



THE IMPACT OF CYBERBULLYING ON THE SAFEGUARDING OF THE RIGHT TO HONOR, IMAGE AND GOOD NAME OF THE INDIVIDUAL

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ABSTRACT

The evolution of computer technology and the widespread use of social networks have given rise to a relevant criminal behavior that affects a growing number of individuals the term "cyberbullying" has been coined to describe this behavior that takes place in cyberspace, using computer media and digital spaces to harass individuals, communities, or groups. This harassment is manifested through the emission of insults through text messages, audio or manipulated images, as well as the dissemination of information that undermines the good name, image and honor of individuals, the problem lies in the absence of a precise typification of this type of harassment in Ecuadorian criminal law, which means that victims lack effective alternatives to deal with this form of virtual violence. This conduct seriously harms the rights protected by international human rights treaties and the Constitution of the Republic of Ecuador, generating emotional distress, instability, worry, depression, and even suicidal thoughts in some victims. In this context, this research study seeks to justify the need to legally typify this type of conduct within the catalog of crimes in the Ecuadorian legal system, to avoid impunity and protect the good name, image and honor of individuals, in accordance with conventional and constitutional standards of protection.

INTRODUCTION

Human beings and society in general face invariable inevitable technological changes that together with the advance of society, new phenomena that affect the structure and social order, the internet, and the implementation of social networks have generated a productive advance with society in general presenting immediacy in the information that circulates in cyberspace that is little controlled both in its veracity and obtaining. However, in conjunction with this great advance, new forms of criminality have been presented that must be regulated by criminal law to avoid conduct harmful to the fundamental rights of human beings.

This behavior is identified as cyberbullying can be understood as a new form of persecution that is consumed through new information technologies generating a harmful act that violates the rights of people to good name, image and reputation.

This criminally relevant conduct is oriented to harassment directed at people who have contact through different social or informative networks, human beings are recognized a series of rights that allow their development and right to a life free of violence, to the good name, to the image understanding that the State must seek the protection of rights.

The evolution of information and communication technologies (ICTs), there are new forms of transgression to the fundamental rights of people today new technological tools are presented that develop novel forms of communication.

Computer crime really began to take off with intensity in the early 2000s, when social networks were inserted into everyday life. The reception of these new technologies without restrictions is generated



from the creation of profiles, created an accumulation of personal information and increased means for the commission of crimes such as identity theft, the creation of false profiles, or so-called trolls through which behaviors that violate the fundamental rights to honor can be verified, to good name and reputation.

At present, the number of crimes committed under the digital modality has increased, since computers can be attacked or in turn can be the means to commit other crimes through information and communication technologies (ICTs) and in this way offenders use these means to commit their criminal acts.

There are gaps in domestic legislation with respect to offences produced through new information and communication technologies (ICTs) in Ecuador. "People with criminal behavior are repressed in physical space, those who tend to commit crimes in cyberspace, are individuals with special and particular characteristics, The most common crimes in Ecuador are: Cybercrime, attacks on databases, interception of communications and bullying "

It is only that from the year 2014 the Organic Integral Criminal Code enters into force, when the legislator proceeds to classify this kind of conduct as crimes, there being legal gaps that affect the victims of these unlawful behaviors.

The implementation of new technologies in society such as the internet has generated spaces for new means by which antisocials proceed to consummate harmful behaviors that have not been typified. These behaviors have been called computer crimes, establishing a need for control and reproach for people who proceed to execute these acts against another.

This new form of criminality affects several constitutional rights, generating the response of the States in search of their protection has already begun to incorporate into their criminal catalog this type of unlawful behavior, calling them computer crimes, given the result they produce in the outside world, this being the violation of legal goods such as good name, image, honor.

The reality Latin America in several legislations has proceeded to typify consummated behaviors through the internet, but in a very general way, it has not proceeded to specify autonomously this kind of infraction called cyberbullying, which affect fundamental rights, image, good name and reputation, being necessary to strengthen this legal vacuum.

Our country does not escape this new criminal reality, being necessary to adopt mechanisms that allow improving the protection of the right to image, good name and reputation to achieve the right to good living.

Technological tools such as the internet have served people to be able to function in our daily activities, work or social, it is important to regulate criminal behavior that may injure or endanger a legal asset.

As indicated by the advance of technology, the expansion of the internet and social networks, means by which several behaviors that violate protected legal rights have been consummated, actions that cannot be sanctioned by the principle of legality, understanding that at the time of consummating these unlawful behaviors the criminal type is not established within the catalog of crimes.

It is important to mention that there are behaviors analogous to cyberbullying that cannot be applied extensively as established by Art. 13 of the Organic Integral Criminal Code, which prohibits the extensive interpretation of criminal law, being impossible to punish conduct that is not classified as a crime at the time of its consummation through digital media.

Cyberbullying is a current and very important problem that is being normalized by the lack of regulation of the contents of information uploaded to cyberspace which has become a threat to the rights of people to their good name, image and reputation. In this type of crime, the passive subjects of this conduct are easy targets for people who have adequate training in technology, a situation that generates a criminal phenomenon by allowing these behaviors that affect the integrity of a person to go unpunished by non-existent typical description.

Cyberbullying is a reality that is found within Ecuadorian society, it has become a social, labor and educational problem, with repercussions in the alteration of the psychological integrity of the victim. This new modality of violation of rights is consolidated in the users of cyberspace, in the recognized social networks such as Instagram, WhatsApp, Twitter, Facebook, etc. considering that these



behaviors must be regulated urgently so that it does not generate the damage of protected legal assets.

The current Organic Integral Criminal Code presents a legal vacuum by not regulating acts of harassment or harassment in social networks that it is urgent need to solve this problem.

DEVELOPMENT

Materials and methods (methodology)

The present investigative work is based on the analysis of several documentary sources that have allowed to deepen on the atypical nature of the behavior called cyberbullying and violation of the constitutional rights of the person to honor, image and good name that are executed through social networks. Various programmes and platforms have been used, such as the UNIANDES virtual library, the website of the Constitutional Court, among others, to obtain reliable information on the right of individuals to a good name, image and honour.

Finally, in the review of the bibliographic sources, both national and international authors who address the topics of computer crimes, cybercrime, new forms of crimes were considered. The reflective and analytical reading was part of the research process that aims to describe the rights to image, good name and reputation of people in virtual spaces.

Computer crimes establish: "The performance of an action that, meeting the characteristics that delimit the concept of crime, has been carried out using a computer or telematic element, or violated the rights of the owner of a computer element, whether hardware or software." (Rodriguez M. A., 2001, p. 288)

From this definition we can infer by pointing out that these computer crimes maintain similar characteristics of criminal offenses, the only indispensable requirement is the means used to consummate the typical act, which would be through a computer or telematic means.

Another definition that we can bring up is that of Huerta Miranda M, and Líbano Mansur C, who point out that a computer crime is: "All typical, unlawful and intentional actions or omissions, whether isolated acts or a series of them, committed against natural or legal persons, carried out in use of an information processing system and intended to cause harm to the victim through attacks on health. computer technology, which, generally, will produce collateral damage to different legal values." (Miranda, 2004, p. 22)

These definitions specifically indicate that these kinds of acts are consummated through the implementation of computer means that allow the crime to be committed whose field of execution is social networks in particular.

Cybercrime, as a concept brings together all the criminality committed in the field of cyberspace, it is not a completely new phenomenon, since its first manifestations emerged with the heyday of the use of the internet. With the massification of personal intercommunication we have understood that more than a new type of crime, we are facing a new type of place where crimes are committed. Once again, technology modifies social habits, gives rise to new interests, new needs, new forms of social communication and, also, new crimes or different concretions of them. (Guilabert, 2014, p. 14)

This problem is not discovered recently, there are already professors who have proceeded to study this phenomenon. Arteaga points out: Currently, in the field of criminal law, behaviors such as cyberbullying arise, which is perfected with the use of Information Technologies and Social Communication. In these cases, it is where the subjects carry out the harassment through the computer media; a conduct that in Ecuadorian criminal legislation is characterized by its scarce regulation, also constituting one of the newest forms of cybercrime (Arteaga, 2015, p. 15)

Cyberbullying must be typified in the catalog of crimes of the Ecuadorian legal system, this is a criminally relevant conduct for criminal law, cyberbullying is becoming a common act within society, which has been developing through the continuous use of Information Technologies and Social Communication, generating a social phenomenon that must be regulated by the State.

The word bullying did not exist or was not common in the language of society in general, in the middle of the last decade was when this expression began to be heard more frequently that consisted



of harassment directed towards a person in order to affect him psychologically, this was just being normalized when the word cyberbullying began to be used, It was even more unknown.

For José Martínez Rodríguez, cyberbullying is when a person through: use of telematic means, such as internet, mobile telephony, online video games, which are intended to exercise psychological harassment between equals, there must be minors at both ends of the harassment so that we can talk about cyberbullying, because if otherwise, there is an adult, we will be facing another illicit cyberbullying (Rodríguez, 2017, p. 87)

In the same sense of ideas Mendoza González B, defines cyberbullying as: use of computer devices to cause constant harm to another student (exclusion, mockery, insults, spreading malicious rumors regarding his person, etc.). In this type of bullying the aggressor is usually anonymous, using false names to not be identified, which places the victim in greater defenselessness. Cyberbullying damages the victim quickly since images or information are spread to mistreat the victim in a massive way (González, 2012, p. 11)

On the other hand, the doctrinaires Martínez V. and Garaigordobil M. conceptualize cyberbullying as: dissemination of harmful or defamatory information in electronic format through media such as email, instant messaging, social networks, text messaging through phones or mobile devices, the publication of videos or photographs on electronic platforms for the dissemination of content (Garaigordobil & Oñederra, 2010, p. 23)

Cyberbullying is any conduct related to violence or violent act that is carried out persistently or repeatedly over time; It implies the intention and violence on another where there is a disproportionate situation of force and power. In the case of cyberbullying, the deployment of violent, intentional and repeated behavior on the same person is developed through technological means (Luna Pla, 2016, p. 90)

From the aforementioned definitions we must indicate that each of them is related to each other, this because they point out that cyberbullying is a form of intentional psychological harassment, which is consummated through different technological means due to the free access that exists in these so-called social networks.

This behavior is invasive in the rights of its victim, breaking the psychological and emotional state, generating effects that can harm their social development, affecting their daily lives that can be protected by an adequate criminal type.

The criminal type is the legal formula necessary to the punitive power to enable its formal exercise, and to the criminal law to reduce the hypotheses of conflicting pragmas and to assess limiting to the criminal prohibition of actions submitted to legal decision. (Zaffaroni, 2002, p. 434)

We bring up this definition in order to identify that cyberbullying is a criminally relevant conduct that should be typified within the Organic Integral Criminal Code. This is because it damages protected legal rights through unlawful conduct that must be eliminated within Ecuadorian society. In the criminal field prior to the positivization of a legal precept there must be a criminal political problem, which must be resolved by the legislative power, entity of primary criminalization, in order to be positivized within the law.

Criminal policy is the set of responses that a State deems necessary to adopt in order to deal with conduct considered reprehensible or causing social damage in order to guarantee the protection of the essential interests of the State and the rights of residents in the territory under its jurisdiction. (Criminal Policy Observatory, 2015, p. 4)

From this definition we can clearly point out that the lack of an autonomous criminal type to sanction cyberbullying behaviors has generated at first a criminal political conflict, being necessary the action of the state entity to prevent this kind of behavior.

The means in which these criminally relevant behaviors are consumed are social networks hosted on free access websites where anyone with internet can access without any restriction,

The characteristics of this type of crime are:

Anonymity: The abuser hides behind a nickname, but leaves traces of himself. The victim can hardly fight the harassment.



Difficult to track: If the harassment acts through sms, mms, emails, etc., it is more difficult to keep track of it.

Elimination of ethics: The bully says or does actions that cannot be done in real life.

No safe place: The victim does not feel safe anywhere, since attacks can come anytime and anywhere; On the other hand, in traditional bullying the student feels protected at home.

Repeated aggressions: The aggressions are repeated again and again, giving the information on the Web is permanent, so the damage is exponential by the number of viewers.

Violation of Privacy: The harasser can post information on the network, video and images sometimes without the victim's knowledge.

Poor parental visibility: Usually parents do not realize the damage their child is receiving due to a lack of communication between them. The lack of cordiality and trust makes the child not ask for help and even comes to think that it is normal. [...] (Red, 2017, p. 23)

In this same thread of ideas, Miró Llinares F, points out that cyberbullying is especially characterized by being a behavior whose purpose is aimed at tormenting, humiliating, harassing, threatening the passive subject of the action, all this through cyberspace, generating anonymity of the person that tends to undermine the rights of the victim. (Miró Llinares, 2013)

Cyberbullying is a behavior that requires the existence of certain characteristic elements of the action, among them we can highlight the intentionality, repetition and imbalance of power. These characters are analogous to those of bullying behavior, however, we must emphasize that the internet or cyberspace adds nuances that differentiate them such as anonymity and the complexity of tracking. (Calmaestra, 2011)

Of the characteristics indicated we can indicate that the means by which this behavior is configured is through digital media such as the internet, this conduct as indicated is malicious, understanding that its purpose is to violate the right of the victim from a psychological aspect seeking to injure their right to privacy, through harassment and warning of a possible exposure to society through the same means. Technological.

The causes of this new social and criminal phenomenon, is due to the free will that exists within computer or telematic systems, these virtual spaces are not restricted as they should be, within these virtual places there are criminal forms that are not yet regulated.

From the research carried out, it has been possible to show an extreme need to incorporate into the Organic Integral Criminal Code, a new autonomous criminal type, called cyberbullying this because of the harmful scope that is causing a vulnerable sector of the community.

CONCLUSIONS

Computer crimes today are present in our society, so it has been necessary to typify them in a legal regulation, to protect the legal assets of people.


Cyberbullying is the violent action committed on a person through new technologies and telematic means. This type of violence can be caused with the purpose of attacking or making the victim feel insecure, it is evident that all these violent acts that are generated in the virtual world violate the rights that people have, generating serious consequences in the personality and self-esteem of their victims.

From the research work it has been observed that these kinds of acts are remaining in impunity, which is generating their normalization since according to the principle of legality we cannot adapt our conduct in a criminal type that does not exist, this shows that the Ecuadorian State is not fulfilling its role as protector of rights.

The highest duty of the Ecuadorian State is to adopt the political, administrative, economic, legislative, social and legal measures that are necessary for the effective and full exercise, protection and guarantee of the Constitutional Rights that Ecuadorians have with regard to the practice of cyberbullying.

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