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# THE SWEDISH ORDINANCE AGAINST VICTIMIZATION AT WORK: A CRITICAL ASSESSMENT

Helge Hoel† and Ståle Einarsen††

## I. INTRODUCTION

The study of workplace bullying was pioneered in Sweden by the late educational psychologist Heinz Leymann<sup>1</sup> in the 1980s. For that reason, it is no surprise that as early as 1993 Sweden became the first country in the world to respond to the problem by means of statutory regulation. In the years following its enactment, the regulation has acted as an inspiration and a point of reference for advocacy groups across the world seeking similar regulation<sup>2</sup> as well as a benchmark for statutory initiatives in other countries.<sup>3</sup> For a considerable time Sweden was considered a positive exception or an anomaly.<sup>4</sup> In many ways Vega and Comer captured the mood of international commentators by describing the regulation in the following upbeat terms: "This ordinance has language to prevent workplace bullying, protect employees that try to address bullying, compensate targets/victims, and penalize bullies and employers who permit transgressions."<sup>5</sup>

However, while there is little doubt that the Swedish regulation against victimization has made an important contribution, not least in

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† Manchester Business School, University of Manchester, United Kingdom.

†† University of Bergen, Norway. The authors would like to acknowledge the contribution of Sven Björck in making this study possible.

1. In addition to a Ph.D. in educational psychology, Leymann also graduated with a Ph.D. in trauma-psychology.

2. TIM FIELD, *BULLY IN SIGHT: HOW TO PREDICT, RESIST, CHALLENGE AND COMBAT WORKPLACE BULLYING* (1996); MARK HUGHES & RUTH NAMIE, *BULLYPROOF YOURSELF AT WORK: PERSONAL STRATEGIES TO STOP THE HURT FROM HARASSMENT* (1999).

3. DUNCAN CHAPPELL & VITTORIO DI MARTINO, *VIOLENCE AT WORK* (3d ed. 2006).

4. Patricia Meglich-Sespico, Robert H. Faley & Deborah Erdos Knapp, *Relief and Redress for Targets of Workplace Bullying*, 19 EMP. RESP. & RTS. J. 31 (2007); David C. Yamada, *Workplace Bullying and The Law: Towards a Transnational Consensus*, in *BULLYING AND EMOTIONAL ABUSE IN THE WORKPLACE: INTERNATIONAL PERSPECTIVES IN RESEARCH AND PRACTICE* 399 (Ståle Einarsen et al. eds., 2003).

5. Gina Vega & Debra R. Comer, *Sticks and Stones May Break Your Bones, But Words Can Break Your Spirit: Bullying in The Workplace*, 58 J. BUS. ETHICS 101 (2005).

providing hope and belief in a future where bullying is prohibited, recent evidence of its shortcomings<sup>6</sup> suggests a more measured assessment of its success and contribution. Moreover, with the recent influx of new or emerging legal remedies against bullying,<sup>7</sup> it is timely to assess the Swedish attempt at regulating bullying by critically evaluating its effectiveness, its strengths and weaknesses, and, at the same time, paying attention to the economic, cultural, and political context at the time of enactment.<sup>8</sup>

To achieve these aims, this paper initially explores the background and emergence of the Swedish Ordinance on Victimization. It then examines and evaluates the regulation and its accompanying Guidelines. To assess the effectiveness of the Ordinance and supporting regulations, we review the findings of several studies. To make further sense of these findings we explore some socio-economic and cultural factors impacting the implementation of the regulation and examine how such factors may have influenced the image of bullying in Sweden as well as attempts to deal with it by means of regulations.

## II. BACKGROUND

Research on bullying emerged in Sweden in the early 1980s and is first and foremost associated with the work of Heinz Leymann. He adopted the term "adult mobbing," which he borrowed from the Swedish debate on aggression among school children,<sup>9</sup> to account for a phenomenon that he had frequently come across, although it was rarely mentioned in public, in his work as a researcher at the Swedish National Board of Occupational Safety (SNBOSH).<sup>10</sup> His observations were brought to the attention of the Inspectorate and the general public at a time when Sweden had recently introduced new,

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6. Helge Hoel & Ståle Einarsen, *Investigating Complaints of Bullying and Harassment, in BULLYING AND HARASSMENT IN THE WORKPLACE. DEVELOPMENTS IN THEORY, RESEARCH AND PRACTICE* (Ståle Einarsen et al. eds., forthcoming 2011).

7. VITTORIO DI MARTINO, HELGE HOEL & CARY L. COOPER, EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS, PREVENTING VIOLENCE AND HARASSMENT IN THE WORKPLACE (2003); M. MILCZAREK & E.R. GONZÁLES, EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK, VIOLENCE AND HARASSMENT AT WORK RISK OBSERVATORY REPORT (2010).

8. See generally Helge Hoel & David Beale, *Workplace Bullying, Psychological Perspectives and Industrial Relations: Towards a Contextualised and Interdisciplinary Approach*, 44 BRIT. J. INDUS. REL. 239 (2006).

9. PETER PAUL HEINEMANN, MOBBING: GRUPPEVOLD BLANT BARN OG VOKSNE (1973).

10. SNBOSH (Arbetskyddstyrelsen) formed part of the Labour Inspectorate and its central authority. In 2001 it amalgamated with the ten semi-autonomous districts of the Labour Inspectorate to form the Swedish Work Environment Authority.



progressive statutory regulations on work environment issues in the form of the Work Environment Act<sup>11</sup> (1977) and Sweden was considered to be at the forefront of international research on psychosocial work environment issues, such as occupational stress.<sup>12</sup> Nevertheless, Leymann's observations were initially met with little interest and sympathy by his own employer.<sup>13</sup> In the past, the issue was frequently looked upon with skepticism and even scorn, viewed as something "difficult people" brought upon themselves or a reflection of personal weakness of those who laid themselves open to mistreatment and victimization and for which they, therefore, would have to pay the price. As such, bullying was not regarded as an issue on which the Inspectorate and practitioners should spend their limited time and resources.<sup>14</sup> In explaining the presence of such attitudes Leymann argued (our translation):

think of all the prejudices that exist about the human psyche, and how some people imagine the psyche functions, consider how easy it is for these people to confuse the desperation they see in their fellow human beings with certain other more serious mental states, consider also how psychological violence at work is kept secret, hushed up, consider also how this imposed inability to communicate—not having anyone to talk to—further worsens the victim's situation, while the rest of us are able to wash our hands in ignorance. I believe you yourself can see the answer to the question as to why this psychological violence can continue without anyone lifting a finger.<sup>15</sup>

Anita von Schéele, a colleague of Leymann at the SNBOH, and an important contributor in her own right to the Swedish debate<sup>16</sup> explains:

I had already worked as a social worker and started as a personnel officer within the State Occupational Health Service in 1979. And one became aware of this phenomenon due to the fact that the media wrote about Leymann's research and then people came to occupational health in search for help. And this had never happened previously because nobody dared talk about the fact that they were badly treated. It was shameful. Leymann opened the door. No one dared talk about what had existed for hundreds of

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11. KRÄNKANDE SÄRBEHANDLING I ARBETSLIVET (SWEDISH NATIONAL BOARD OF OCCUPATIONAL SAFETY AND HEALTH, VICTIMISATION AT WORK, ORDINANCE) (ARBETSMILJÖVERKET [AFS] 1993:17) (Swed.).

12. Bertil Gardell, *Scandinavian Research on Stress in Working Life*, 12 INT'L J. HEALTH SERV. 31 (1982); Robert A. Karasek, *Job demands, Job Decision Latitude and Mental Strain: Implications for Job Redesign*, 24 ADMIN. SCI. Q. 285 (1979).

13. ANITA VON SCHÉELE, PERSONAL COMMUNICATION (2004).

14. *Id.*; HEINZ LEYMAN, *MOBBING I ARBETSLIVET* (1987).

15. *Id.* at 11.

16. *See, e.g.*, ANITA VON SCHÉELE, *MOBBNING: EN ARBETSMILJÖFRÅGA* (1993).



years. . . . And that attitude had also existed among employers; that those who cannot handle the harsh style in the workplace would simply have to leave, they didn't belong, they didn't fit in.<sup>17</sup>

In this way a previously hidden and ignored social problem was gradually made visible due to media concern and interest in Leymann's work,<sup>18</sup> including the results from an empirical study that supported his claims.<sup>19</sup> By bringing his findings into the public domain it can be argued that, through his work, Leymann provided targets of bullying with a name for their experience, thus assisting them in making sense of it.<sup>20</sup>

This empirical study, which consisted of two separate interview-studies, deliberately carried out independently from each other by Leymann and a research student (Bo Gustavsson) to ensure that the data analysis was completed as freely as possible, aimed to explore the phenomenon in question and the terms being used to describe it, such as "harassment," "violence," "expulsion," and "mobbing." To reduce the possibility of subjectivity that Leymann thought would influence the perceptions of victims to a high degree, the interviews were carried out with "informed third parties," e.g., personnel managers and consultants, company doctors, occupational health nurses, and psychologists, as well as managers and trade-union officials.

While Leymann in his own work decided to adopt the term "mobbing" to account for this phenomenon, a term that previously only had been used in the context of schools and childhood, it had for some time been acknowledged that a similar phenomenon also applied to adults.<sup>21</sup> However, Leymann recognized that applying this term to the workplace also had some distinct disadvantages:<sup>22</sup> First, the term was strongly associated with the experience of children, schools, and adolescence. Second, the term seemed to be limited to incidents describing an "all against one" situation. Third, the term described only a small part of the negative interactions between adults at work that Leymann wanted to bring to the fore. Although one option for Leymann could have been to widen and change the concept

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17. VON SCHÉELE, *supra* note 13.

18. LEYMAN, *supra* note 14.

19. BO GUSTAVSSON & HEINZ LEYMAN, PSYKISKT VÅLD I ARBETSLIVET, Arbetarskyddsstyrelsen, Undersökningsrapport 1984:42 (1984).

20. BULLYING AND HARASSMENT IN THE WORKPLACE. DEVELOPMENTS IN THEORY, RESEARCH AND PRACTICE (Ståle Einarsen, Heinz Hoel, Dieter Zapf & C.L. Cooper eds., forthcoming 2010); Heinz Hoel & Ståle Einarsen, *Shortcomings of Anti-Bullying Regulations: The Case of Sweden*, 19 EUR. J. WORK & ORG. PSYCH. 30 (2010).

21. See, e.g., ROLF NIELSEN & LARS STIGENDAHL, VARFÖR MOBBNING? (1973), cited in GUSTAVSSON & LEYMAN, *supra* note 19, at 30.

22. GUSTAVSSON & LEYMAN, *supra* note 19.

through a redefinition, this was seen to undermine the concept where it was already established. Having considered other alternatives, including introducing a completely new term to better fit the phenomenon described, Leymann decided to continue to use the term mobbing. This said, Leymann also sometimes employed the term "psychological violence at work," probably to capture and emphasize the seriousness of the phenomenon he was addressing.

The interest in the issue of "mobbing at work" was further enhanced by the publication of the results of a national representative survey in 1992, which reported that a total of 3.5% of Swedish employees were subjected to persistent, long-term exposure to bullying behaviors.<sup>23</sup> At that time and reflecting the changing mood in the Inspectorate, Anita von Schéele, now Head of Department within the Inspectorate (SNBOSH) responsible for issues associated with occupational stress was requested by the Inspectorate's Director to prepare General Guidelines on the issue of mobbing. According to von Schéele,<sup>24</sup> when the proposed guidelines document was ready to go out for consultation, the process was brought to a halt and she was asked to single-handedly turn the Guidelines document into a distinct statutory regulation, the result of which was the Ordinance Against Victimization.<sup>25</sup> The Ordinance was subsequently promulgated by the SNBOSH in accordance with powers given to them in the Swedish Work Environment Act and came into effect on March 31, 1994.

#### A. *The Ordinance Against Victimization*

The Ordinance<sup>26</sup> consists of six brief paragraphs or sections organized under three headings: "scope and definitions" (section 1), "general provisions" (sections 2 and 3), and "procedures" (section 4, 5, and 6). Below we examine each section and its accompanying Guideline.

In terms of section 1, it is significant that the regulation, in line with the way the Swedish national debate developed, chooses to replace the term bullying (in Swedish: mobbing) with the expression *kränkande särbehandling* (KS), which in the English version of the Ordinance is translated as "victimization." According to the Ordinance, "By victimisation is meant recurrent reprehensible or

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23. HEINZ LEYMAN, VUXENMOBBNING PÅ SVENSKA ARBETSPLATSER (1992).

24. VON SCHÉELE, *supra* note 13.

25. KRÄNKANDE SÄRBEHANDLING I ARBETSLIVET (SWEDISH NATIONAL BOARD OF OCCUPATIONAL SAFETY AND HEALTH, VICTIMIZATION AT WORK, ORDINANCE) (Arbetsmiljöverket [AFS] 1993-17) (Swed.).

26. *Id.*



distinctly negative actions which are directed against individual employees in an offensive manner and can result in those employees being placed outside the workplace community."<sup>27</sup>

Although little emphasis is placed on exploring the exact wording of the definition in the Guideline, in support of replacing "bullying" with *kränkande särbehandling* (KS), it has been argued that the current term is more descriptive and, therefore, easier to understand and that it more precisely expresses the nub of the problem.<sup>28</sup> In the original language the term is made up of two separate Swedish expressions, each conveying their own meaning. In this respect *kränkande* refers to being treated disrespectfully or in an undignified way, while *särbehandling* points to the unequal treatment or discrimination of the victim, emphasizing the exposed and precarious nature of the situation as far as the victim is concerned.<sup>29</sup> The fact that *särbehandling* has connotations of discriminatory treatment has given rise to a discussion about whether the regulation is limited to those cases where someone is singled out for negative treatment. Thus, situations where all members of a work group are mistreated or bullied by their line-managers, strictly speaking, could be considered to fall outside the scope of the regulation. But, in this respect, von Schéele<sup>30</sup> argues that *särbehandling* or being treated differently could in this particular context equally be seen as being treated in a manner that violates accepted norms of a given society at a specified time.<sup>31</sup>

The relationship and resemblance of victimization (KS) with the term bullying is also made clear in the Guidelines' section of the Ordinance that states: "The phenomena commonly referred to for example as, adult bullying, psychological violence, social rejection and harassment—including sexual harassment—have come to be seen more and more as problems of working life in their own right and will be collectively referred to here as Victimization."<sup>32</sup> Furthermore, the Guideline also provides examples of "instances of Victimization," e.g., slander, sabotaging, ostracism, and persecution, highlighting the lack of respect toward other people such acts reflect and the likely effect of such acts on individuals and working groups. For clarification it also

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27. *Id.* § 1.

28. T. HALLMAN, *MOBBING—KRÄNKANDE SÄRBEHANDLING: EN KUNSKAPSORIENTERING SAMT REDOVISNING AV EN ENKÄTSTUDIE PÅ NIO LOKALKONTOR 3* (1995); FÖRSÄKRINGSKASSAN STOCKHOLM LÄN (1995).

29. *Id.*

30. VON SCHÉELE, *supra*, note 16, at 13.

31. *See also* Hoel & Einarsen, *supra* note 20.

32. KRÄNKANDE SÄRBEHANDLING I ARBETSLIVET (SWEDISH NATIONAL BOARD OF OCCUPATIONAL SAFETY AND HEALTH, VICTIMIZATION AT WORK, ORDINANCE) (Arbetsmiljöverket [AFS] 1993-17) 7 (Swed.).

points out that "occasional difference of opinion, conflicts and problems in working relations generally should be regarded as normal phenomena"<sup>33</sup> and should, therefore, not be considered victimization.

It is of significance, however, that von Schéele in her book entitled: *Mobbing: A Work Environment Question* (our translation), published in the same year as she wrote the text of the Ordinance, makes no attempt to put forward an argument in favor of replacing the term mobbing with kränkande särbehandling and largely refers to mobbing rather than kränkande särbehandling when exploring different aspects of the problem. One is therefore left to speculate whether the introduction of the new term (KS) was the result of an assessment of possible shortcomings of the term "mobbing," in line with those put forward by Leymann, and referred to above, or chosen for any other reason.

In Section 2, of the General provisions, it is stated that: "The employer should plan and organize work so as to prevent victimisation as far as possible."<sup>34</sup>

The responsibilities of the employer arising from the Swedish Work Environment Act (Chapter 3, § 2) and clarified in other regulations<sup>35</sup> are detailed in the Guideline notes. Measures employers may take include the development of a specific policy on work environment activity, the design of routines for ensuring a healthy work environment, creating norms for positive and respectful interaction, and provision of training for managers and supervisors in relevant regulations; and how working conditions may impact behavior and interpersonal conflict within groups. Those with supervisory responsibility should also provide good induction to the workplace to assist individuals' integration into the group, give information about the prevention of victimization, as well as provide general guidance on involvement and participation.

The third section states: "The employer shall make clear that victimisation cannot be accepted in work activities."<sup>36</sup> The accompanying Guidelines highlight that victimization should never be accepted regardless of who is involved, emphasizing that management is required to set standards for good behavior by example. Similarly, following on from the previous section, behavioral norms should be

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33. *Id.* at 8.

34. *Id.* § 2.

35. See, e.g., INTERNAL CONTROL OF THE WORK ENVIRONMENT (Arbetsmiljöverket [AFS] 1992:6).

36. KRÄNKANDE SÄRBEHANDLING I ARBETSLIVET (SWEDISH NATIONAL BOARD OF OCCUPATIONAL SAFETY AND HEALTH, VICTIMIZATION AT WORK, ORDINANCE) (Arbetsmiljöverket [AFS] 1993-17) § 3 (Swed.).



clarified and new employees told about expectations at the start of their employment. It points out that "the best chances of achieving a positive atmosphere and effective norms occur when the employer, through his or her own behavior, creates a reliable foundation for dialogue, communication, and a genuine desire to solve problems,"<sup>37</sup> thus underlining the importance of shared understanding and employee involvement in order to prevent victimization.

Section four of the Ordinance reads: "In the activities there shall be procedures for the early detection of signs of, and the rectification of such unsatisfactory working conditions, problems of work organisation or deficiencies of co-operation as can provide a basis for victimization."<sup>38</sup> This paragraph has a strong preventative character and draws parallels with a risk-assessment strategy normally applied to more tangible work-related risks. Furthermore, timeliness and quick response to problems when they emerge is emphasized in the Guidelines section and the importance of looking for possible signs that may conceal victimization is pointed out. Furthermore, personal views should not be allowed to act "as a basis of discrimination," while it is emphasized that "provocative behavior" can be a reflection of the working conditions. In responding to the problem, the Guideline suggests that all concerned should be listened to and those in weaker positions should be supported, with no decisions being made without the involvement of the person concerned.

The subsequent paragraph deals with intervention or how incidents of victimization should be dealt with. It states: "If signs of victimisation become apparent counter-measures shall without delay be taken and followed up. In doing so, a special investigation shall be made to ascertain whether the causes of shortcomings of co-operation are to be found in the way in which work is organized."<sup>39</sup>

The accompanying Guideline suggests that the response to the detection of a possible incident of victimization should start with a conversation with the victim to clarify what has been happening, including establishing what actions have been taken by the victim. While it warns against raising the issue at meetings where the entire work group is present, it emphasizes the prospect of reaching a consensus, suggesting that:

The prospect of achieving good consensual solutions diminishes the longer an employee is away from work or the problems are left untackled. . . . In certain cases the problems may in time develop

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37. *Id.* at 10.

38. *Id.* § 4.

39. *Id.* § 5.

into a complete deadlock, with perpetual new misunderstandings and finally, if worst comes to worst, the complete elimination of the employee from working life.<sup>40</sup>

The sixth and final section of the Ordinance states: "Employees who are subjected to victimisation shall quickly be given help or support. The employer shall have special procedures for this."<sup>41</sup> According to the Guideline notes, the employer's intention should be to return the victim's work situation to normal as soon as possible combined with provisions for personal and emotional support. Such support would also include the opportunity to talk about their personal experience with their colleagues as well as with the employer, with the aim of exploring possible causes of what actually happened and what factors within the work-environment might have contributed to it. Furthermore, acknowledging the victim's personal preferences and capabilities, it suggests that possible solutions might include moving the target to alternative duties or retraining, if it helps protect an employee from further victimization (discrimination is the term used here) or from risk of injury. It is stressed that such interventions should offer the target meaningful and positive work experiences.

Finally, to avoid repeated victimization and the search for new scapegoats, the Guideline emphasizes that the employer, in collaboration with the group, needs to identify the underlying work-related problems that give rise to a "scapegoating mentality" within the workgroup in order to improve working relationships. With their intimate connections to work processes, the group is considered an important source in identifying the problem. If not, the targeted individual might be seen as the source of the problem. However, where the conflict is too entrenched for constructive solutions to emerge from such discussions, outside expertise, including assistance from occupational health services, might be engaged to undertake "causal analyses, proposals for solutions and individual and group discussions."<sup>42</sup>

The regulation clearly emphasizes the employer's responsibility for carrying out preventive measures to protect against victimization. Moreover, examination of the regulation and accompanying Guidelines notes suggest that the Inspectorate, in launching the regulation, acknowledged the need for guidelines that address the practicalities of putting the regulation into action. In this respect it

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40. *Id.* at 12.

41. *Id.* § 6.

42. *Id.* at 13.



appears to offer useful, hands-on advice to employers. In particular, much of the advice and suggestions regarding local prevention efforts in terms of introducing policies aimed at dealing with work environment issues including victimization must be considered far-reaching, echoing more contemporary debates.<sup>43</sup> For example, the advice that a policy should include a statement of employer intent, making it clear that victimization is considered unacceptable within the organization and establishing common norms for acceptable behavior underline the employer's overall responsibility for prevention, but also signal the need for employee compliance. It is also noteworthy that, without making the point explicit, the Guideline notes then treats the problem of victimization or bullying as a group phenomenon often associated with scapegoating processes directly related to working conditions and the organization of work.

However, the approaches advocated also raise some important questions. First, the strong belief that incidents of bullying and indeed victimization can be resolved by means of dialogue and consensus seems somewhat unrealistic and to some extent ignore any issue of rights and wrongs in cases of bullying. Second, and related to the previous point, there is a strong belief in a problem-solving approach and in the ability to trace the causes of the problem to the work environment in terms of problems with working methods, work-allocation, and communication, etc., strongly reflecting Leymann's and von Schéele's<sup>44</sup> view that bullying is fundamentally a reflection of work environment inadequacies. Third, no attention is paid to the rights of victims to have their case heard<sup>45</sup> and the employer's responsibility in this matter in investigating the facts of a case. Fourth, the regulation takes a non-punitive approach, with little or no attention paid to potential sanctions against perpetrators or against those whose behavior and action breach the regulation. Fifth, and related to the previous point, using transfers of victims to alternative duties, to prevent further attack or repeat victimization, must be considered a declaration of failure and an abdication of responsibility

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43. E.g., Charlotte Rayner & D. Lewis, *Managing Workplace Bullying: The Role of Policies*, in BULLYING AND HARASSMENT IN THE WORKPLACE: DEVELOPMENTS IN THEORY, RESEARCH AND PRACTICE (Ståle Einarsen et al. eds., forthcoming 2010); Jon Richards & Hope Daley, *Bullying Policy: Development, Implementation and Monitoring*, in BULLYING AND EMOTIONAL ABUSE IN THE WORKPLACE: INTERNATIONAL PERSPECTIVES IN RESEARCH AND PRACTICE 247 (Ståle Einarsen et al. eds., 2003).

44. VON SCHÉELE, *supra* note 16.

45. See also Ståle Einarsen & Helge Hoel, *Bullyings and Mistreatment at Work: How Managers May Prevent and Manage Such Problems*, in EMPLOYEE WELL-BEING SUPPORT: A WORKPLACE RESOURCE (Andrew Kinder, Rick Hughes & Cary L. Cooper eds., 2008); Hoel & Einarsen, *supra* note 6.

on the part of managers as well as a breach of their duty of care toward employees.

### III. ASSESSING THE EFFECTIVENESS OF THE ORDINANCE AGAINST VICTIMIZATION

A review of Swedish and international literature identified three contributions in terms of assessment of the Swedish Ordinance and the wider Swedish regulatory approach to bullying and victimization: First, there is an assessment by the Working Environment Delegation (Arbetslivsdelegationen), a government-appointed tripartite committee, in an official White Paper entitled "The Individual and Working Life—Perspectives on Contemporary Working Life Around the Turn of the Century 2000" (*Individen och arbetslivet – Perspektiv på det samtida arbetslivet kring sekelskiftet 2000*).<sup>46</sup> Second, there is a regional study examining the views and experiences of managers and inspectors about the implementation of the Ordinance carried out by the Inspectorate (SNBOSH) itself.<sup>47</sup> Third, a recent study by Hoel and Einarsen<sup>48</sup> assesses the effectiveness of the regulation by means of a qualitative study involving key expert informants. These contributions are presented and discussed below in chronological order.

In its report,<sup>49</sup> the Work Environment Delegation describes the scale of the problem of bullying and victimization in Sweden, the forms it takes, and its consequences. This analysis is based on secondary sources and is largely based on the author's personal knowledge and experience as a key contributor to the Swedish debate. Moreover, for the purpose of our investigation, it assesses the status and contribution of anti-bullying and other relevant regulations, with particular regard to providing protection for victims.

With reference to the wider legal framework for regulating the work environment, including the Work Environment Act and regulations for Internal Controls to ensure that the regulations are being implemented, the responsibilities of employers with respect to bullying are clearly emphasized in the Ordinance. However, in spite of employers' prescribed key role in preventing bullying and intervening when made aware of a problem, the report points to

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46. STATENS OFFENTLIGA UTREDNINGAR (SOU), INDIVIDEN OCH ARBETSLIVET: PERSPEKTIV PÅ DET SAMTIDA ARBETSLIVET KRING SEKELSKIFTET 2000 (1999).

47. ARBETARSKYDDSTYRELSEN, UTVÄRDERING AV FÖRERSKRIFTERNA OM KRÄNKANDE SÄRBEHANDLING (2000).

48. Hoel & Einarsen, *supra* note 20.

49. STATENS OFFENTLIGA UTREDNINGAR (SOU), *supra* note 46.



several shortcomings in fulfilling this requirement. According to the report, employers have difficulties in seeing the connection between work environment factors, such as stressed or pressured managers, unclear job descriptions, and lack of communication, on the one hand, and bullying on the other. In addition, weak management or absence of leadership altogether are also seen as antecedents or instigators of bullying and scapegoating processes, while managers themselves may also, in some cases, be the perpetrators. The unions, for their part, are criticized for failing to deal with the problem when all those involved are members of the same union.

Although it is recognized that the regulations afford the victims some protection, they are still considered to be weak. Thus, the report highlights that current rules and regulations make it very difficult to receive compensation for work-related injury, or indeed to have one's case heard in court, leaving victims with little negotiating power. Furthermore, the support available to victims is considered inadequate, which, according to the report, is surprising given the overall cost of bullying to society. However, it is noted that as various costs are assigned to different budgets, their total magnitude may not be apparent. Rehabilitation of victims is also considered problematic with the possibility of resolving the problem by means of internal transfer at times abused by managers, and carried out without involvement of or consent from victims. For some victims, challenging such decisions has actually led to their being dismissed. The picture as regards potential sources of support available to victims and the procedures for activating them also appears to be unclear.

In response to the identified weaknesses and shortcomings, the report provides some suggestions for action. In terms of prevention, it emphasizes involvement and communication. The potential positive role of internal policies and activity plans, developed in collaboration by employers and trade unions is emphasized. Likewise, it stresses the importance of making the Ordinance and other regulations better known, particularly among managers and supervisors, by promoting their content. Moreover, dwelling on the victims' relatively weak position in cases of bullying, the report draws attention to recent developments in regulation on discrimination on the grounds of ethnicity, disability, or sexual orientation in Sweden and the EU, where the position of victims is seen as much stronger due to the responsibility imposed on employers for investigating complaints and deciding on what course of action is needed.



In a concluding section the Work Environment Delegation put forward two proposals: "First, the question of where responsibility lies and possible shortcomings of the regulation, as far as bullying at work is concerned and the need for research is assessed."<sup>50</sup> Second, "the government grants 2 million kronor per year over three years for a resource centre, to lay the foundations for long-term voluntary work in the workplace in support of those bullied through development and co-ordination of knowledge and resources at work."<sup>51</sup>

To gain further insight into the implementation of the regulation, the Labour Inspectorate (SNBOSH) carried out an internal study with the expressed aim of accessing the respondents' understanding of the Ordinance and its practical applicability.<sup>52</sup> The study involved labor inspectors and senior managers at the Inspectorate as well as a small sample of employers (nine) in one Swedish region. In summarizing its findings, the study reported that most initiatives by employers as well as by Inspectors were primarily focusing on the individual victim rather than the work environment. In terms of prevention, employers were first and foremost concerned with enhancing internal competencies by means of training, while prevention in terms of making changes to the work organization or the work environment was by and large overlooked. Furthermore, while the Guidelines notes were considered helpful, the employers found the regulation itself difficult to understand. Moreover, the Inspectors themselves found it difficult to see the connection between shortcomings in the work-environment on the one hand and victimization on the other. This supports a claim made by the Work Environment Delegations, as reported above. In conclusion, it is argued that the Ordinance's aim to stimulate preventative action against bullying and victimization must be considered to have failed. Nevertheless, it was argued that the regulation had contributed to defining and raising awareness of the problem as well as highlighting the employer's responsibility for prevention and rehabilitation.

It was reported that, contrary to the advice given in the Ordinance, some employers reported organizing meetings for all those concerned as a means of resolving the problem. Another strategy adopted by some employers was to carry out separate conversations with each individual involved, followed by a joint meeting of all involved. Of the nine employers interviewed, eight reported resolving the problem by means of discussions with those involved or by

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50. *Id.* at 268.

51. *Id.* at 269.

52. ARBETARSKYDDSTYRELSEN, *supra* note 47.



transfers of some of those involved to alternative work or to other work-groups. The report suggests that, where this practice was used extensively, this could be seen as legitimizing the problem. In other words, rather than dealing with it head-on by branding such behavior and practices as unacceptable, the problem was side-stepped. In one reported case, the employer went so far as rotating workers at regular intervals, hoping to avoid victimization altogether.

The latest contribution assessing the Swedish regulations is a study by Hoel and Einarsen.<sup>53</sup> Their decision to carry out a broader assessment of the Ordinance was spurred by several factors. First, the very favorable portrayal of the Swedish statutory approach to bullying in the international literature explored in an earlier section.<sup>54</sup> Second, indications from Swedish surveys that it did not work in terms of high levels of reported bullying and victimization.<sup>55</sup> Third, the 2003 suggestion of the Swedish National Board of Occupational Safety and Health (SNBOSH) to repeal the Ordinance altogether,<sup>56</sup> replacing it with a new integrated structure incorporating various psychosocial issues (although SNBOSH later withdrew the suggestion).

In response, Hoel and Einarsen interviewed a number of stakeholder informants, each of whom was considered an expert on the Swedish Ordinance and workplace bullying.<sup>57</sup> They included representatives of employer associations, trade unions, and enforcement authorities, as well as spokespersons of one victim support group with specific expert knowledge. The study identified five sets of shortcomings: the Ordinance itself, the employers' response, the response of trade unions, the response of the enforcement authorities, as well as perceived shortcomings in victims' opportunities for redress.

First of all, the results clearly indicated that with respect to the more severe cases of bullying, the informants reinforced the position reflected in the Ordinance's Guideline notes that horizontal bullying between colleagues predominates. In this respect realities may be different in Sweden than in many other countries where downward or

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53. Hoel & Einarsen, *supra* note 20.

54. Vega & Comer, *supra* note 5.

55. ARBETSMILJÖVERKET, MOBBNING OG RELATIONSPROBLEM—KORTA SIFFERFAKTA (2006); M. Widmark, H. Oxenstierna & T. Theorell, *Vuxenmobbing och Sjukskrivning*, in DEN HÖGA SJUKFRÅNVARON: PROBLEM OCH LÖSNINGAR 115 (S. Marklund et al. eds., 2005).

56. ARBETSMILJÖVERKET, MOBBNING OCH TRAKASSERIER—KORTA SIFFERFAKTA (2003).

57. Hoel & Einarsen, *supra* note 20.

vertical bullying is the dominating configuration, e.g., the United Kingdom<sup>58</sup> or Ireland.<sup>59</sup> As one participant put it:

bullying in Sweden has a different face than in other countries. Here people are being excluded from the group in a silent way. Here bullying is not aggressive in the way that people are shouting at each other. They just exclude you, they don't talk to you, don't listen to you.<sup>60</sup>

This finding also reflects the view of von Schéele,<sup>61</sup> the author of the Ordinance, who refers to two forms of victimization (KS) in Sweden: expulsion and ostracism. While these are different in the sense that expulsion refers to destructive acts aimed at actively pushing/forcing an individual away, while behavior associated with ostracism emphasizes the non-importance and irrelevance of the target,<sup>62</sup> they both appear to refer to processes aimed at excluding an individual from the group and as such would fit the term mobbing as previously described.

In terms of overall assessment of the impact of the regulation, the study revealed that informants agreed that the initial enactment of the regulation and its continuing presence had contributed to raising awareness of a problem often ignored, or indeed hidden, as many people have found the issue shameful and profoundly difficult to discuss. Still, according to the interviewees there is strong doubt about the effectiveness of the regulation in terms of its ability to control or impact positively on behavior. Some informants were concerned with what was described as the vagueness of the regulation, which in their view leaves it open to interpretation, making it a "waste-bin for all kinds of problems," as expressed by one of the interviewees. In other words, any form of violation, whether strictly speaking considered bullying or not could be interpreted as such. According to informants, this is seen as having led employees to jump to conclusions about bullying, with anyone who feels a sense of violation pointing to this regulation. This may also have possible detrimental consequences for the targets themselves in terms of lowered self-image and self-respect,<sup>63</sup> in itself possibly a first step in an emerging victimization process. In this respect, it is argued that the

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58. Helge Hoel, Cary L. Cooper & Brian Faragher, *Workplace Bullying in Great Britain: The Impact of Occupational Status*, 10 EUR. J. WORK & ORG. PSYCH. 443 (2001).

59. M. O'Moore et al., *Victims of Bullying At Work in Ireland*, 14 J. OCCUPATIONAL HEALTH & SAFETY: AUSTL. & N.Z. 569-74 (1998).

60. Hoel & Einarsen, *supra* note 20.

61. VON SCHÉELE, *supra* note 16.

62. *Id.* at 14.

63. Helge Hoel, C. Rayner & Cary L. Cooper, *Workplace Bullying*, 14 INT'L REV. INDUS. & ORG. PSYCH. 195 (1999).



introduction and presence of the regulation may also have given rise to "false expectations," with targets' hope for support and justice not easy to accommodate, in the authors' view potentially leaving many victims disillusioned.

Accounting for such a shortcoming, some of the respondents also argued that part of the difficulty might lie in the very nature of the problem, which makes it so much more difficult to regulate than more tangible work-related problems. In this respect, a representative of the Confederation of Swedish Enterprises (SN) went even further, arguing that these types of problems could not be regulated by legal means at all, suggesting that: "It is like regulating that we should be satisfied at work and be nice to each other."<sup>64</sup>

Definition is a key challenge for any regulation against bullying. While this emphasizes the need for regulatory clarity, particularly with respect to an issue where a subjective element is present, defining an issue too narrowly could also have drawbacks, removing from the equation uncommon or rare situations, or situations previously not considered or anticipated. Moreover, we would argue that too-specific regulation with little flexibility might also result in the regulation being unable to accommodate changes in public perceptions and what might be considered acceptable at a given time.

Although informants suggested that the Inspectorates have received considerable praise for regulating such a difficult area, Hoel and Einarsen<sup>65</sup> argue that it became clear that the enforcement authorities were not sufficiently prepared at the time the regulation was enacted, neither in terms of the labor inspectors' training and competence, nor with respect to the authority's role and enforcement strategies. Thus, according to their findings, while some inspectors responded positively to calls from individual victims, others only intervened where bullying was uncovered as part of a general inspection. In this respect the role of inspectors has seemingly still not yet been clarified, at least not in practice, with different inspectors viewing their roles differently. The enforcement authorities were also criticized for having individualized the problem, rather than treating it as an organizational problem, although more recently the focus had turned toward preventive effort. However, as is argued by Hoel and Einarsen, with no sanctions available to the enforcement authorities other than the opportunity to impose fines where improvement notices issued by inspectors were not complied with, there was little

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64. Hoel & Einarsen, *supra* note 20, at 8.

65. *Id.*

inspectors could do about employers who did not act in accordance with the regulation. At the same time, Hoel and Einarsen, in their previous paper, also question whether a change of strategy from the individual to the organization is necessarily a positive development, particularly if the victim's right to have his or her case heard is ignored, an issue already raised above, and the Inspectorate does not consider it its responsibility to ensure that this right is enforced. Here we would like to reinforce this argument by pointing to a guideline for inspectors particularly aimed at dealing with work-related conflicts and victimization (KS).<sup>66</sup> Under the sub-heading "Explaining the role of the Inspectorate" it is stated: "Questions regarding redress, questions of guilt and economic compensation should be directed to the trade union, national insurance or possibly other legal entities,"<sup>67</sup> thus indicating that the inspectorate does not involve itself with investigation of individual cases as well as seemingly letting the employers off the hook in terms of establishing the facts of the cases and disciplining culprits where a complaint is supported.

Despite the fact that the Ordinance emanated from within the Inspectorate itself, the implications of the Inspectorate's lack of preparation for its task at the time the regulation was enacted are likely to be negative given that expectations are likely to be raised and the actions of the enforcement authorities scrutinized by all concerned. In Sweden, the response of inspectors also appears to have varied considerably, which represents a problem in its own right in terms of consistency and predictability. It is also clear that the Inspectorate has gradually adopted an approach that treats the issue as an organizational problem, focusing particularly on prevention and development of organizational procedures, an issue also raised by Hoel and Einarsen.<sup>68</sup> But concentrating one-sidedly on prevention might also lead to less effort being expended on development and implementation of policies and procedures for intervening in problems when problems might arise, effectively undermining targets' opportunity for a fair hearing of their case.

As far as the employers are concerned, despite being assigned a vital role in ensuring the success of the regulation, according to the study by Hoel and Einarsen<sup>69</sup> employers had demonstrated little enthusiasm with respect to taking onboard the roles and

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66. ARBETSMILJÖVERKET, TILLSYN AV VISSA PSYKHOSOCIALA ARBETSMILJÖFRÅGOR: EN HANDEDNING MED SÄRSKILD INRIKTNING PÅ ARBETSBETINGADE KONFLIKTER OCH KRÄNKANDE SÄRBEHANDLING (2002).

67. *Id.* (e.g., solicitor) (6.4.3., at 33) (translation by authors).

68. Hoel & Einarsen, *supra* note 20.

69. *Id.*



responsibilities assigned to them. For example, in terms of management intervention, very few employers were reported to have introduced policies or local action plans to improve their work environment, an observation also made in the government white paper.<sup>70</sup> From the employers' perspective, it was unreasonable to blame them or make them responsible for intervening in what they considered to be problems occurring between adult members of the workforce or within work groups. Still, in response to a view held by many employers that the task they had been allocated was vague and difficult, it was argued that to ensure a greater degree of employer compliance there was a need for effective and more detailed intervention methodologies to accompany the regulation, going well beyond the existing guidelines.<sup>71</sup>

According to the Hoel and Einarsen study, the employer representative also drew attention to the fact that those who bully others, whether coworkers or managers, should be held responsible for their actions and subsequently punished. Interestingly, although interviewees frequently addressed the issue of lack of sanctions available against employers who do not comply with regulations, few voices were raised advocating sanctions to be taken against individual perpetrators. Moreover, as indicated above, with no formal system in place for systematically investigating local cases, there is little evidence to suggest that perpetrators are actually held accountable for their actions and subsequently punished if found guilty.

A further explanation for the inactivity of many Swedish employers could be related to cost considerations. For cultural and historical reasons, with litigation not being seen as a realistic option for most victims of bullying in Sweden, litigation is not a financial threat to employers. In addition, with the costs associated with long-term sickness absenteeism largely carried by the state (Social Security Regulation),<sup>72</sup> a potential cost factor that otherwise could propel employers into action,<sup>73</sup> is perhaps not present. In this respect, recent local settlements, which involve financial compensation paid for by the employer, could represent a positive move in helping to focus minds. Nevertheless, the employers' lack of engagement despite their designated role must also be seen in the light of the general absence of

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70. STATENS OFFENTLIGA UTREDNINGAR (SOU), *supra* note 46, at 69.

71. Hoel & Einarsen, *supra* note 20.

72. STEFFAN MARKLUND ET AL., DEN HÖGA SJUKFRÅNVARON: PROBLEM OCH LÖSNINGAR (2005).

73. HELGE HOEL, KATE SPARKS & CARY L. COOPER, THE COST OF VIOLENCE/STRESS AT WORK AND THE BENEFITS OF A VIOLENCE/STRESS-FREE WORKING ENVIRONMENT (2001); SABIR I. GIGA, HELGE HOEL & DUNCAN LEWIS, THE COST OF WORKPLACE BULLYING (2008).

sanctions. This suggests that anti-bullying regulation should provide an opportunity for actions to be taken against employers who do not comply. Drawing attention to this issue, the leader of a Swedish public sector union, and one of the interviewees referred to the opportunity for sanctions in the European anti-discrimination legislation, an issue also raised by the Work Environment Delegate, which she saw as a possible model for a more effective anti-bullying regulation.

While trade unions often have been at the forefront of campaigns favoring regulation of workplace bullying, the investigation by Hoel and Einarsen<sup>74</sup> suggests that the Swedish unions' role in ensuring the effectiveness of the anti-bullying regulations has been ambiguous. In this respect, there appears to be a local-central divide, with national officers altogether better informed on the issue. Still, in comparison to, say, British trade unions, the engagement with the issue has been less, possibly reflecting the nature of the problem in Sweden with coworkers rather than managers seen as perpetrators.<sup>75</sup> To some extent this divide is also a reflection of priorities, as acknowledged in the study by Hoel and Einarsen, with local trade unions prioritizing more traditional collective issues such as pay, pensions, and physical work environment. However, it appears that the main problem is not one of priorities but of the local unions being criticized for coming down on the side of the group against individuals singled out for bullying. According to national officers from a public sector union, their own course of action in such cases when asked to intervene was to try to "rescue" the victimized individual by ensuring a physical move where this was possible, albeit, in the face of protest from the victims.<sup>76</sup> However, one needs, of course, to bear in mind that the local union situation is frequently made more difficult by the fact that both parties, victim and perpetrator, are members of the same union and each demand that the union should back their side of the story. The significance of this is further emphasized with reference to the fact that 78% of the Swedish workforce are members of a trade union, one of the highest figures in the developed world.<sup>77</sup>

As has been argued above, as far as redress for victims is concerned, monetary compensation has been paid, in some cases

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74. Hoel & Einarsen, *supra* note 20.

75. David Beale & Helge Hoel, *Workplace Bullying, Industrial Relations and The Challenge for Employers and Management: Britain and Sweden Compared and Contrasted*, 16 EUR. J. INDUS. REL. 101 (2010).

76. Hoel & Einarsen, *supra* note 20, at 11.

77. Jelle Visser, *Union Membership Statistics in 24 Countries*, 121 MONTHLY LAB. REV. 38 (2006).



settled locally with the involvement of the trade union,<sup>78</sup> although a condition of such deals has been that the victims resign. Even if such settlements have been seen as a partial victory, as it lays the responsibility at the door of the employer, for the victim this appears to be a shallow victory and the victim has often been resisted. As is argued in the paper by Hoel and Einarsen, in principle, the Swedish system also allows for financial compensation from the Social Insurance System. The Social Insurance System (*Försäkringskassan*) forms an important part of the Swedish social security system, that covers everyone who lives or works in Sweden (<http://www.forsakringskassna.se/arbetsgivare>). It is wide-ranging in terms of coverage and, as far as work is concerned, includes protection and support for those who are ill or who have suffered a work-related injury. The system is financed via the tax system and is based on contributions from employees and employers.

However, in terms of possible compensation for injury arising from bullying, the system has proved very restrictive, with only a few cases awarded compensation.<sup>79</sup> As any compensation is based on victims being able to prove victimization, as well as providing evidence for a direct link between victimization and any detrimental effects suffered by targets, very few cases have succeeded. Moreover, according to Hoel and Einarsen,<sup>80</sup> attempts at rehabilitating victims of bullying also appear to be less than successful. Thus, in order for a particular work rehabilitation plan to be approved and economically supported by the state, the Swedish rehabilitation regulation requires that rehabilitation be carried out within the same organization. For most cases involving rehabilitation this is unproblematic and would indeed be the desired solution. However, in terms of bullying, where many victims feel physically ill at the thought of going anywhere near their workplace and where members of the work group are often identified as the perpetrators, the idea of being rehabilitated back to the very work environment in which the victimization process occurred is considered impossible, and poignantly characterized as a "Catch 22" situation.<sup>81</sup>

Drawing on the distinction between relief, on the one hand, referring to victim support and prevention activities, and redress, in terms of compensation, monetary or otherwise,<sup>82</sup> on the other, we can

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78. M. Brannäs, *Var tionde arbetskamrat blir kränkt på jobbet*, MÅBRA 51 (Apr. 2004).

79. STATENS OFFENTLIGA UTREDNINGAR (SOU), *supra* note 46.

80. Hoel & Einarsen, *supra* note 20.

81. *Id.* at 12.

82. Meglich-Sespico, Faley & Knapp, *supra* note 4.

conclude that Swedish victims of bullying have neither received the relief nor the redress they might expect. As has been argued above, in those cases where support has been forthcoming in terms of intervention from the enforcement authorities, it has often been too late to deal constructively with the situation.<sup>83</sup>

#### IV. THE IMPACT OF SOCIO-ECONOMIC AND CULTURAL FACTORS

It should be emphasized that some of the shortcomings identified in the Hoel and Einarsen<sup>84</sup> study were the results of external events. Thus, the economic crisis that hit Sweden in the early 1990s<sup>85</sup> certainly impacted negatively on the implementation of the regulation in the first years after its enactment. As far as the trade unions are concerned this meant that issues concerning cut-backs, redundancies and job-loss would take precedence over issues such as bullying and victimization. The subsequent cut in state support to local occupational health services also seems to have had a negative effect.<sup>86</sup> Hence, with employers carrying the total cost of occupational health services, their priorities veered toward medical health screening away from preventive work and as an active independent player in the prevention of bullying. From the perspective of victims this possibly also removed a potentially important source of contact and support.

Moreover, the change in the balance of power between employees and employers in Sweden in favor of the employer<sup>87</sup> also appears to have undermined opportunities for any joint approach to the prevention of bullying, still according to Hoel and Einarsen.<sup>88</sup> In this respect, the employers' reluctance to engage with the regulation, and, in particular, their unwillingness to work with the trade unions, for example around policy development and implementation of intervention strategies, may be linked to the employers' continuous resistance to the codetermination regulation and any initiatives that could be seen to strengthen the influence of trade unions. This law, introduced after pressure from the trade union movement in the 1970s, in principle, gave employees the right to negotiate about most work-related issues and represented a curb or considerable limitation

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83. Hoel & Einarsen, *supra* note 20.

84. *Id.*

85. ASSAR LINDBECK ET AL., TURNING SWEDEN AROUND (1994).

86. MARKLUND ET AL., *supra* note 72.

87. ANDERS WIKMAN, ALF ANDERSSON & MADELENE BASTIN, NYA RELATIONER I ARBETSLIVET—EN RAPPORT OM TENDENSER MOT FLEXIBLA MARKNADSRELATIONER I STÄLLET FÖR PERMANENTA ANSTÄLLNINGSRELATIONER (1998).

88. Hoel & Einarsen, *supra* note 20.



on the managerial prerogative.<sup>89</sup> With employers continuing to guard against anything that might challenge their managerial prerogative,<sup>90</sup> initiatives that could be seen to involve joint decision-making, such as union involvement in development of anti-bullying policies and procedures, are likely to be resisted by many employers.<sup>91</sup> It is argued that in reality this also prevents the local trade unions from playing an active role in the prevention and resolution of the bullying problem.<sup>92</sup>

Furthermore, some of the issues raised above only appear to make sense if considered in the light of the wider socio-cultural context of Sweden. For example, it can be argued that the Swedish lack of openness or even feeling of shame about the existence of such a relatively widespread social problem as workplace bullying has to be understood within the context of what has been referred to as the "Swedish model,"<sup>93</sup> the particular socio-economic model developed in Sweden after World War II, described as the middle way, neither capitalism nor communism. With its focus on egalitarianism, equality, fairness, and respect for one's "neighbor," reflected in the term "the People's home" (*Folkhemmet*) coined by the Swedish Social Democrat politician Per Albin Hansson, Prime Minister from 1932–46,<sup>94</sup> the presence of workplace bullying, particularly those incidents where a group has been seen to be ganging up against a colleague, resulting in severe harmful effects to that individual, could be seen as signifying the very antithesis of the values inspired by the model.

In a similar way, the employers' disinclination to get involved with the regulation may in part be linked to Swedish employers' general reluctance to interfere in work team conflict,<sup>95</sup> possibly a manifestation of the traditional pattern of industrial relations in Sweden<sup>96</sup> and arguably reflecting a weakness of leadership. In this respect it is suggested that considerable power is conceded to the work group.<sup>97</sup> Others have argued that it is less a reflection of weakness than a different type of leadership altogether, combining

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89. Jonas Pontusson, *The Comparative Politics of Labor-Initiated Reforms: Swedish Cases of Success and Failure*, 25 COMP. POL. STUD. 548 (1993).

90. STATENS OFFENTLIGA UTREDNINGAR (SOU), *supra* note 46.

91. Beale & Hoel, *supra* note 75.

92. Hoel & Einarsen, *supra* note 20.

93. Klas Eklund, *Gösta Rehn and The Swedish Model: Did We Follow The Rehn-Meidner Model Too Little Rather Than Too Much?*, in GÖSTA REHN, THE SWEDISH MODEL AND LABOUR MARKET POLICIES 53 (Henry Milner & Eskil Wadensjö eds., 2001).

94. *Id.*

95. BARBRO LENÉER-AXELSON & INGELA THYLEFORS, OM KONFLIKTER: HEMMA OCH PÅ JOBBET (1996).

96. Beale & Hoel, *supra* note 75.

97. Hoel & Einarsen, *supra* note 20.

team-building and collaboration with autonomy.<sup>98</sup> According to the Globe study,<sup>99</sup> a recent cross-cultural study comparing twenty-five countries, this form of leadership is seen to mirror the particular nature of Swedish society. Thus, Sweden was judged on the one hand to be the most collective society (associated with conformity and interdependence) in terms of its institutional arrangement at the societal level, while, on the other hand, it was ranked as the second most individualized country as far as the private sphere is concerned. In terms of work arrangements these apparent opposites appear to be reflected in an emphasis on collaboration and participation,<sup>100</sup> and in a strong pressure to reach consensus on work-related processes (institutional collectivism), while such pressures do not appear to extend to interpersonal relationships.<sup>101</sup>

Given that the more homogeneous the group is, the more scapegoating processes may be widespread,<sup>102</sup> the strong focus on dialogue and consensus in Swedish society could, therefore, indirectly be seen to contribute to bullying processes. In this respect, dialogue, grounded in "civic literacy" or informed citizens with high levels of functional literacy, is seen as a central component of exercising citizenship, and a key element in attaining "a better world" and egalitarian outcomes.<sup>103</sup> The emphasis on dialogue and consensus when applied to the workplace is seen to encourage collective learning about work-related problems by those closest to them in order to arrive at agreed-upon solutions.<sup>104</sup> However, where discussion about work-related problems and conflict drags on in the pursuit of agreement and collective understanding, and bearing in mind the great value put on transparency and openness in Swedish society, such processes may lead to victimization and ostracism of those who are unwilling to accept the majority agreement of the group. The fact that the Swedish culture is seen to prefer silence to open conflict,<sup>105</sup> as also

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98. Ingallil Holmberg & Staffan Åkerblom, *Modelling Leadership—Implicit Leadership Theories in Sweden*, 22 SCANDINAVIAN J. MGMT. 307 (2006).

99. CULTURE AND LEADERSHIP, ACROSS THE WORLD: THE GLOBE BOOK OF IN-DEPTH STUDIES OF 25 SOCIETIES (Jagdeep S. Chhokar, Felix C. Brodbeck & Robert J. House eds., 2007).

100. Holmberg & Åkerblom, *supra* note 98.

101. Beale & Hoel, *supra* note 75.

102. LILLEMOR R.M. HALLBERG & MARGARETH K. STRANDMARK, VUXENMOBBNING I MÄNNISKOVÄRDANDE YRKEN (2004).

103. Henry Milner, *Gösta Rehn, Civic Literacy, and The Swedish Model*, in GÖSTA REHN, THE SWEDISH MODEL AND LABOUR MARKET POLICIES 79 (Henry Milner & Eskil Wadensjö eds., 2001).

104. Bo Gustavsen, *Workplace Reform and Democratic Dialogue*, 6 ECON. & INDUS. DEMOCRACY 461 (1985).

105. Holmberg & Åkerblom, *supra* note 98.



emphasized in a previous section, may further explain why group conflicts may be met by silence and exclusion.<sup>106</sup>

Although the Swedish model has been under attack in recent years,<sup>107</sup> with many of its core elements weakened, the model, e.g., the focus on dialogue and consensus, appears to be resilient and to remain in force, suggesting that such processes thus do not rely on pressure from the state, but might reflect deeper values of egalitarianism and social democracy.<sup>108</sup>

## V. CONCLUDING REMARKS

Despite attracting many congratulatory comments and glowing assessments, the reality of the impact of the Swedish Ordinance Against Victimization is less impressive. Still, by its mere existence it has, no doubt, had considerable influence not only in Sweden but internationally as well. Moreover, we would agree with those who argue that, by entering the realm of legislation, the issue has been given welcome legitimacy.<sup>109</sup> Nevertheless, investigations of the Swedish experience suggests that there appears to be no guarantee that such an acknowledgement by the state will result in changes on the ground. Still, the authors, while acknowledging that it is a difficult and arduous undertaking, beg to disagree with the representative of the Swedish Employer Federation's (SN) assessment, who suggested that it is not possible to regulate human interaction by means of a law. Thus, any overreliance on statute in the struggle against bullying appears to be misplaced. It is, of course, possible that as long as the issue is not prohibited by law, or indeed criminalized, it will have little or no regulating effect on the behavior of organizations and their employees.

While many of the shortcomings and weaknesses identified in this paper relate to the implementation stage, we would argue that part of the problem may lie in the culturally-informed philosophy and thinking underpinning the Ordinance. For example, the Ordinance appears to be entirely based on a preventative perspective, taking for granted a causal relationship between shortcomings of the work environment, on the one hand, and bullying and victimization on the other. While such an approach has its strengths, and represents a challenge to any victim-based perspectives, it overlooks the fact that

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106. Beale & Hoel, *supra* note 75.

107. E.g., Milner, *supra* note 103.

108. Beale & Hoel, *supra* note 75.

109. Hoel & Einarsen, *supra* note 20, at 18.

bullying as a complex social problem may be the product of a multitude of factors, including personal characteristics and competing interests. The non-punitive stance adopted by the Ordinance and associated Guidelines is a logical consequence of such an approach. Furthermore, the strong belief in dialogue and consensus as methods for conflict resolution appears to be misplaced when applied to cases of bullying and victimization, indirectly removing rights and wrongs from the equation. Ironically, through its belief in prevention as the predominant method for addressing the issue, the Ordinance loses sight of any restorative perspective, thus failing to provide targets, and indeed the alleged perpetrators, with appropriate sources of support as well as the opportunity for a fair hearing and possibility of redress and vindication.

With the shortcomings and challenges identified above in mind, we consider that the following criteria need to be fulfilled in order for regulations against bullying and victimization to work and be effective. First, there needs to be an integrated approach involving the combined effort and collaboration of employers, trade union representatives, and enforcement authorities. Second, the enforcement authorities and individual inspectors need to have the necessary knowledge and competencies about the issues involved. Third, practical intervention methods for enforcers/inspectors as well as employers need to be developed. Thus, any regulation or regulatory framework must be translated into practical tools for prevention and intervention. Fourth, the employers' responsibilities must be further clarified and their accountability for putting in place adequate policies and procedures and responsibility to intervene in cases of bullying and victimization emphasized. Fifth, trade unions and employee associations must clarify their own role in terms of prevention and intervention, including resolving how to respond in those cases where both the complainant and alleged perpetrator(s) are among their members. Sixth, targets of bullying and victimization must be assured that it is safe to complain and subsequently receive a fair hearing of their case within their workplace. Moreover, where regulations and internal policies are found to be breached, appropriate sanctions against perpetrators must be taken.

Finally, despite its shortcomings and relative lack of effectiveness, one should not lose sight of the Ordinance's historic and symbolic contribution. By its mere existence, the Swedish Ordinance Against Victimization has attracted the attention of a global audience, giving hope to victims and spurring activists and advocacy groups into action all over the world—no mean achievement.