interests of teachers and administration

The psychological structure of the teacher's activity includes the interrelation, system and sequence of the teacher's actions aimed at achieving the set goals through the solution of pedagogical tasks. The main

and constant requirement for the teacher is the love of children, the pedagogical activity, the presence of knowledge in the area where he teaches children, extensive erudition, pedagogical intuition, highly developed intellect, a high level of general culture and morals, professional mastery of a variety of teaching methods and the upbringing of children. In order to make the student a person - and now we need people who need the time as never before - the educator himself must have independence, literacy, individuality, independence and many other qualities, and systematically develop them in himself.

The interests of teachers in the educational process, albeit directly related to cognitive activity, are rather professionally oriented. Developing interest in the process of cognition and encouraging pupils to actively cognitive activity, the teacher creates the conditions for the formation of an active, purposeful, active and creative personality. Basically, the interests of teachers are aimed at how they conduct classes, how the children perceive their subject, to the content and quality of educational activities. The interests of teachers are directed to the educational process itself and to the way in which they manifest themselves in it. Also, in the senior and middle level, the teacher can consciously or indirectly implement the orientation of children to a certain choice of professions, in the course of lessons on which, in one way or another, topics related to the choice of professions are touched upon. Very important components that support the teacher's educational activity are both material and moral incentives. Material incentives include bonuses that the teacher receives for hard work. Moral, or social incentives include: praise from colleagues and school administration, parents' respect for the teacher, the interest that the students show to the subject taught by the teacher. Moral incentives include letters and diplomas, which the teacher is awarded for his work. The incentives listed above also contribute to the orientation of the teacher's interests in self-development, raising his professional qualifications.

The most important component of teachers in the school is the administration of the educational organization. Disclosure of social and psychological-pedagogical aspects of ensuring its interests in the educational process is the most important condition for improving the quality of the school's work. There are three basic models of management of educational systems. The first model, based on coercion, using predominantly directives and administrative-command methods, is more traditional for our education, but it contradicts the very essence of its modernization and leads him to a dead end. The second model, based on economic interests, causes a lot of disagreement both between the participants of the system and in its relations with the surrounding, leads to the commercialization of education, exacerbates professional and administrative conflicts, hence it is associated with unjustified risks. The third model, based on the coincidence of the values and interests of different social groups within and outside the organization, requires careful theoretical and methodological elaboration, however, it seems to be the most productive.

The interests of administration (as well as teachers') are professionally oriented, but not on the educational process' organizing at school. The administration is important to the quality of the work of teachers, which affect the quality of the students' knowledge. The interest of employees, working in the school's administration, is career growth.

Social, psychological and pedagogical aspects of ensuring the interests of parents (legal representatives) of students are the most important task of society and schools. It must be noted that the last (but not the most important) participants in the educational process are parents of pupils who want the best for their children. They want their children to receive a quality education. Parents, like teachers, shape their children's craving for knowledge, they develop interest in the educational process, the formation of cognitive activity. The interests of parents are indirectly aimed at the process of education, but they are also aimed at ensuring that pupils and their children receive knowledge and skills in a particular area. In order to comprehensively develop their children, parents tend to write down their various sections, hire them tutors, etc.

Thus, the order in the education system is the genesis of the three orders listed above: social (parent), teacher self-order and pupil self-order. The forthcoming activities to ensure their unity (integration) need to be carried out on the ontology of the educational process and channeled to eliminate the contradictions existing between them. The most optimal way to function and develop is the system in which the goals of these orders coincide or are taken into account by one of the parties. If equilibrium can't be reached, then

the pupil's self-order must be the leader. In the pupil's self-order, these principles can't be equally represented, characterizing the personality in its integral hypostasis. Some are found in the beginning, and the teacher will have to develop them. Others can be absent altogether, then it is necessary to promote their formation and development. Still others can remain in an unsystematic, chaotic and spontaneous state, requiring procedures for the formation and ordering. Presented in the unity in the professional functions of the educator, they form the activity of cultivating an integral personality capable of formally meeting the needs of the social order, while retaining the right to potentially intentional aspirations, consisting in identifying creative, individual and cultural self-actualization of the person's life-activity and activity.

Thus, it can be concluded that the efficiency level of cooperation between the administration, teachers, pupils and parents, and the level of the effectiveness of their activities as well as the level of personal development and psychological health. Socio-psychological service in the education system fulfills one of its main goals: ensuring the interests of participants in the educational process

BIBLIOGRAPHY

1. Meshcheryakov, B., V. Zinchenko Great psychological dictionary Available at: http://www.gumer.info/bibliotek_Buks/Psihol/dict/08.php (Accessed 11 March 2017).
2. Ozhegov, S.I. Dictionary of the Russian language: About 65000 words and phraseological expressions. 26th edition, OOO Onix Publ, 2008, 736 p.
3. Pedagogical, psychological aspects of activization of cognitive activity. Available at: <http://www.eduinfluence.ru/inehs-139-5.html> (Accessed 11 March 2017).(In Russian).
4. Selezneva, N. A. Glossary of agreed terms and definitions in education of the members of the Commonwealth of Independent States, NITY MISiS Publ., 2012, 244 p.
5. Uskova, S. A. Cooperation of the teacher and parents in the upbringing and education of school-age children, SPb, APO Publ., 2008, 61 p.
6. Andreyeva, A.D. Motivational basis of family strategy of school education of child, Science Time, 2015, 8 (20), pp. 11-25.
7. Vasiliev, I.A. Quality of school education: a subjective view of the objective process, Sociological Journal, 2013, 4, pp. 72-88.
8. Danilova, E.E. Are parents ready to take responsibility for the education of their children, Science Time, 2015, 9, pp. 9 (21), P. 65-70.
9. Khomenko, I. School and parents: stages of development of social partnership, Head teacher, 2007, 4, pp. 83-88.
10. Code of Education of the Republic of Belarus, TamBy.info. Information and reference portal of Belarus [Electronic resource], Access mode: <http://www.tamby.info/kodeks/edu.htm>.

CHAPTER 4

LEGISLATIVE BASIS OF LIABILITY AT SCHOOL AND RESPONSIBILITIES TO ENSURE ACCOUNTABILITY

4.1. Legal basis of responsibility of the school stakeholders

High social significance of education, multidimensional, multidisciplinary nature, relationship of the autonomy of educational institutions and teaching staff with the need for steady execution of pedagogic discipline determine the originality of the legal relations in the field of education, which leaves its mark on the legal responsibility of subjects of the relevant legal relations.

Principles governing the regulation of responsibility in the field of education are:

-a combination of the common basis of legal liability with special basis, specific only to the field of education;

-violations of basic human and citizen rights in education serve as offences in pedagogical legal relations.

-a combination of public and private law elements in the regulation of liability;

-peculiarity of sanctions of responsibility in the field of education, reflecting the features of pedagogical legal relations, particularly the educational character;

-limited use of sanctions impeding an individual's right to education;

-the combination and interrelation of different kinds of legal liability prescribed by law in education.

The feature of legal responsibility in education is its integrated nature, when it includes elements from different types of liability and reflects the particular content of pedagogical relationships. For relations in the sphere of educational activities because of their multidimensional are common all types of legal responsibility such as legal, criminal, administrative, disciplinary, and that was fixed in separate special industry legislative acts like criminal code of the Republic of Belarus, the code of the Republic of Belarus on administrative offences, the labor code of the Republic of Belarus.

In the educational sphere could be committed and are committed:

-Civil Torts (failure of educational institution to fulfill the terms of concluded economic contracts, lease agreements, offences of the legal forms provided for educational institutions, etc, prescribed by the civil legislation.);

-administrative offences committed by officials of educational institutions and those institutions themselves (violation of administrative law requirements on the management of the educational institution, interaction with the education authorities, violation of financial and tax laws, etc.);

-criminal acts (bribes by the teachers, extortions from parents and pupils, fraudulence in the "organization" of educational institutions, students' theft of property in the premises of the educational institution, brutal insult of the pupils, etc.);

-disciplinary offenses (failure of the students to comply with the requirements interschool discipline, i.e. internal regulations, failure to comply with the requirements of the curriculum and the educational process, tardiness of a teacher or other categories of educators to work, etc.)

Specialists in the field of educational law offer and justify a special kind of legal responsibility in educational activities, arising only in case of unlawful encroachment on the educational relationship. Accordingly, a special place is occupied by the offences, having actually educational and legal character, i.e. violating the norms of special education legislation.

The educational legal responsibility is manifested in the application of sanctions of a certain nature, arising from the content of educational legal relations. As a specific relationship educational legal responsibility is characterized by special features: subjects, content, reasons for the emergence, resulting from a specific series of educational legal relations; the specific nature of the sanctions.

Offensive of educational liability is conditional, as a rule, on violation of citizens' rights in the field of education and failure (improper fulfillment) of educational organization, pedagogical workers to comply with their responsibilities.

4.2.Educational liability

Educational liability is directly linked to the implementation of the educational process, including stages of admission to educational institutions and release of, particularly, final (State) certification of graduates. Improper fulfillment of prescribed teaching standards of the actions or their failure leads to certain negative, particularly for the learner, consequences. So, unreasonable cancellation of the lesson, transfer of educational material not in full, the teaching of improper quality lead to infringement of the student's right to receive an education in the amount, provided by established requirements and appropriate quality.

One of the criteria of the legislative establishment of educational liability is not so inappropriate behavior associated with violation of established legal norms, as social harmfulness of the consequences of that breach.

Educational liability differs from other kinds of legal liability in the following ways:

-can be installed only in the educational sphere, in the educational process, during the learning interaction between the student and the teacher. This is how it differs from the responsibility of an educational institution in relationship with the learner, for example, about the fulfillment of licensing requirements and conditions, which have a legal and administrative nature;

-educational liability is a consequence of the failure to perform pedagogical standards. Failure to comply with and violation of the teaching's norms is recognized as an offence only in cases, which are often imposed by educational institution itself.

Thus, non-fulfillment of the schedule's deadline serves as a basis to exclude the student from school. The legal consequences of such a breach are installed, in most cases, by the educational institution itself, and the basis of liability are usually fixed in the Charter and other local acts of educational institutions.

Educational liability has indirect effects on the regulation of social relations arising during the educational process.

Educational violations become offences only in cases when they are fixed in the regulations, and on condition that they obtain the feature of social harm, violate the rights, legally protected interests of others, threaten the fundamentals of law and order, public administration, thereby causing or may cause harm to other persons, the State. Thus, not every violation of established norms in education represents a potential offence.

For example, failure of the educational institution to comply with the conditions prescribed by license, negative results of the certification of educational institution, realization of activities without the proper license or activities prohibited by law, or any activity that does not match its statutory goals. Parents do not send their child to school for some reason (religious, national), violating the constitutional duty to get basic general education. The teacher refused to teach a student, justifying it as his inability to learn etc.

Parties to a listed offences can act as institutional parties (educational establishments or education authorities), as well as individual parties of educational legal relations (students, their parents, teaching staff, heads of educational institutions and education authorities).

The Education Code of the Republic of Belarus provides for the responsibility of educational institutions for quality of education, proper methodical providing of selection and placing of qualified personnel, that is controlled in the course of State accreditation of each educational institutions for compliance with the content and quality of education to requirements of State standards.

The responsibility of educational organization is also possible for nonperformance or improper performance of the obligation to provide educational service, for its quality, which is regulated directly by the contract and the requirements, which is set by law to education. The Law defines a number of grounds of liability of educational institutions, in particular, for failure to comply with the functions underlying within its competence; implementation of the educational program in incomplete capacity, curriculum, schedule, quality education, violation of the rules and freedoms of students and workers, their life and health during the educational process.

Supervision of educational functions, and therefore the responsibility of educational institutions is imposed on the public authorities. In most cases, in the legislation of the Republic of Belarus and the Russian Federation there are no norms establishing the liability for the failure of legislation on education, making it difficult to prevent and eliminate violations of the law on education, hinders the State supervisory and monitoring functions in the field of education.

4.3 The legal liability of educators

The legal liability of educators is one of the fundamental and essential element of the system of legal guarantees of the realization of their duties and, thus, part of their legal status. Teachers' knowledge as their responsibilities and the liabilities that they may carry for nonperformance or improper performance

of their administrative and official duties, is the most important guarantee that pedagogical employee will be able to continue his professional pedagogical activity, grow professionally and figure on effective guaranteeing of their civil and professional rights and legitimate interests.

Teaching staff are responsible for the professional performance of their activities, increase of a professional level (which is confirmed by the certification every three years).

The educational and labor responsibility of teaching staff is provided for law "On education". A legislator puts down among the grounds of the dismissal of a employee at the initiative of the administration of educational institutions (besides without the consent of the Trade Union of education workers) to: 1) the repeated flagrant violation of the Charter of the educational institution during the year; 2) use, including a one-time, parenting skills, associated with a physical and/or psychological violence to the person of a pupil.

The legal unit is singled out as an independent legal under various names in many laws on the formation of the CIS countries and the Baltic States as unit is allocated. For example, "Rights, duties and obligations in the field of education" is in the code of the Republic of Belarus on education, "Rights, duties and responsibilities of students, parents and teachers» is in the Education Act of the Republic of Lithuania. Sections of "The right of foreign citizens and stateless persons to education" and "Responsible for the violation of the law" are in the Education Act of the Republic of Latvia. The law of the Republic of Estonia legal block includes sections on "legal framework for the work of the institutions of public education", "the right of citizens of foreign States on education".

The concept of a legal framework of EURASEC on the formation of the year 2004 is the basic legal act of the Eurasian Economic Union, have proclaimed the need to form a legislative conditions for unification and harmonization of legislation in the field of education of the EURASEC. General principles of State education policy and a unified system of State guarantees of the rights of citizens of Member States of the Eurasian Economic Community on education must be formulated to achieve this goal.

Fundamentals of the legislation of the EURASEC on education must be based on respect for the right of every citizen to get free primary General, basic general, secondary (full) general education; a statement by the State as a guarantor of the constitutional rights of citizens and other persons permanently residing in their territories, to education.

Member States of EURASEC must establish a uniform amount of rights and responsibilities of students. The State must secure the control of the provision of equal opportunities for different social layers of population to get free education of high quality, both in his State and in other States that are members of the Eurasian Economic Community; establish a uniform amount of rights, duties and responsibilities of parents (legal representatives) of minor children; establish uniform requirements and limitations (criminal or medical contraindications, a list of which shall be determined by national law) for individuals to receive the right to engage in teaching activities.

Thus, the establishment of legal responsibility for violations of legislation in the field of education is a necessary condition for its effective application, as well as the realization and protection of the rights of citizens and organizations in this area. The question of legal liability in the field of education is not regulated in the legislation. So, the Code of the Republic of Belarus on education, the law of the Russian Federation Educational Act enshrines mainly the rights and responsibilities of participants in the educational process. The law on education, determining responsibility for violations of the right to education, as well as other violations of the law in this area, tend to mailing in nature.

Case study

1. 18 citizens of the Czech Republic of Roma origin complained that, as a result of their placement in "special schools", they became victims of discrimination based on race or national origin in violation of the principles of article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms in Combination with Article 2 of Protocol No. 1 (the right to education) to the Convention, as they were subjected to less favorable treatment than other children in a similar situation, without any

objective and reasonable justification. In their application to the European Court of Human Rights, the applicants alleged, inter alia, that in the exercise of their right to education, they were victims of discrimination on grounds of racial or ethnic origin.

Date of the Resolution: 13/11/2000. Number of the complaint: 57325/00. Articles of the Convention: 14, Protocol 1, Art. 2.

<https://roseurosud.org/espch/evropejskij-sud-po-pravam-cheloveka>

Decision: The Court, having recognized the complaint in this part as admissible on the merits, issued a ruling in which it recognized that there had been no violation of the requirements of Article 14 of the Convention in combination with Article 2 of Protocol No. 1 to the Convention. However, the Grand Chamber, having taken the case to the proceedings at the request of the applicants and having examined the submissions of several relevant international human rights organizations, did not agree with the majority by recognizing that the Czech authorities violated the norms of the Convention. The Court noted that although the authorities of the Czech Republic, like some other countries, face serious objective difficulties in providing Roma children with equal opportunities for education and their integration into society, placing children of a certain ethnic origin in special schools providing a lower level of education compared with ordinary schools, is discrimination.

2. Exception from school of children due to the lack of a registration card from one of the parents (Timishev case v. Russia, 2005). Between September 1998 and May 2000, the 9-year-old son of the applicant and his 7-year-old daughter studied at school No. 8 in the city of Nalchik in Kabardino-Balkaria. On 24 December 1999 the applicant received compensation for the property lost in Chechnya. In exchange for compensation, he had to hand over his migration card, which was a document issued by local authorities and confirming his residence in Nalchik and his status as a forced migrant from Chechnya. On September 1, 2000 the applicant's son and daughter went to school. However, they were denied admission, as the applicant was not able to produce a migration card. The school principal agreed to admit children informally, but told the applicant that his children's education would be immediately suspended if the education department found out about it. On 4 September 2000 the applicant appealed to the court for the refusal of the Department of Education and Science of the Nalchik Administration to admit his children to school. The Department replied that after 24 December 1999 the applicant had no legal grounds to remain in Nalchik, and that his claim constituted a violation of the legal rights of other children, due to the fact that school No. 8 was overcrowded without his children.

This case is based on two complaints (No. 55762/00 and No. 55974/00) against the Russian Federation lodged with the European Court of Human Rights in accordance with Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms by a Russian citizen, Mr. Ilyas Yakubovich Timishev, on February 25 and March 9, 2000.

<http://www.srji.org/resources/search/4/>

Decision: The Convention and its Protocols are not tolerant of the denial of the right to education. The government confirmed that Russian laws do not allow this right of children to be used depending on the place of residence and registration of their parents. It follows that the children of the applicant were deprived of the right to education provided for by the national law. Their expulsion from the school thus did not meet the requirements of Article 2 of Protocol No. 1. Therefore, there has been a violation of Article 2 of Protocol No. 1.

3. On September 29, during the agricultural work in "Voskhod-Agro", a student of the 8th grade of secondary school No. 11 Molodechno, 13-year-old Victoria, was killed. She was hit by a truck. The girl died on the way to the hospital. The Molodechno District Department of the Criminal Investigation Department instituted proceedings on the grounds of the crime provided for in Part 2 of Art. 317 of the Criminal Code of the Republic of Belarus. (Violation of the rules of road traffic and the operation of vehicles accidentally resulted in death of a person). In early October, the father of the schoolgirl Oleg P. sent an application to the Molodechno Interdistrict Department of the Minsk Department of the State

Labor Inspectorate of the Ministry of Labor and Social Protection. He asked for a special investigation into the accident. According to human rights activists, a number of violations are seen in the actions of the employer (SEC "Voskhod-Agro") and education officials (who directly sent the schoolgirl to agricultural work). At the end of October Molodechno interdistrict department of the State Labor Inspectorate Department refused to investigate. The main argument was that in Belarus it is possible to enter into an employment contract only with citizens aged 14 and only 13 dead. And neither the labor nor the civil relations between Voskhod-Agro and the schoolgirl have been established.

Decision: The investigation revealed a number of violations by officials of the educational institution. A criminal case was initiated under Part 2 of Art. 165 of the Criminal Code of the Republic of Belarus (On improper performance of duties to ensure the safety of life and health of a minor, to whom such duties are assigned on special assignment and voluntarily assumed such responsibilities, which resulted in the negligence of the death of a minor) against two teachers who accompanied schoolchildren to harvest potatoes And left unattended the dead girl.

BIBLIOGRAPHY

1. The Code of the Republic of Belarus on Education No. 243-3, The National Register of Legal Acts of the Republic of Belarus, 2011.

2. Law on education in Russian Federation: Federal Law No. 273-FZ, 2017-2016 [Electronic resource], Access mode: <http://zakon-ob-obrazovanii.ru>, Date of access: 01/04/2017.

3. On approval of the Regulation on the Federal Service for Supervision in Education and Science: Resolution of the Government of the Russian Federation of June 17, 2004, 300 [Electronic resource], Access mode: <http://base.garant.ru/187127>, Date of access: 01/04/2017.

4. Valitskaya, A.P. Education in Russia: A Choice Strategy: Monograph, SPb, Russian State Pedagogical University, 2007, 128 p.

5. Shkatulla, V.I. Educational Law: a textbook for high schools, Moscow, Norma-Infra, M, 2001, 688 p.

6. Shkatulla, V.I. Educational Law of Russia: Textbook for Universities, Moscow, 2015, 774 p.

7. On the Concept of the Foundations of EurAsEC, Legislation on Education (based on a comparative legal analysis of national legislations and taking into account the provisions of the Bologna Declaration: Decision of the Bureau of the Inter-Parliamentary Assembly of the Eurasian Economic Community of, 2004, 9, Documents of the Bureau of the Inter-Parliamentary Assembly and the Meeting of the Inter-Parliamentary Assembly of the Eurasian Of the economic community, 2004.