

II. IN THE GRIP OF A CHANGING WORLD – CONCEPTUAL AND FORMAL APPROACHES

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It is essential for the topic of this book to define what exactly is meant by *cyberbullying*, as the lack of a proper conceptual framework is detrimental to the understanding of the topic.¹

The diversity and differences of concepts and content is due to a number of reasons. The phenomenon is complex and cross-disciplinary. Highlighting other elements is important for the psychologist, the pedagogist, the criminologist or even the criminal lawyer. The fact that the constant development of information and communication technologies is helping to give rise to new forms of activity that are not yet known is also a challenge for professionals. The other fact, that as many of the consequences of the phenomenon, particularly in the long term, are not sufficiently understood or have not been researched. The rapid development of research methods in fields such as neuroscience and medical technology is also an important factor to deeply understand the phenomenon. It is not only the external conditions that are changing, but also the victims of abuse. For example, with the arrival of new generations, the low degree of digital resilience and the high level of mental and emotional vulnerability is a relevant issue, while for older generations, who are increasingly active in the online space, it is the increased degree of victimization that is more important.

In this changing world, there is a need to develop a conceptual framework that can cover all legally relevant aspects of the phenomenon under consideration, while ensuring an adequate criminal law response.

¹ Pongó, 2021, p. 34.

1. Conceptual diversity: from bullying to cyberbullying

The English-language term is often used in other languages to fill in the missing concept, although it is not uniform (in Germany and the Scandinavian countries, for example, *cybermobbing*, which is also of English origin, is the common term).² There are also examples of cyberbullying being identified with *online harassment*³ although the two terms are not synonymous. Criminal harassment and cyberbullying are two distinct categories, but there is a very narrow intersection between the two, whereby electronic bullying also constitutes the crime of harassment.⁴ In contrast, in the domestic literature e.g., the more expressive *online* or *cyber-intimidation* is gaining ground and has been adopted at the official level, for example in the Digital Child Protection Strategy of Hungary.⁵

According to Katalin Parti, the conceptual elements of bullying are:⁶

- (a) physical, verbal or psychological assault or intimidation intended to cause fear, distress or other harm;
- (b) power imbalance (physical or psychological), exploited by the stronger person (or persons) to exert pressure on the weaker;
- (c) a regularly recurring or prolonged situation between two or more people.

The most widely accepted conceptual definition of bullying comes from a 1997 article by Dan Olweus,⁷ which is at the core of attempts to conceptualize cyberbullying. He defines bullying as when a student is subjected to repeated and prolonged negative actions by one or more students.⁸

Compared to this original definition from 1997, the content of bullying has also changed. Gabriella Kulcsár analyses this development in detail in her monograph⁹. The range of defining elements is partly different for each definition: while the original 1997 concept emphasizes the repetitive nature of harassment, in addition to intentionality and the lack of balance of power, the newer definitions define a more detailed set of criteria.

² Nocentini et al., 2010, p. 130.

³ See, for example, the UNICEF information page in Hungarian. <https://unicef.hu/cyberbullying>

⁴ Monori, 2016, p. 247.

⁵ The Digital Child Protection Strategy of Hungary, p. 22.

⁶ Parti, 2016, p. 115.

⁷ The study was translated by Éva Dudik and published in Hungarian. Olweus, 1999, pp. 717–739.

⁸ Olweus, 1999, p. 717.

⁹ Kulcsár, 2024, p. pp. 43–54.

It is worth noting that the scientific approach of almost the same professional community can change – even within a short period of time. A good example of this is the definition developed in 2021 and 2023 by the working group set up by UNESCO and the World Antibullying Forum.

The 2021 concept emphasizes the role of the education system and school standards. The same set of actors ('between students'), the occurrence of physical, emotional and peer harm, the existence of a power imbalance, and the interpersonal and online format are important. However, there are no essential criteria such as intentionality or repetitive nature of the act.

In comparison, the current recent approach – next to the maintaining the social nature of the process, the occurrence of physical, emotional, peer harm, the importance of peer and institutional norms and the power imbalance – contains a number of differences. It identifies the repetition (or the risk of repetition) and intentionality as renewed criteria. At the same time, it includes adults as well as students, does not specify the specific form of bullying, but allows for the abuse to be at the level of the individual, the group or the community. This conceptual flexibility is illustrated by the extent to which the views of the same professional community can change in just some years.

As with bullying, there are different approaches to the concept of cyberbullying¹⁰ – depending on whether the focus is on the psychological, criminological or legal aspects of the phenomenon. For example, the psychological elements played an important role in an earlier concept from 2008: *"Cyberbullying is an aggressive, intentional act carried out by a group or individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself."*¹¹ In contrast, an approach from 2023 focuses more on the criminological aspects: *"Cyberbullying is willful and repeated harm inflicted through the use of computers, cell phones and other electronic devices."*¹²

It is not only the interdisciplinary difference in approach that is reflected in the different definitions. There is also a debate among researchers on the question of whether cyberbullying is a separate act or just a simple form of bullying in the online space. Olweus himself takes the latter view, while others argue that the particularities of cyberspace (e.g. the preservation of anonymity) require a different kind of response.¹³

There are a number of common elements between the various concepts of cyberbullying, which can be identified in most definitions. These are:

¹⁰ For more details, see Pongó, 2021, pp 30–62.

¹¹ Smith, 2014, p. 18.

¹² Hinduja et al., 2024, p. 10.

¹³ Parti, 2016, p. 116.

- (a) (intentional) harm,
- (b) repetition over time, and
- (c) power imbalance between the victim and the perpetrator(s).

However, recent research shows that these do not always appear so clearly in practice. For example, repetition raises the question of whether it is feasible on the Internet with a single content sharing?¹⁴ After all, the negative (defamatory, abusive) content posted remains accessible, shareable and transmissible in the online space. Thus, a single act of cyberbullying can lead to ongoing victimization.¹⁴ The important question is whether it is considered repetitive if this content, once shared, is subsequently interacted with (spread, shared, etc.) again and again. In my view, such cases can also be considered repetitive and thus meet the conceptual criterion of cyberbullying.¹⁵

Anonymity may be an important element, which may be one of the manifestations of the imbalance of power in cyberbullying,¹⁶ as the perpetrator may conceal his/her identity from the victim, or even the bullying itself may take place in a space from which the victim is barred (e.g. in a secret online group); thus, while he/she becomes the target, nothing will be known about the perpetrator. It should be added that there are also forms of bullying in schools where the perpetrator may remain unknown to the victim (e.g. spreading malicious rumors).

In any case, it is worth mentioning that Tamás Pongó, drawing on American examples, captures the essence of the term in his book: “*an intentional, single or repeated behavior by an electronic device that causes harm or injury to the victim, with the aim of upsetting the balance of power between the perpetrator and the victim*”.¹⁷ It is a step forward, because his concept has elements which are important also from the criminal legal field.

Based on the above, we can establish the following as the conceptual criteria for cyberbullying:

- (a) an attack of some kind intended to intimidate the victim
- (b) it takes place in the online space using an electronic device
- (c) single or repeated conduct
- (d) power imbalance.

¹⁴ Nocentini et al., 2010, p. 131; Parti, 2016, p. 116.

¹⁵ Schenk, 2020, p. 277.

¹⁶ Parti, 2016, p. 116.

¹⁷ Pongó, 2021, p. 34.

In terms of perpetration, the information and communication technologies used include instant messaging services (e.g. Viber, WhatsApp, Skype), chat applications (e.g. Messenger, Snapchat), social media sites (e.g. Tiktok, Facebook, Instagram), video sharing sites (e.g. YouTube), email, blogs, forums, websites, some of which are specifically designed to defame others, but cyberbullying can also be committed on mobile phones or even in online role-playing games. Among students, such abusive behavior is most often carried out through instant messaging.¹⁸

In order to clarify the content of the concept, a number of documents also identify possible concrete forms of cyberbullying. For example, the Digital Child Protection Strategy of Hungary classifies the following types of behavior as cyberbullying:¹⁹

- (a) *flaming*: deliberate provocation of online fights, offensive comments;
- (b) harassment;
- (c) defamation: the publication or sharing of vicious rumors that are likely to damage reputation;
- (d) ostracism;
- (e) outing: sharing secrets, rumors or other personal information with others without permission;
- (f) *trickery*: obtaining personal information from someone by fraud or deception and then sharing that information with the community;
- (g) *cyberstalking* (online surveillance): monitoring and offensive circumvention of the victim's online habits, sending threatening, intimidating messages and using them to create fear to make the other person feel that their safety is at risk;
- (h) online threats: direct threats or disturbing statements that appear to make the author appear emotionally disturbed and contemplating harming someone else or himself/herself or committing suicide;
- (i) sexting: a contraction of the word 'text' and the word 'sex', it refers to the sending of naked pictures of oneself. Although some sources, such as the Digital Child Protection Strategy of Hungary, only provide so much information on the content of sexting, it is worth adding that cyberbullying actually occurs when the images sent during sexting cause the sender to be a victim of abuse/abuse, e.g. by further unauthorized sharing of the images, etc.).

¹⁸ Preuß, 2019, p. 98.

¹⁹ The Digital Child Protection Strategy of Hungary, pp. 22–23.

2. Criminological aspects of the use of the term

The phenomenon, which primarily but not exclusively concerns young people, also gained attention in the *criminological literature*²⁰, where several terms are used, some of them synonymously. In terms of content, *bullying* is a form of aggressive behavior of a repetitive nature directed against a person who, for whatever reason, is unable to defend himself or herself (for example, someone who is physically weak). Similar behaviors are covered by *mobbing*, which means assault and is used primarily to cover the phenomenon of harassment or psychological terror in the workplace. *School violence* covers verbal, psychological, physical and sexual abuse between different groups of people (students, teachers, parents). The essential element of *school bullying* is the repetitive, prolonged nature of the aggressive act, which may happen in the form of an active, public action against the victim (direct bullying) or through ‘mere’ ostracism (indirect bullying). Where there is no objective obstacle (e.g. physical violence), all of the above types can be committed by means of modern communication tools, using *cyberspace*.

In addition to the concept of cyberbullying, there are several sources²¹ which prefer the term *cyberaggression*. According to experts, the term primarily covers the phenomenon of aggression on ICT platforms, whose targets may be specific groups, individuals, celebrities or even randomly selected victims. While cyber-harassment is defined partly as an imbalance of power and partly as repetitive, cyberaggression is defined as a form of harassment with a specific intent. In their view, the general characteristics of bullying behavior on social media are closer to this concept than to cyber-harassment or cyberbullying. Some argue²² that the strict criteria mean that phenomena such as ‘happy slapping’ should be excluded, while they can be classified under the conceptual umbrella of cyberaggression, defined as a form of social aggression. Other experts, such as Gabriella Kulcsár²³, are of the opinion that there is no missing criterion, since the possibility of repetition exists here too – albeit not directly, with new attacks on the victim, but indirectly, through the widespread display and replayability of the recording, which is a result of its shareability.

It is also important to note that for young people, as shown by a study²⁴ covering several EU countries, repetition was less important as a defining element

20 See e.g. Csemáné Váradi, 2019, 2021.

21 See, for example, Nakano – Suda – Okaie – Moore, 2016. But this definition is also used, for example, by Antipina – Bakhvalova – Miklyaeva, 2020, pp. 402–414.

22 Corcoran – Mc Guckin – Prentice, 2015, p. 252.

23 Kulcsár, 2024, p. 47.

24 Menesini et al., 2012, pp. 455–463.

of cyberbullying than power imbalance, intentionality and anonymity. This is due to the recognition that offensive content can spread in virtual space without the perpetrator's involvement in a 'viral' way, due to the use of information and communication tools – i.e. repetition is not related to the perpetrator's activity.

Another effect of this technology is that it can 'victimize' a large number of people who cannot be identified in advance.

Intentionality, i.e. the intention to abuse, is another important factor for young people in deciding how to evaluate the behavior of the other party. In the absence of the element of intentional harm the perpetrator's behavior is seen as 'just' a bad joke or crude humor.²⁵

Anonymity is an equally important factor. The very fact of anonymity tends to make the behavior more serious for the victim; however, if there is no presumption of intentionality, anonymity is less likely to be identified as cyberbullying.

According to the respondents, the most striking feature of the phenomenon is the imbalance of power.²⁶ The relevance of this criterion was prominent in all countries and in all types of behavior, and was more important than the fact of the intent to abuse. The psychological mechanism of the phenomenon, precisely because of the characteristics of the online space, is capable of greatly magnifying the victim's sense of defenselessness and, therefore, helplessness. The perception of vulnerability on the Internet on the victims' side might completely independent of the existence of the actual physical, psychological, social, etc., dominance of the attacker. Due to the way ICT tools work, preventing hurtful, harassing behavior or its 'material' manifestation from reaching others is typically not possible, or only to a limited extent with the help of a professionals, and the perpetrator's power is therefore multiplied, even in the case of less severe forms of behavior. This is partly why (offline) bullies in a face-to-face context are described as more popular, smarter and stronger than their online 'peers'.

3. Hate speech and cyberbullying

The concept of hate speech needs to be specifically mentioned for the phenomenon under consideration in this book. The term itself, as a separate category, is in fact a type of online communication with a hostile attitude, aimed at insulting the honor of a person, persons or social groups, and at degrading the community.

²⁵ Nocentini et al., 2010, p. 137.

²⁶ Menesini et al., 2012, p. 459.

A more detailed definition is given, for example, by Cohen-Almagor,²⁷ who explains that hate speech is any bias-motivated, malicious speech directed at a person or group of people because of some of their perceived or real characteristics. An important characteristic is that it expresses discriminatory, intimidating, disapproving, hostile and/or prejudicial attitudes towards characteristics of the targeted group such as gender, race, religion, ethnicity, nationality, skin color, disability or sexual orientation. Hate speech is intended to insult, dehumanize, harass, intimidate, degrade, humiliate and victimize its targets as well as incite insensitivity and brutality towards them.

Hate speech can take many different²⁸ forms, and thus, we can also find different definitions. Despite the diversity and the different focal points, the essential common element of the concepts is the insulting or belittling of the target group or its members, through the denigration of the defining characteristic of the person or group of persons. In practice, these take the form of harassing and intimidating online communication – for example, in the case of women, by highlighting negative stereotypes or gender-based insults. It is therefore important to underline that the activities that fall into the overlapping categories of hate speech and cyberbullying can take the form not only of text or audio, but also of visual communication. Indeed, given the changes in the channels of interpersonal information transmission and the fact that communication in a visual language is much easier and faster to absorb, their role and importance in the online space is increasingly dominant. But even when used ‘only’ as a supplement, they can override the interpretative framework of the written text. In face-to-face interactions, verbal channels take a back seat to non-verbal channels. In the online space, many of these – such as tone, volume, mimicry, gesticulation, or even proxemics – are missing, and can be replaced by artificial visual elements.²⁹ An emoticon placed in a given context or sentence structure can give a completely different, even offensive, humiliating, etc., interpretative framework to an otherwise neutral verbal message.

While hate speech and cyberbullying are by no means the same set of toxic behaviors, they do show significant commonalities, particularly in the world of social media.

The risks of online hate speech are particularly significant because of several features, which are also discussed in this chapter: the anonymity of the online space, the low chances of detection, identification, ‘getting caught’ and

27 Raphael Cohen-Almagor, 2011. pp. 1–2.

28 For a discussion of the concept, see for example Anderson – Barnes, 2022.

29 For the socio-emotional needs in online communication, see Wallace, 2002. pp. 34–36.

the fact that the perpetrator does not have to face the consequences of the impact of hurtful statements on the potential victim, allowing their emotions and passions to run high without social barriers.

At the same time, the limits of fundamental rights that are considered of paramount importance in the online space, such as freedom of expression, constitute a challenge as well, in particular, if we take into account the specific, potentially distorting characteristics of text comprehension and processing – i.e. the different inferences and emotional reactions resulting from the absence or limited nature of non-verbal channels or, for example, the highly (sub)culture-dependent interpretative frameworks of complementary visual representations. While the Internet as a communicative space is supranational, the interpretation and perception of the messages sent there is very much ‘national’, influenced by cultural, cultural-anthropological, socio-psychological, historical, etc. factors. And since the main actor in judging the harassing, offensive, intimidating, etc. nature of an interaction is the specific individual or group of individuals, newer and newer aspects and filters are introduced in the process, giving more and more room to human, biological and psychological characteristics that reinforce subjectivity.

There are no universal, universally accepted, strict answers. “Now each man judges well the things he knows, and of these he is a good judge.” writes Aristotle in his *Nicomachean Ethics*.³⁰ Judgments, evaluations and boundaries vary from society to society, from age to age, influenced by historical circumstances and cultural norms. In judging the specific nature of a particular behavior, the rule of the golden mean, which Aristotle considered to be the basic tenet of a life of moderation, may be a guiding principle. Freedom of expression and opinion must therefore be allowed. But this must not be without limits: it cannot harm the honor and dignity of others.

However, an important aspect in judging hate speech is to define the concept of hate. In this case, harassment is defined as the single or repeated intimidatingly offensive behavior of a perpetrator in a position of authority in the online space, ‘which is motivated by an offender’s prejudice against a person or community and which incites or encourages hatred, discrimination or hostility towards that person or community’. As for the hate element, we have taken the interpretation of the Hungarian Constitutional Court³¹ as a basis, according to which it is “*one of the most extreme negative, [...] highly hostile emotions.*”

³⁰ Aristotle, 1987, p. 7.

³¹ Decision 30/1992 (26 May 1992) AB.

Summary

The definition of the phenomenon encompassed by abusive, harassing behavior has undergone several changes since it first became a focus of academic interest. There are several reasons for this. Changes in social and economic conditions have in themselves constantly shaped the socio-psychological attitudes of citizens and, through them, the concrete forms in which the phenomenon is realized. Among these environmental influences, the emergence and spread of technology, the Internet and information and communication tools, which have had a drastic and decisive impact – also in relation to the problem under study, should be highlighted. As research has progressed, the body of knowledge available to professionals has deepened, and conclusions and theoretical approaches have evolved as a result.

Harassment, mobbing and bullying are just some of the terms used by professionals (in some cases with slightly or considerably differing content). The diversity of these definitions reflects both the diversity of the phenomenon and of the professional focus (partly depending on the discipline), and also gives the authors the opportunity to analyze the source material available to them by highlighting a particular term.

The chosen definition of cyberbullying is defined as any attack aimed at intimidating the victim, carried out in the online space, using electronic means, with a one-off or repeated behavior, and characterized by a lack of balance of power in the relationship between the parties.

In the light of the comparative (criminal legal) focus of the book, the phenomenon contains any attack intended to intimidate the victim, carried out in online space, using an electronic device, by means of a one-off or repeated behavior, and characterized by a lack of balance of power in the relationship between the parties.

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