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CASO PRÁCTICO: INTERVENCIÓN DE LA INSPECCIÓN EDUCATIVA ANTE UNA DENUNCIA A UN DOCENTE

CASE STUDY: INTERVENTION OF THE EDUCATIVE INSPECTION BECAUSE OF A COMPLAINT AGAINST A TEACHER

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Resumen

Ante la denuncia por un supuesto caso de maltrato por parte de un tutor a una alumna de sexto curso de primaria, el juzgado que recibe la denuncia solicita informe al Departamento de Inspección Educativa. El caso práctico versa sobre el informe realizado en el cual se da respuesta a las cuestiones planteadas desde el juzgado y en el cual entran en juego cuestiones de índole tanto disciplinaria como penal.

Palabras clave: Delito de malos tratos, artículo 173 del Código Penal, denuncia, cambio de centro escolar, colaboración con el Poder Judicial, régimen disciplinario, Estatuto Básico del Empleado Público (EBEP).

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

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Abstract

Following a complaint alleging abuse by a tutor of a sixth-grade student, the court that receives the complaint requests a report from the Department of Educational Inspection. The practical case deals with the report produced in which answers are given to the questions raised by the court and in which questions of both a disciplinary and criminal nature come into play.

Keywords*:* Crime of mistreatment, article 173 of the Criminal Code, complaint, change of school, collaboration with the Judiciary, disciplinary regime, Basic Statute of Public Employees (EBEP)..

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

INTRODUCTION

The practical case we now present is based on a report requested by the examining court in relation to a complaint for an alleged case of harassment and ill-treatment filed by the mother of a minor against the tutor of her daughter. Thus, it is presented as a report sent to the court in relation to the complaint filed against the teacher of the CEIP Mar Océana, of [LOCATION], Mr. Aureliano Buendía, tutor of 6th grade of primary education, by Mrs. Ana Ozores, mother of the pupil Úrsula Iguarán, for an alleged crime of degrading treatment (article 173 CP).

The case is an example of the complexity of the actions which, unfortunately, we education inspectors have to face with some frequency. At stake here is not only the obvious criminal liability of the accused, but also their possible disciplinary liability and even, if applicable, the financial liability of the Administration.

It is important for its correct resolution, as will be seen, to prove, on the one hand, that the conduct of the teacher was correct and, on the other hand, that the school acted at all times with the diligence of a good parent in the face of complaints of harassment or mistreatment. This was achieved through constant monitoring by the inspector of reference and by the school, so that all activities and actions taken to resolve the dispute were recorded and documented.

Also noteworthy is the fact that the extraordinary change of centre requested by the mother was reported favourably despite the fact that no evidence was found of inappropriate behaviour on the part of the teacher, nor of any harassment or mistreatment, as the trust between family and

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

centre had been broken and in order to always and in all cases protect the best interests of the child.

It should be noted that given the lack of evidence of malpractice on the part of the tutor or the centre, and the non-existence of evidence of improper or degrading treatment on the part of the tutor, the examining court dismissed the case, to the relief of the teachers and the satisfaction of the centre's inspector of reference.

FACTS AND BACKGROUND

1.On 24 April 2024, the inspector of reference of the centre received a letter from the Juzgado de Instrucción [Examining Magistrate's Court] no. 3 of [LOCATION], dated 20 April 2024 (Preliminary Proceedings under Abbreviated Procedure XXX/2024) by which he was requested "to proceed to carry out an investigation with regard to the statements that are the object of the complaint that is attached, sending a copy of the proceedings to this Court, once the action has been completed".

2. On 7 April 2024, Mrs. Ana Ozores, mother of the 6th year primary pupil of CEIP Mar Océana Úrsula Iguarán, lodged a complaint with the Civil Guard of [LOCATION] for a possible offence of insults that occurred between 25 September 2023 and 7 April 2024 committed by the tutor and teacher of the 6th year primary pupil of CEIP Mar Océana, Mr. Aureliano Buendía, of which her daughter Úrsula Iguarán is said to be the victim..

3. Prior to this, on 6 April 2024, this inspector received an e-mail from the centre informing him of a complaint from the mother of the minor and forwarding an e-mail from the same addressed to the headmistress dated 5 April 2024. This email is accompanied by two screenshots.

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

4. On the same date, the headmistress of the school was requested by telephone to report on all the measures taken in relation to the case, which was initially a case of alleged bullying of the said pupil.

5. On April 12, 2024, and entry register no. 2024, the Department of Educational Inspection received an internal note from the Head of the Schooling Service requesting a report from this inspector on the request for an extraordinary change of school made by Ms. Ana Ozores. On 19 April 2024, this inspector issued a favourable report which was sent to the corresponding Service. It should be noted that despite the allegation of serious bullying and inaction on the part of the centre, this inspector finds no evidence of alleged inaction; on the contrary, the centre has acted at all times with the appropriate diligence. In view of the mother's manifest bad relationship with the tutor and the members of the management team, and in order to preserve the best interests of the minor, who, according to the mother, does not want to go to school, a favourable report is given on the change of school.

6. Throughout the school year, the school management has implemented and put into operation both the protocol for action in cases of bullying and various measures and actions aimed at resolving the issue and preventing harm.

HISTORICAL ACCOUNT OF THE EVENTS

The following is a brief historical account of the events that took place according to the reports of the school management.

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

1. At the end of October 2023, Mrs. Ana Ozores, mother of the 6th year primary pupil of CEIP Mar Océana Úrsula Iguarán requested a meeting with the school's management team to refer a possible case of bullying suffered by her daughter. The protocol for action and intervention in cases of bullying begins on 2 November 2023 (as 1 November, All Saints' Day, is not a public holiday). The data is entered into the corresponding management platform and the school's reference inspector is informed (4/11/2023).

2. The PTSC (technical teacher of community services) of the centre, attached to the educational guidance service, is also informed of the case.

3. From this moment on, various questionnaires (CESC) on bullying are carried out and the minor Ursula Iguarán is interviewed (10/11/2023).

4. An interview is held with Ursula Iguarán's mother (21/11/2023).

5. In December 2023, Ursula Iguarán stated that the problems she was having with some of her classmates had ceased and that the situation had improved.

6. In view of these data, it was decided to temporarily suspend the protocol, as no indicators of bullying were found.

7. In view of an incident that occurred during lunch break on 3/2/2023 and communicated via instant messaging (WhatsApp) to the school, a meeting was held with the offending pupils and with the offended party, Úrsula. On 4/4/2023 a meeting was held between the management team and the offending pupil. The family of the offending pupil is summoned to a meeting on 18/4/2023.

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

8. The bullying protocol is resumed and the inspector and social services are informed.

9. Numerous activities have been organised to improve coexistence in the classroom and to promote group cohesion:

1. Follow-up and individual talks with the pupil Úrsula Iguarán.

2. Classroom tutorials and various tutoring activities.

3. Group cohesion and cooperation dynamics with the school's coexistence coordinator (March 2023).

4. Group cohesion dynamics (23/11/2022).

5. Workshop given by the Health Centre nurse on respect and coeducation (7/12/2022).

6. Request to the Civil Guard for a workshop on cyber-bullying, to be held.

7. Also requested a talk of the same type from the National Police, which was cancelled as the centre does not belong to their demarcation.

8. Request for workshops from the police tutor referring to the centre and the [LOCATION] children's and youth centre, on bullying and social networks.

9. Request to the Youth Council for the workshop "Internet, photos and me" (10/2/2023) and "We are all friends on the internet" (5/5/2023).

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

10. The inspector of reference has been informed in several inspection visits and even by telephone (4/11/2023, 2/12/2023...).

11. The competent social services have also been informed of the case, which has been reviewed at monthly meetings between them and the centre in November 2023 (24/11/2023), December 2023, February 2024, 9 March 2024.

12. The teacher has repeatedly summoned Mrs. Ana Ozores to hold a meeting to discuss her daughter's case, but to no avail, as she has never attended any of these meetings.

13. As early as December 2023, upon learning of her daughter's school grades, Ms. Ana Ozores expressed her disagreement with these results, especially in the area of artistic education (shared between the tutor Mr. Buendía, responsible for the subject of plastic arts, and the teacher Mr. Pedro Páramo, responsible for the subject of music). The music teacher issues a report on these results and the reasons for the marks awarded and merited by the pupil.

14. On 5 April 2023, the tutor Mr. Aureliano Buendía receives audio via WhatsApp and a phone call from Ms. Ana Ozores, in which she expresses her disagreement with the marks of the second assessment. On the same date, the school management received an email from Ms. Ana Ozores for the same reason. In response to these communications, the school summoned the complainant, Ms. Ozores, to a meeting scheduled for 18 April 2024, but she stated (17/4/2024) that she would not attend and that she had no intention of discussing these issues with the centre.

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

INSPECTOR'S ACTIONS

1.Monitoring of the case throughout the academic year 2023-2024 by means of informal meetings with the management team in the framework of ordinary inspection visits (26 September 2023, 6 October 2023, 25 October 2023, 4 December 2023, 11 February 2024, 20 March 2024, 13 May 2024), in addition to telephone or e-mail communications (such as that of 8 April 2024).

2. Request for reports from the centre's management, including a historical account of the proceedings and a complementary report of conclusions.

3. Report favourable to the extraordinary change of centre of the minor Ursula Iguarán dated 19 April 2024.

4. Meeting with Mr. Aureliano Buendía on 14 May 2024.

5. Meeting with Mr. Julián Álvarez, director of CEIP Mar Océana, dated 18 May 2024.

6. Favourable report on the request for legal assistance from the Law Office of the Autonomous Community of the Balearic Islands requested by Mr. Aureliano Buendía on 17 May 2024.

IMPLEMENTING LEGISLATION

1.Organic Law 2/2006, of 3 May, on Education, modified by Organic Law 3/2020, of 29 December.

2. Organic Law 10/1995, of 23 November 1995, on the Penal Code.

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

3. Law 3/2007, of 27 March, on the Civil Service of the Autonomous Community of the Balearic Islands.

4. Royal Legislative Decree 5/2015, of 30 October, approving the revised text of the Law on the Basic Statute of the Public Employee.

5. Law 1/2022, of 8 March, on education in the Balearic Islands.

6. Decree 121/2010, of 10 December, establishing the rights and duties of students and the rules of coexistence in non-university educational centres supported with public funds in the Balearic Islands.

LEGAL CONSIDERATIONS AND ASSESSMENT OF THE FACTS

First: On the possible harassment suffered by the minor Ursula Iguarán and on the actions of the centre

1.The application of the school bullying protocol does not provide any evidence to support the conclusion that this is a case of bullying. In spite of this, at all times the school management, the tutor and the teaching staff have acted diligently.

2. It is clear from the school's actions that the management acted with the diligence of a good parent, initiating the bullying protocol immediately and intervening at all times to prevent harm and bring the conflict to an end. It has requested the intervention of various social and health professionals and law enforcement agencies and has effectively and efficiently managed the situation. Despite finding no evident indicators of bullying and the minor Ursula stating that the situation had improved, which

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

led to the suspension of the protocol in December 2023, the centre continued to monitor and intervene appropriately in the case.

3. Moreover, the standard of diligence required here is exceeded by the actions of the management team, since, as has just been indicated, despite the lack of clear evidence of the bullying suffered, the school's intervention was aimed at protecting the minor at all times and re-establishing coexistence and cohesion within the group.

4. The regulations on coexistence and bullying have been applied at all times, in order to guarantee the exercise of the rights enjoyed by the students and the other members of the educational community, as well as the fulfilment of the duties established by these same rules.

Second: On the complaint against the teacher Mr. Aureliano Buendía

1.From the proceedings carried out, there is no evidence of inappropriate behaviour on the part of the teacher Mr. Aureliano Buendía, neither in the disciplinary nor in the penal sphere.

2. The statements made in the complaint, even if they were confirmed in all respects, which does not seem possible in view of what has been investigated so far, are not sufficient to give rise to criminal liability on the part of the teacher, nor do they allow any fit with article 173 of the Criminal Code:

1. Anyone who inflicts degrading treatment on another person, seriously undermining their moral integrity, shall be punished with a prison sentence of six months to two years [...].

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

The same penalty shall be imposed on those who, in the context of any employment or civil service relationship and taking advantage of their relationship of superiority, repeatedly carry out hostile or humiliating acts against another person which, without constituting degrading treatment, constitute serious harassment of the victim.

3. Case law (for example, STS 213/2015, 22 February) requires, for the elements that make up the concept of an attack against moral integrity to be present, the presence of these elements: a) an act of clear and unequivocal vexatious content for the passive subject; b) the concurrence of physical or psychological suffering; and c) that the behaviour is degrading or humiliating with special impact on the concept of dignity of the person-victim. And all of this is linked by way of a common thread to the note of seriousness, which requires a study of each specific case.

4. According to this precept, the minor offence of degrading treatment requires the concurrence of a medial element (inflicting degrading treatment on a person) and a result (seriously impairing their moral integrity), both in a perfect causal relationship. The treatment given to the victim must therefore be of such a nature that it seriously undermines their moral integrity, that is to say, it must be capable of creating feelings of terror, anguish and inferiority in the victim, which could humiliate them, debase them or even break their physical and moral resistance (STS 1122/1998, of 29 September, STS 1218/2004, of 2 November, STS 819/2002, of 8 May and STS 1061/2009, 26 October).

5. If it is understood, as here, that the degrading treatment occurs in the context of an official relationship by a superior, it requires that "hostile or humiliating acts are carried out against the victim which, without constituting degrading treatment, involve serious harassment of the victim",

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

which is not the case here either, since the alleged acts are neither repeated, nor are they hostile or degrading, nor do they involve serious harassment, but rather no harassment whatsoever of the minor.

6. On the contrary, in the alleged facts, from the account given by the tutor and the headmistress, there is no malice or *animus iniuriandi*, nor any *animus laedendi* whatsoever.

7. On the other hand, the facts denounced are not sufficiently serious or typical to constitute the type of criminal offence indicated. In fact, there is no evidence that they could even constitute a disciplinary offence, since they are part of the natural, every day, habitual relationship between teacher and student.

8. Thus, when it is stated in the complaint that "Ms. Úrsula tells her teacher in private that due to her age and being in a hormonal period she needs to go out to the toilets and the teacher Mr. Aureliano shouts in the middle of the classroom that she is having her period", according to the testimony of the tutor Mr. Buendía, in no case has he ever made the intimacies of his students public before the class, and furthermore, Úrsula had permission from the head of studies and from the tutor herself to go to the bathroom whenever she needed to, information that is corroborated by the headmistress in her statement.

9. Regarding the complaint "That when they are in class doing maths exercises, Mrs. Úrsula is doing some exercises and Mrs. Antonia, on approaching her desk and seeing that she is not doing the exercises as she said, abruptly rips the page out of her notebook and, quite upset, tells her that this is not the way to do it", the teacher, Aureliano Buendía, states that he did not tear out the sheet of paper abruptly, but that, indicating to the

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

minor that the exercises were badly done, he agreed with her to tear out the sheet of paper and do them again, since it was not possible to correct the exercises in an adequate and comprehensible manner due to a lack of clarity and order. For this reason, he agreed with the pupil to tear up the sheet and start again.

10. Another alleged fact is that "Don Aureliano ridicules her in front of her classmates for still wearing a mask in class and making comments such as (look at the pimples you have)". Well, the tutor, Aureliano Buendía, states that at no time did he make any comment to the pupils in the class about Ursula Iguarán wearing the mask. When the events took place, and when the pupil complained that the mask was bothering her because of the heat, given that it was September, he recommended to her in private that during playground time, in the open air, she should remove the mask so that the air would cool the skin on her face and relieve the itchiness of her pimples or blackheads.

11. On the other hand, with regard to the statement that "That during an excursion in the LOCALITY area where zip-line activities are carried out, Mrs. Úrsula did not want to jump off because she was too tall and the class tutor Mr. Aureliano ridiculed her in the presence of her classmates saying that she was scared and that she should jump off, which caused Mrs. Úrsula to start crying and panic even more", the tutor Mr. Buendía indicated that the pupils participating in this activity were in the charge of instructors who were responsible for developing the specific activities with the pupils. The role of the teachers was merely to support and observe the development of the activities. According to what was stated by the teacher, Ursula Iguarán at no time stated that she did not want to go on the zip line because she was afraid, neither to the

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

instructors. And in fact, Mr. Buendía was downstairs with two students who were doing the initiation course because they did not want to go up so high. Thus, neither the teacher Mr. Buendía climbed the zip line nor at any time was the minor, or any other pupil, forced to jump. The teacher's action was to encourage her to participate, but without any kind of pressure on the minor.

12. It should be noted that the zip-line activity took place not during this school year, but the previous one, when Úrsula Iguarán was in 5th grade of Primary, and there was no complaint, communication or statement of any kind about this alleged incident.

13. It is also stated in the complaint that "Mrs. Rebeca sent the teacher a note through the school diary stating that he should refer to teaching and not to psychological abuse or persecution of her daughter, and that he should please stop this behaviour towards her daughter. Without any reply from him", to which the teacher, Mr. Buendía, indicates that he received this note a fortnight after the start of the school year, and that the mother was told that it would be better to deal with the issue in a face-to-face meeting during a tutorial session. On the other hand, the teacher, until he received this note through the school diary, had not had any news of any discomfort or complaint from the mother of the minor Ursula Iguarán, despite the fact that during the previous school year he had already been her teacher.

14. It is also remarkable the tutor's affirmation that Ursula Iguarán has at no time expressed her discomfort, displeasure or rejection of the treatment received from Mr. Buendía. On the contrary, she has gone to him when she has had a conflict with other students.

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

15. On the other hand, the complainant, Mrs. Ana Ozores, mother of the pupil Ursula Iguarán, has not approached the teacher to express her differences or complaints, nor has she participated in any meetings or tutorials. She did meet once with the team managing the bullying protocol opened at the request of the minor, an interview included in the aforementioned bullying protocol.

16. Finally, it should be noted that the statement in the complaint that "the school has already been informed of what has happened and has not taken any relevant steps to resolve what is happening at the school" is incorrect, given that, as indicated above, in addition to the opening of the bullying protocol, the school has programmed and carried out numerous activities to improve coexistence and prevent bullying.

17. The conduct of the tutor Mr. Buendía does not fall within any of the types of sanctioning established in Law 3/2007, of 27 March, on the Civil Service of the Autonomous Community of the Balearic Islands, established in articles 137, 138 and 139, especially in the offences referring to the treatment of any person with whom the official has dealings in the course of his duties, nor only in the minor form of "Impropriety with any person with whom he has dealings in the course of his duties", provided for in article 139 c) of the aforementioned law.

18. Neither the school management nor the teacher were guilty of any disciplinary misconduct in dealing with the reported bullying, as they acted diligently and applied the protocols in place. Their conduct, therefore, can in no way be considered as a lack of performance, inhibition or even the minor offence foreseen in article 139 d) of the same Law 3/2007, of "Lack of care or negligence in the exercise of one's duties", since, as has been

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75
https://doi.org/10.52149/Sp21
ISSN 1886-5895

demonstrated, both the school management and the tutor and the other teachers involved acted with care and diligence.

CONCLUSIONS

1. The background and facts set out in this report and the accompanying documentation do not disclose any evidence of malpractice, lack of diligence or any conduct that could be subject to disciplinary or criminal sanction.

2. The same can be said of the actions of the teacher, Mr. Aureliano Buendía, in which there is no evidence of malpractice or any conduct that could be subject to disciplinary or criminal sanction.

3. The school has acted with the diligence of a good parent, applying the protocols and taking the necessary measures to resolve the case of alleged bullying suffered by the minor Ursula Iguarán, programming and carrying out group cohesion activities, tutorials, mediation, etc.

4. The mother of the minor, Mrs. Ana Ozores, expressed her disagreement with the school's actions, which was triggered by Ursula Iguarán's report card. A first disagreement took place when the grades corresponding to the first evaluation were handed in, and a second, more serious disagreement took place when the report card for the second evaluation was handed in. This seems to be the trigger for the complaint.

5. When requesting a change of school due to alleged bullying, the undersigned inspector, on the basis of the data and information provided by the school, understands, and so it is indicated, that despite there being no

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

evidence to indicate possible bullying, the situation of loss of confidence with the school on the part of Ms. Ana Ozores and the statement of the minor (through her mother) of not wanting to attend the school justify, in accordance with the principle of the best interests of the child, the change of school, despite the lateness of the request, without this implying improper action on the part of the management of CEIP Mar Océana or her teachers towards the child.

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

NORMATIVE REFERENCES

Legal regulations

●Ley Orgánica 2/2006, de 3 de mayo, de Educación, modificada por la Ley orgánica 3/2020, de 29 de diciembre.

●Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.

●Ley 3/2007, de 27 de marzo, de la Función Pública de la Comunidad Autónoma de las Illes Balears.

●Real Decreto Legislativo 5/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto Básico del Empleado Público.

●Ley 1/2022, de 8 de marzo, de educación de las Illes Balears.

●Decreto 121/2010, de 10 de diciembre, por el que se establecen los derechos y los deberes de los alumnos y las normas de convivencia en los centros docentes no universitarios sostenidos con fondos públicos de las Illes Balears.

Rulings

- STS 1122/1998, 29 September.
- STS 819/2002, 8 May.
- STS 1218/2004, 2 November.

Recepción: 11/01/2025 Aceptación: 14/01/2025

Supervisión21 nº 75

https://doi.org/10.52149/Sp21

ISSN 1886-5895

- STS 1061/2009, 26 October.
- STS 213/2015, of 22 February.

Recepción: 11/01/2025 Aceptación: 14/01/2025