

CRIME IN SCHOOLS: AN ANALYSIS OF CIVIL LIABILITY IN HOMICIDE CASES

CRIMINALIDADE NAS ESCOLAS: UMA ANÁLISE DA RESPONSABILIDADE CIVIL NOS CASOS DE HOMICÍDIO

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ABSTRACT

The aim of this article was to carry out a study on the judicialization of school conflicts that culminate in homicide, through a documentary and jurisprudential analysis in the state of São Paulo. Bibliographical, documentary and jurisprudential research of a qualitative nature was used to develop the study. The context of the study was the virtual environment of the Court of Justice of the State of São Paulo (tjsp.jus.br), in order to carry out a documentary survey of case law on the subject of this research, considering the time span of the last ten years (2013 to 2023). The data was analyzed based on a floating reading of the data collected from the case law of the São Paulo State Court of Justice, involving the judicialization of public and private school relations, and comparing it with the theoretical framework. The results showed that in the case of homicide, compensation will follow Article 948 of the Brazilian Civil Code, since it is the school's responsibility to ensure safety within its establishment. The jurisprudential and documentary analyses led to the conclusion that judicialization has been a mechanism for enforcing rights that may have been violated in the school environment, with consequent compensation for material and moral damages.

Keywords: Judicialization; School; Civil liability; Case law. São Paulo Court of Justice. Homicide~

RESUMO

O presente artigo teve como objetivo realizar um estudo a respeito da judicialização dos conflitos escolares que culminam em homicídio, por meio de uma análise documental e jurisprudencial no estado de São Paulo. Para o seu desenvolvimento, foi utilizada a pesquisa bibliográfica, documental e jurisprudencial, de cunho qualitativo. O contexto do estudo foi o ambiente virtual do Tribunal de Justiça do Estado de São Paulo (tjsp.jus.br), com o intuito de realizar levantamento documental de jurisprudências a respeito da temática desta pesquisa, considerando-se o lapso temporal dos últimos dez anos (2013 a 2023). A análise dos dados foi realizada com base na leitura flutuante dos dados coletados nas jurisprudências do Tribunal de Justiça do Estado de São Paulo, envolvendo a temática da judicialização das relações escolares de ordem pública e privada, cotejando-os com o referencial teórico. Os resultados evidenciaram que no caso de homicídio, a indenização seguirá o artigo 948 do Código Civil brasileiro, uma vez que cabe à escola cuidar da segurança dentro de seu estabelecimento. As análises jurisprudencial e documental permitiram concluir que a judicialização tem sido um mecanismo de concretização dos direitos eventualmente violados no âmbito escolar, com a consequente indenização dos danos materiais e morais.

Palavras-chave: Judicialização; Escola; Responsabilidade civil; Jurisprudência. Tribunal de Justiça de São Paulo. Homicídio

Introduction

Society is changing day by day. We can say that these changes cover all spheres of the sciences, including the social sciences, which is an area of study that aims to understand the organization of society in its most varied aspects.

Society is constantly changing. Interpersonal relationships are expanding more and more. This evolution stems, among other things, from the effects of globalization, which is a process of expansion of various sectors of society, including technology, at an international level.

With the progression of social and technological changes and the intensification of humanistic relationships, there is also an increase in conflicts, which can occur due to various factors, caused by interests, values, in the most varied areas, including schools.

The existence of school conflicts can be derived from various generative facts, occurring between teachers-students, teachers-teachers and students-students. It can happen in the simplest of ways and for the simplest of reasons, such as disagreements, complaints, or lack of interest in studies that generate behavior that is inappropriate for the school environment. However, these conflicts can have even more serious consequences that can lead to physical violence, pushing, punching and even psychological aggression.

Based on the possibility of material and moral damage occurring in the educational environment, this research aimed to carry out a study on the judicialization of school conflicts that culminate in homicide, through a documentary and jurisprudential analysis in the state of São Paulo.

In order to present how the research was carried out, this article is structured initially with a theoretical foundation on the issue of civil liability and the school environment, then we present the research methodology and the results. Finally, we present the conclusions and future prospects

Civil liability in schools

Conflicts end up reaching the Judiciary, at which point there is a real judicialization of school relations, and from the moment it is invoked, it is necessary to act in accordance with Article 5, XXXV, of the Federal Constitution/1988, and Article 3, of the Code of Civil Procedure, which refer to the principle of non-appealability of jurisdiction.

On the civil liability of schools, according to the words of Cristiano Chaves de Farias, Nelson Rosenvald and Felipe Braga Netto (2019, p. 998):

Educational establishments are liable, without fault, for damage caused by their students in that capacity to third parties. If the educational establishment is public - federal, state or municipal - the state is liable, without fault, both for damage caused by pupils (in their capacity as pupils) to third parties and for damage caused by pupils to other pupils. Although educational establishments, whether public or private, are obliged to ensure the physical and psychological safety of students (STF, RE No. 109.615), while they are there, the issue must always be analyzed from the perspective of the causal link. If, say, a student drowns during a swimming lesson, the causal link with the activity is obvious. The same can be said if a physical education teacher injures a student during a soccer match, even if he argues that it is something specific to the game. There is, in this case, a causal link with the activity offered by the educational establishment and, therefore, a duty to compensate (at the beginning of 2014, we had sad and tragic cases in Brazil involving the deaths of children whose hair was sucked down the drains of swimming pools in recreational clubs).

Cristiano Chaves de Farias, Nelson Rosenvald and Felipe Braga Netto (2019, p. 998 and 999) also discuss civil liability for bullying:

Educational establishments, both public and private, are responsible for curbing these practices and can be held liable for failure to act. Naturally, the duty of observation and care is not limited to the classroom, and in such cases it is essential to take care during breaks, when aggression and humiliation occur with greater frequency and intensity[...]. If there is evidence of such a practice, an attempt should be made, through the courts if necessary, to prevent the damage, or at least its continuation. Civil liability for moral

damage is imposed if the injury is not prevented, or if it is only interrupted when certain damages have already been suffered. In this case, the educational establishment is liable, as are the parents of the offending child.

It is possible to affirm, by virtue of the analysis of the doctrinal citations, that the civil liability of schools is objective, and this issue of the civil liability of schools is entirely linked to the judicialization of school conflicts and actions for compensation for moral damages in the same context.

According to the Civil Code, in its article 932, item IV (BRASIL, 2002): "The owners of hotels, inns, houses or establishments where lodging is provided for money, even for educational purposes, by their guests, residents and students are also liable for civil reparation." According to this legal provision, it is possible to extract the objective civil liability of educators during the period in which the student is under the tutelage of the school establishment.

Finally, it can be seen that the judicialization of school relations is totally present in our daily lives, with both legal and jurisprudential backing. It is important to understand the social context and the social and technological changes that have taken place to this day, in order to understand the causes of conflicts, as well as the social reaction to them, and finally reaching the sphere of the judiciary, generating civil liability.

Methodology

To develop this study, we used bibliographical, documentary and case law research of a qualitative nature.

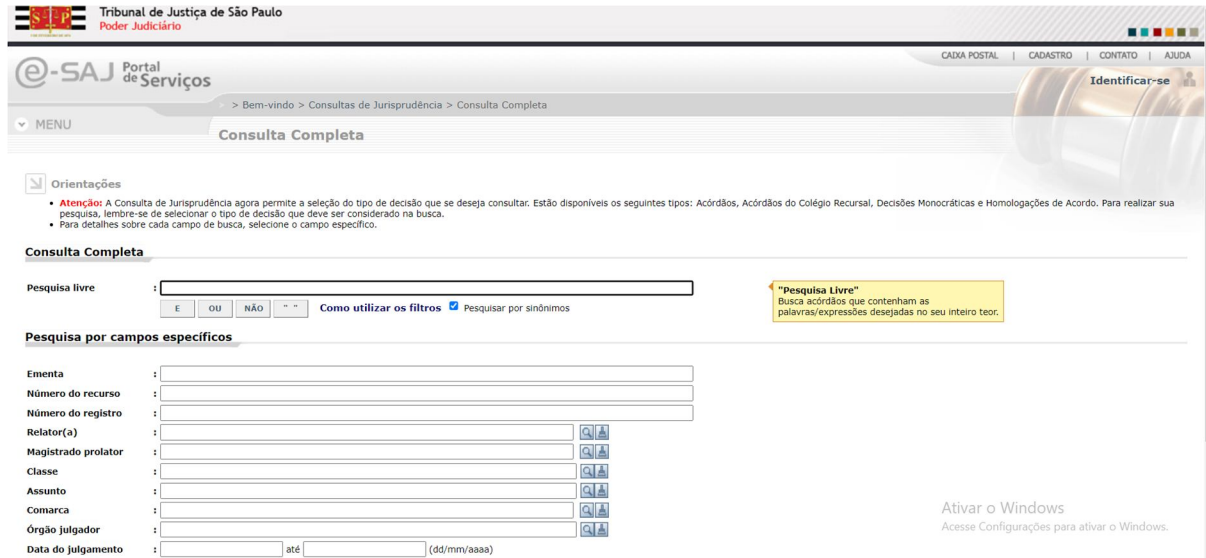
The research context was the virtual environment of the Court of Justice of the State of São Paulo (tjsp.jus.br), with the aim of surveying case law on the subject discussed in this project. Figures 01 and 02 show the context in which we searched for this information:

Figure 1. Website of the São Paulo State Court of Justice



Source: <https://www.tjsp.jus.br>

Figure 2. Consultation of case law at the São Paulo Court of Justice



Source: <https://esaj.tjsp.jus.br/cjsg/consultaCompleta.do?f=1>

We used the qualitative approach, which according to Bodgan and Biklen (1994, p. 49).

The qualitative research approach requires that the world be examined with the idea that nothing is trivial, that everything has the potential to constitute a clue that will allow us to establish a more enlightened understanding of our object of study.

Finally, we would like to point out that this study did not require approval from an ethics committee, as it did not involve human beings.

Results and discussion of the data: homicide in the school environment

The concept of homicide can be taken from article 121, caput, of the Penal Code (BRASIL, 1940) in verbis: "to kill someone". In order to properly understand cases of homicide in the school environment, it is first necessary to understand how civil liability works in relation to homicide and its compensation.

Compensation in the event of homicide was set out in Article 1.537 of the Civil Code of 1916, and now finds correspondence in the current Civil Code (BRASIL, 2002), Law No. 10.406, of January 10, 2002, which in its Article 948 states:

In the case of homicide, compensation consists, without excluding other reparations:
I - payment of the victim's treatment, funeral and family bereavement expenses;
II - the payment of maintenance to the persons to whom the deceased owed it, taking into account the probable duration of the victim's life.

This is a case of subjective civil liability, which depends on the verification of culpa lato sensu (broad sense), i.e. guilt or intent. Thus, once the harmful act is proven to be faulty, the duty to repair the damage arises.

In the old law there was a flaw in the article, as it allowed for a restrictive interpretation, implying that the compensation due in the event of homicide was only that set out in the article, which would exclude, by way of example, compensation for moral damages.

Over time, while the old Civil Code was still in force, case law evolved and came to understand that article 1.537 should be interpreted as an exemplary list. This problem was solved by the Civil Code of 2002, which in article 948, with basically the same provision, added: "without excluding other reparations", thus safeguarding any other reparation due, even if not expressly mentioned in the provision.

Expenses incurred in treating the victim refer to cases in which the victim does not die immediately, but needs to be taken to an emergency room, emergency room or hospital, constituting the duty to compensate the amounts spent on medical and hospital expenses.

The offender must also pay the funeral expenses, which can be understood as the amounts paid to the funeral company, the purchase of a coffin, hearse, grave, and as already understood by case law, funds for the construction of a grave.

Still unraveling item I, of article 948, of the Civil Code, on the expression "family bereavement", Azevedo Marques apud Carlos Roberto Gonçalves (2021, p. 479) establishes that:

Azevedo Marques, commenting on the expression "family bereavement", considers that it should not be taken in the sense of "mournful garments", but rather in the broad sense of "a deep feeling of sadness caused by the loss of a loved one", of "moral pain".

With regard to maintenance, provided for in item II of article 948 of the Civil Code, Flávio Tartuce (2021, p. 482) states that:

[...] compensation for loss of earnings is due to the dependents of the deceased, taking into account the probable life of the deceased. According to higher case law, the calculation of this probable life must comply with the life expectancy set by the IBGE [...]

It is more common to find in jurisprudence and doctrine, judgments that take into account, for the purposes of receiving a pension, the average expectation of 65 years of age for Brazilians.

However, as Carlos Roberto Gonçalves (2021) rightly points out, many of the judgments based on the age of 65 for receiving a pension date back to the early 1990s, and until the end of 2007, case law said that this was the average life expectancy.

At the beginning of 2008, the Superior Court of Justice changed this guideline and ruled that the age limit for alimony payments would be based on the average life expectancy of Brazilians at the time, 70 years. Today, the average life expectancy is 76.8 years, and should reach 78 years by 2030.

Even with this evolution in jurisprudence, several judgments still use the age of 65. In this sense, it would be important for judgments to constantly evolve so that the people whom the deceased supported are not left without proper support before the time abstractly guided by case law as to life expectancy, for example: the average life expectancy is 76.8 years and the court decides that the agent should provide maintenance to the people to whom the deceased owed it until he turned 65 if he were alive.

Before going into the case of schoolchildren, it's worth making a few points: In the case of the death of the spouse who supported the family, the pension would consist of 2/3 of the victim's salary up to the limit of the probable duration of his/her life. This is 2/3 because it is assumed that if the victim were alive, they would spend 1/3 of their salary on themselves. In the event that the deceased was the spouse who carried out the household chores and had no profession outside the home, Carlos Roberto Gonçalves (2021, p. 486) believes that "The amount of the pension, in these cases, has been fixed based on the standard salary in the locality, paid to the person in charge of

looking after the household chores [...]". It should be noted that the calculation of this pension is the result of a doctrinal construction.

Given the context of the compensation due in the event of a homicide, we will now deal with the death of a minor child, which is what happens in the event of homicides in schools, since, as a rule, the students are minors.

With regard to compensation in the event of the death of a minor child, Precedent 491 of the STF states: "An accident that causes the death of a minor child, even if the child is not in paid employment, is compensable". Carlos Roberto Gonçalves (2021) also says that all damages that can be proven are compensable, including moral damage.

With regard to the payment of maintenance to the family of the underage victim, Carlos Roberto Gonçalves (2021, p. 483) states:

[...] in the period in which the deceased child was between 14 and 25 years old, the parents must receive a pension equivalent to 2/3 of the minimum wage. If the death occurred between the ages of 25 and 70, the pension will be 1/3 of the minimum wage. Fourteen is the age at which a minor can start working as an apprentice (CF, art. 7, XXXIII); 25, the age arbitrated by case law as the age at which people usually get married and start helping their parents less financially; and 70, the life expectancy estimated by case law.

As for the age of 25, in addition to being understood by case law as the age at which people usually get married, some believe that this is a sufficient age for the deceased to be able to complete his higher education course and end up leaving his parents' home.

Although the understanding is that the pension to the minor's family should be considered from the moment he turns 14 until the age of 25 in the amount of 2/3 of the minimum wage, and after that decrease to 1/3, from the age of 25 until his probable life span, there are understandings to the effect that the age of 25 is the time limit for the payment of compensation, because as Flávio Tartuce (2021, p. 485): "[...] it cannot be deduced, from the general standard of conduct of Brazilians, that the son will continue to contribute to his parents' household savings after starting his own family."

When the homicide is caused by underage pupils, the educational establishment is objectively liable, as set out in the Civil Code, in article 932 (BRASIL, 2002) "They are also liable for civil reparation: IV - the owners of hotels, inns, houses or establishments where people stay for money, even for educational purposes, for their guests, residents and pupils". Schools, as service providers, are also subject to the Consumer Protection Code, which under the terms of its article 14 (BRASIL, 1990) are liable, regardless of fault, for damage caused to consumers.

The school's strict liability presupposes the student's fault, i.e. if the student was not at fault in their conduct, the school is not strictly liable.

In addition, the school must also ensure the physical and psychological safety of students.

Carlos Roberto Gonçalves says about the damage caused by students to third parties (2021, p. 151):

[...] If the damage is caused by the student against a third party, the school is liable for the damage, regardless of fault. It does, however, have recourse against the pupils (because their parents have no obligation to answer for the actions of their children at school), if the latter are able to pay for the damage without depriving themselves of what is necessary (CC, art. 928 and sole paragraph).

It is understood that the educational establishment's right of recourse against the students is possible if they can afford to repair the damage without depriving themselves of what is necessary, but in practice it is very difficult for underage students to be able to do so. This raises a question in which the doctrine differs: some believe that a regressive action against the parents is possible, while others say it is not.

Carlos Roberto Gonçalves (2021, p. 153) believes that it is not possible:

[...] there is no justification for taking action against the parents of minors who are relatively or absolutely incapable, because the establishment, by taking them in, is transferring custody and supervision, and is therefore responsible, if the student commits any act that harms a third party [...].

Carlos Roberto Gonçalves (2021) also points out that parents can only be held responsible exceptionally, if the causal link between their conduct and the damage caused is proven, for example: they didn't hide the firearm in a suitable place and the child picked it up and took it to school, in which case they would be able to sue the parents. Cristiano Chaves de Farias, Nelson Rosenvald and Felipe Braga Netto (2019), however, believe that a regressive action against the parents is possible, depending on the specific case.

It is also important to differentiate between private schools and public schools (federal, state or municipal). In the case of public schools, the Public Administration of the respective entity will be liable.

Having understood the aspects of homicide in the school environment, we can look at some case law from the São Paulo State Court of Justice::

ILLEGITIMACY OF PASSIVE PARTY - Action for damages - Damaging event that occurred on the premises of the state school - The Municipality is an illegitimate party to answer for an act that occurred outside the limits of its police power - Illegitimacy "ad causam" recognized INDEMNITY - Civil liability - Moral damage - Sentence against the State - Possibility - It is the Public Administration's duty to ensure the safety of the environment. Moral damage - Teacher murdered by a student - Sentence directed only against the student - Claim to extend the sentence to the State - Possibility - It is the duty of the Public Administration to ensure the physical safety of teachers and staff who carry out their activities within the school - Student who, armed with a knife, circulates normally around the school premises, enters the teachers' private room and there, feeling at ease, strikes the teacher five times, killing her - Serious omission - Presence of a causal link - State civil liability recognized - Extension of the condemnation to the State of São Paulo, in solidarity - Attorney's fees increased - Appeal partially upheld (TJSP; Civil Appeal 1000089-74. 2016.8.26.0283; Rapporteur: Reinaldo Miluzzi; Judging Body: 6th Chamber of Public Law; Itirapina Court - Single Court; Date of Judgment: 18/12/2017; Date of Registration: 19/12/2017).

In the above-mentioned case, the student and the state were held jointly and severally liable and ordered to pay the sums decided by the trial court. In this appeal, the Municipality of Itirapina/SP was excluded from liability, because, as we have seen in this book, since it is a state school, the state must be held responsible.

Also in a state school, the case law below shows a homicide in a school, but not caused by a student:

MORAL AND MATERIAL DAMAGES Civil liability. Death of a student inside a state school. A body of evidence that allows us to ascertain, with the necessary certainty, the occurrence of a causal link between the harmful event and the damages suffered by the plaintiffs. It was the school's responsibility to ensure the student's safety in class and within its premises, which it failed to do, given the evidence that a third party entered the school and fired shots that hit him and caused his death. Thus, the event cannot be attributed to mere fatality or to the responsibility of a third party, since the school always provided security staff, certainly because of the risks posed to students. In short, given the obvious foreseeability of the risk and the omission of the Administration's duty of care, the causal link necessary to obtain the compensation claimed has been demonstrated. (TJSP; Civil Appeal 0111934-91.2006.8.26.0053; Rapporteur (a): Jarbas Gomes; Judging Body: 8th Chamber of Public Law; Central Court - Public Treasury/Acidentes - 11th Public Treasury Court; Date of Judgment: 11/26/2014; Date of Registration: 11/26/2014).

In this case, it is possible to see that the entity responsible for the school was held liable, so that it was not possible to attribute the event to mere fatality or the responsibility of a third party, given that it even had an employee to keep the students safe. In the wake of the Consumer Defense Code, in its article 14, § 1, I (BRASIL, 1990), "The service is defective when it does not provide the safety that the consumer can expect from it, taking into account the relevant circumstances [...]".

The following case refers to a murder at a school, in which, given the circumstances, there was broader liability:

Civil liability Death of a student caused by a firearm being discharged inside the school Objective liability of the administration Liability of the student who brings the firearm into the school and hands it over to a third party, as well as his parents Liability of the student who discharges the firearm Duty to compensate recognized Material damage non-existent Moral damage well assessed Interest due in accordance with Precedent 451 of the STJ Interest and monetary correction in line with Law 11. 960/09 Recognition of reciprocal succumbence Appeals partially granted. (TJSP; Appeal / Remessa Necessária 0014794-45.2008.8.26.0099; Rapporteur (a): Luis Fernando Camargo de Barros Vidal; Judging Body: 4th Chamber of Public Law; Bragança Paulista Court - 2nd Civil Court; Date of Judgment: 10/20/2014; Date of Registration: 10/24/2014).

Unlike what was shown earlier in this book, about the payment of compensation for material damages based on the minimum wage in the event of the death of a minor child who does not yet work, the judgment in question concluded that compensation for material damages should not be paid, because the victim was seventeen years old, did not work and was not a poor family, in which case the deceased would presumably contribute. The compensation was set at R\$102,000.00 (one hundred and two thousand reais).

It should be noted that the judgment appealed against did not hold the student who brought the firearm into the school responsible, nor his parents. The aforementioned appeal reversed this scenario, holding the aforementioned responsible, as well as the student responsible for discharging the firearm, his parents and the Public Treasury of the State of São Paulo.

The following judgment took a different view, awarding compensation for material damage in the form of a monthly pension:

CIVIL RESPONSIBILITY Action for compensation for moral and material damages Death of the plaintiff's son, shot by a firearm on the premises of the state school where he was studying Responsibility of the Public Authority in the custody and surveillance of its students Characterization of the Public Treasury's duty to repair the damage Monthly pension at the rate of 2/3 (two thirds) of the minimum wage, due only until the deceased child's 25th birthday Also configured, the moral damage subject to compensation However, the amount arbitrated by the lower court should be reduced. Judgment upheld in the first instance Sentence upheld in part Necessary review and voluntary appeal by the Treasury partially upheld. (TJSP; Appeal / Necessary remittance 0001628-47.2003.8.26.0510; Rapporteur (a): Leme de Campos; Judging Body: 6th Chamber of Public Law; Rio Claro Court - Public Treasury Court; Date of Judgment: 12/16/2013; Date of Registration: 12/17/2013).

The plaintiff's son died from a gunshot wound on the premises of a state school. The 6th Chamber of Public Law of the São Paulo Court of Justice, in its ruling, reduced the compensation for moral damages from R\$ 100,000.00 (one hundred thousand reais) to R\$ 50,000.00 (fifty thousand reais). It also decided on a monthly pension in the amount of 2/3 of the minimum wage until the deceased child reached the age of 25, on the understanding that when he reached 25 he

would no longer be able to help with the family income, and that the pension should not be extended, even if reduced to 1/3 of the minimum wage, until he reached the age of 65..

COMPENSATION FOR MORAL AND MATERIAL DAMAGES STUDENT HIT BY FIREARM PROJECTILE, FIRED BY PERSONS NOT BELONGING TO THE SCHOOL - PROVEN OMISSION OF PUBLIC AUTHORITIES IN THE PROVISION OF SECURITY SERVICES CAUSAL LINK BETWEEN THE EVENT AND THE DAMAGE SUFFERED OBLIGATION TO MAKE REPARATION. The occurrence of shots fired from a firearm inside the school, followed by the death of a student, characterizes the causal link and the omission in the provision of the service by the State, as well as the duty to compensate. Decision upheld. Appeal dismissed. (TJSP; Appeal / Remessa Necessária 0111855-15.2006.8.26.0053; Rapporteur: Danilo Panizza; Judging Body: 1st Chamber of Public Law; Foro Central - Fazenda Pública/Acidentes - 5ª Vara de Fazenda Pública; Date of Judgment: 06/03/2012; Date of Registration: 07/03/2012).

Civil Appeal Compensation for material, moral damages Death of a student caused by another student inside a public school Action judged partially well-founded Nonconformity - Inadmissibility - Negligence of the State - Proof of guilt and failure in the public service Compensation due Compensation amounts correctly fixed - Appeals dismissed (TJSP; Appeal / Remessa Necessária 9158852-57.2009.8.26.0000; Rapporteur (a): Castilho Barbosa; Judging Body: 1st Chamber of Public Law; Presidente Epitácio Court - 2nd CIVIL COURT; Date of Judgment: 02/26/2013; Date of Registration: 02/28/2013).

It should be noted, as can be seen from the cases described above, that the civil liability of public schools, in addition to being included in other legislation, also finds legal support in the Federal Constitution, in its article 37, § 6 (BRASIL, 1988), which states:

§ Paragraph 6 - Legal entities governed by public law and those governed by private law that provide public services shall be liable for any damage caused to third parties by their agents in this capacity, with the right of recourse against the responsible party being guaranteed in cases of intent or fault.

The simple failure to fulfill its duty to ensure the safety and security of the people for whom the school is responsible, including the students, is enough to establish liability.

Conclusion and future prospects.

This work sought to highlight the implications of school relationships, through analysis of documents and, above all, case law, based on the rules and dictates of current civil law, entering substantially into the sphere of civil liability.

We can conclude that civil liability consists of the obligation to repair damage, either by one's own act or by the act of a third party in one's custody. As a result, it has become clear that the school is responsible for the damage caused by the individuals in its care.

In this research, we specifically sought to analyze the school's civil liability in relation to homicide.

The research showed that there is a large number of cases of judicialization of school relations. We understand that there is an increase in this phenomenon, so that all injured parties can be compensated for their damages. It is also of the utmost importance that the constitutional right of access to justice is guaranteed for all.

This right should be aimed at repairing the damage suffered by students and parents, while also taking into account the social reality of our country, it should also guarantee fair and effective decisions by the Judiciary, also considering that most of the cases analyzed in this article took place in public schools, with the respective federal entities being held responsible.

Finally, we believe that, as time goes by, there is a possibility that more and more disputes will reach the courts, given that society is having greater access to information and knowledge of the possibilities for compensation.

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