Workplace Bullying/Mobbing in Sweden
Legal Analysis Report

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1. Introduction and background

The theme of this report is the content and implications of the legal framework regarding harassment, sexual harassment and workplace victimization (bullying) in Sweden.

For the purpose of the report, the following definitions will be used, which correspond to the statutory definitions in Swedish law. The concept harassment is defined as conduct that ‘violates a person’s dignity and that is associated with one of the grounds of discrimination sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age’. The concept sexual harassment is defined as a conduct ‘of a sexual nature that violates someone’s dignity’. Harassment and sexual harassment are concepts that mainly belongs to the area of discrimination law, regulated by the Discrimination Act (2008:566).

Bullying is not a legal concept in Sweden. Instead, conduct normally labeled as bullying, falls under the concept victimization which belongs to the legal area of work environment, regulated by the Work Environment Act (1977:1160). Victimization is defined as ‘recurrent reprehensible or distinctly negative actions, directed against individual employees in an offensive manner and can result in those employees being placed outside the workplace community’. The concept victimization is wide. In addition to conduct normally labeled as bullying, it also covers conduct that qualifies as harassment or sexual harassment.

The protection against harassment and sexual harassment in the Discrimination Act (2008:567) includes access to justice and remedies for victims, along with sanctions for the employer. This is in contrary to the provisions on victimization in the Work Environment Act (1977:1160). These provisions aim to pursue employers to work proactively for a safe work environment, and they do not grant any rights to individual employees.

It is very difficult to estimate the actual extent of harassment, sexual harassment and other forms of victimization in the workplace. Every other year, the Swedish Bureau of Statistics (SCB) carries out a work environment survey on behalf of the Work Environment Authority (AMV). The survey, which regards all aspects of the working environment, includes written questionnaires to and telephone interviews with between 4000 and 12000 persons. The 2017 survey is based upon answers from around 8700 persons.

The survey shows that in 2017, around one out of ten in employment were subject to abusive conduct in the form of mean talk and actions from managers or colleagues. The share of 10 percent applies equally for men and women in virtually all age groups, and has been the same every year between 2009 and 2017.1

As regards sexual harassments, in 2017, around 1 per cent of the men and 4 per cent of the women were subject to such actions from managers or colleagues. The proportion is greatest among young women aged 16–29, where 10 percent had been subjected. If also including those who were subject to sexual harassments from other people (i.e. clients, customers, patient, pupils or passengers) the share among all employees increase from 1 to 10 per cent, and to 30 per cent in the group of young women aged 16–29. The share of men who has been subject to sexual harassment from managers or colleagues has been constant at around 1 per cent since 2017. Among women, the Work Environment Authority notes a slight increase from 2 per cent in 2013 to 4 per cent in 2017.2

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1 In the group ‘men 16–29 years’, around 3 per cent reported to have been exposed to abusive conduct during 2017.
The Work Environment Survey provides valuable information on how different types of problems related to work environment is perceived in different groups of employees with respect to sector, age, and gender. There is, however, reason to assume that there are many unreported cases, mainly due to lack of knowledge on how to assess harassments and sexual harassments, along with a reluctance to report such matters.\(^3\) In the aftermath of the Metoo-movement in 2017, a number of trade unions, organisations and authorities initiated investigations regarding sexual harassments, out of which some have resulted in reports. Others are still pending.

Swedish law addresses harassment, sexual harassment and other forms of workplace victimization primarily in the Discrimination Act (2008:567) and the Work Environment Act 1977/1160). The provisions in these two Acts is the major focus for this report. The report is structured as follows. After a short introduction to Swedish labour law and industrial relations (Section 2) comes an overview of the regulatory framework (Section 3). The two next sections discusses deals with harassment and sexual harassment as a matter of equality and non-discrimination (Section 4) and victimization as a matter of work environment (Section 5). The final section concludes the report (Section 6).

2. Swedish labour law and industrial relations

Swedish labour law is characterized by the importance of the collective agreement, at the same time that there is comprehensive labour law legislation.\(^4\)

The body of statutory legislation is uniform; normally the same provisions cover employees in the private and the public sector. Statutory law regulates virtually all parts of the employment relationship, with the exception of wages. However, most of the statutory rules are semi-mandatory, in the sense that they can be deviated from in collective agreements. An overwhelming proportion of those in the workforce are members of a union, and an even greater number work in a workplace covered by collective agreement.\(^5\) The labour market parties have a strong tradition of regulating working life autonomously through collective bargaining.

The Swedish industrial relations system is a single channel system, where the trade unions represent the employees both in sectoral collective bargaining, and at the local level in the workplaces.\(^6\) Negotiations between the employer and the trade union is by far the most common way to solve individual labour disputes.\(^7\)

There is no labour inspectorate. However, in certain areas, there are authorities with supervisory powers. Thus, the Equality Ombudsman is the supervisory authority for the Discrimination Act

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\(^3\) In 2017, the unionisation rate was 67 per cent, and the rate of collective agreement coverage was 89 per cent, Swedish Mediation Office, Annual Report 2018.


(2008:567), whereas the Work Environment Authority is the supervisory authority for the Work Environment Act (1977:1160).\footnote{Chapter 4 Section 1 Discrimination Act (2008:567), Chapter 7 Section 1 Work Enviroment Act (1977:1160).} Notwithstanding the existence of these supervisory bodies, in the everyday life at the work place level, the collaboration between the employer and the trade unions is the crucial element for the implementation and upholding of the legal requirements, both as regards gender equality and as regards work environment.

3. The regulatory framework

As regards international conventions, Sweden applies a dualistic approach; international legal norms are not applied by the domestic authorities and may not be invoked before domestic courts until they have been transformed into national law.\footnote{Melander, G, Sweden, In: Martin Scheinin (ed.), International Human Rights Norms in the Nordic and Baltic Countries (Kluwer Law International Dordrecht 1995). The State is bound by the convention already from the time of ratification.} Sweden has ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, the Revised European Social Charter, as well as the majority of the ILO conventions currently up to date and in force, including ILO convention No. 100 on Equal Remuneration, and ILO convention 111 on Discrimination (Employment and Occupation). National legislation provides a high level of legal protection for employees, which has made the ratification of many ILO conventions uncomplicated. Sweden has refrained from ratification of conventions and provisions in areas where the social partners regulate with no or almost no the interference of the State, such as the area of wages and working time.\footnote{Herzfeld Olsson, P. Folkräten i arbetsrätten. In: Stern R. and Österdahl I. (eds.) Folkräten i svensk rätt, Liber 2012.}

In 1952, Sweden ratified the European Convention of Human Rights, and since 1995 it is incorporated in national legislation. Albeit its formal status as statutory law, the ECHR holds a special position in the Swedish legal system, as Chapter 2 Section 23 of the Instrument of Government SFS 1974:152 prohibits legislation that violates the Convention. The State may be liable for damages in cases where national law fails to protect ECHR rights.\footnote{Swedish Supreme Court judgement 2005 p. 642 and later case law.} Beyond what applies in the relationship between the State and the individual, employees in public employment may bring action against their employer regarding violation of ECHR rights in the individual employment relationship.

Although the Swedish Labour Court sometimes refer to both the ECHR and, more rarely, ILO conventions, legal scholarship shows that it is very unusual that international conventions have had substantial impact on the outcome of the case.\footnote{Discrimination Act SFS 2008:567.} This does not mean that the Court have decided in contravention with the conventions, but simply that the outcome of the cases would have been the same if only national law had been considered. Constitutional and then statutory laws, which must be interpreted in conformity with EU law, are at the top of the hierarchy of the legal sources. Within the field of labour law, collective agreements also belongs to this top-level category. Even though there might be constitutional aspects to take into consideration, in the Swedish context, harassment, sexual harassment and other forms of victimization are not constitutional matters. Instead, the substantial protective rules are to be found in statutory legislation. As regards harassment and sexual harassment, the most important act is the Discrimination Act (2008:567), which is designed closely to the non-discrimination directives in EU law.\footnote{Discrimination Act SFS 2008:567.} The same act also contains an obligation for employers to take active measures to create an including and accessible workplace. When it comes to other
forms of victimization, the most important act is the Work Environment Act (1977:1160) and the adjoining statutory instruments on Organisational and social work environment (AFS 2015:4), which address victimization. Victimization refers to insulting and denigrating words or actions, along with different treatment in an unfair or unjust manner, which risks isolating the victim from the workplace community. This means the provisions in the Work Environment Act on victimization with respect to all employees also covers cases of sexual harassment and harassment in relation to certain protected grounds under the Discrimination Act. The Act are thus to some extent overlapping.

The focus of this report is the Discrimination Act and the Work Environment Act. Provisions in other acts, such as the Employment Protection Act (1982:80), the Penal Code (1962:700), and the Liability Act (1972:207) will be discussed and highlighted where relevant throughout the report. In the following, the regulation and managing of harassment and sexual harassment as a matter of non-discrimination and equal treatment will be explained and discussed. After that, the next section will address the regulation on victimization in the workplace as a matter of work environment. In the final section, the report will highlight and analyse the most important and most widely used solutions to the problems that are the theme of this report.

4. Harassment and sexual harassment as a matter of equality and non-discrimination

4.1. Addressing harassments and sexual harassments along three different lines

In the EU law directives on equal treatment and non-discrimination, harassment is defined as unwanted conduct of a person related to any of the grounds covered by the directive and with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment (Art 2.1 (c) of Directive 2006/54, Art 2.3 of Directive 2000/78, and Art 2.3 of Directive 2000/43). Sexual harassment is defined in a similar way, but here the unwanted conduct is specified as ‘any form of unwanted verbal, non-verbal or physical conduct of a sexual nature’, and the conduct must not be related to sex or any other protected ground (Art 2.1 (d) of Directive 2006/54).

Up until 2005, Swedish law did not make a difference between harassment in relation to gender and sexual harassment. However, the legislation was amended in 2005, following the introduction of the Recast Equal Treatment Directive 2006/54. The separation of harassment and sexual harassment means that in cases of sexual harassment, no connection with gender needs to be established, which was previously the case. Today, harassment and sexual harassment is subject to regulation in the Discrimination Act 2008:567 (hereinafter the DA). In 2009, the DA replaced the then four separate acts on discrimination; on the grounds of gender, sexual orientation, disability, and ethnicity (including religion). With regards to harassment and sexual harassment, the DA works along three different lines. First, the ban against discrimination applies in cases where the harassment or sexual harassment is conducted by the employer. Second, there is a duty for the employer to investigate allegations and take measures against harassments and sexual harassments in cases where the perpetrator is a co-worker. Upon both these provisions, an individual employee may base a legal claim before a court. Finally, the DA also contains an obligation for employers to take active preventive measures to create

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14 The organisational and social work environment – key pieces of the puzzle in shaping a good work environment Guide for implementation of the Swedish Work Environment Authority’s provisions concerning the organizational and social work environment, AFS 2015:4, 33.

15 Government Bill 2004/05:147, 53.
an including and accessible workplace. This obligation does not correspond to any particular rights for individual employees. Instead, the requirement on employers in this area is a matter for the supervisory activities of the Equality Ombudsman.

4.2. Harassments and sexual harassments as a form of discrimination

The prohibition against discrimination in working life means that an employer may not discriminate against a person, who is enquiring about or applying for work, is applying for or carrying out a traineeship, or is available to perform work or is performing work as temporary agency worker, Chapter 2 Section 1 of the DA. According to the same provision, anyone who has the right to make decisions on the employer’s behalf shall be equated with the employer. According to case law from the Swedish Labour Court, this also includes an immediate supervisor. The DA prohibits six different forms of discrimination: direct discrimination, indirect discrimination, inadequate accessibility for persons with a disability, harassment, sexual harassment, and instructions to discriminate, Chapter 1 Section 4. When someone is disadvantaged by being treated less favourably than someone else who is treated, has been treated or would have been treated in a comparable situation, and the disadvantaged treatment is associated with a protected ground, this treatment constitutes direct discrimination. In cases where the protected ground is not directly addressed, but where the employer instead emphasizes criteria implicitly related to a certain protected ground, this indicates indirect discrimination. Instructions to discriminate refers to the situation where an employer orders someone in a subordinate or dependent position to discriminate against a person who is protected by the act.

Harassment is defined as a conduct that violates a person’s dignity and that is associated with one of the grounds of discrimination sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. Whether the conduct constitutes harassment is a subjective matter in the sense that the experience of the exposed person is to be taken as the starting point for the assessment.

Just like in relation to other forms of discrimination, a the protection against harassment covers not just people who are protected under a certain ground, but also those who are victimized because they are related or connected person covered by that ground (cf case C-303/06 Coleman). The protected ground must not have to be the sole motive for the demeaning conduct, and the protection applies also in cases where the employer wrongfully assumes that someone belongs to a protected group.

Sexual harassment as a conduct of a sexual nature that violates someone’s dignity. It bears noting that, differently from EU law, national legislation does not specify that the conduct amounting to harassment and sexual harassments must qualify as ‘unwanted’ conduct. The

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16 Government Bill Prop 2007/08:95, 137.
17 Swedish Labour Court judgement AD 2016 No 38.
18 Chapter 1 Section 4 of the DA.
19 Government Bill Prop. 2007/08:95, 486f.
20 Government Bill Prop. 2007/08:95, 490. Indirect discrimination is at hand when a person is being disadvantaged by a provision, a criterion or a procedure that appears neutral but that particularly disfavours people of a certain religion.
21 Chapter 1 Section 4(5) of the DA.
24 Chapter 1 Section 4(6) of the DA.
A conduct or a conduct of sexual nature may be verbal, non-verbal, or physical. Harassing conduct related to any of the grounds for discrimination can include racist texts, images, tags and graffiti, or things that someone whistling, staring or making offensive gestures. It may further include ridiculing or demeaning behaviour, such as comments on appearance or behaviour. The conduct should be disadvantageous in the sense that it causes damage or discomfort and thus violates the dignity of the individual in a noticeable and clear way. Trivial differences in treatment should not be regarded as disadvantageous, and should therefore not constitute harassment. The conduct must, as a rule, be specifically directed towards one or more individuals. However, repeated derogatory statements directed to a larger group may be regarded as discrimination if someone in the group has made clear that the opinions are perceived as offensive. Actions or approaches that appear to be harmless in isolation can amount to harassment when it is repeated and when the victim clarifies that the behaviour is offensive. As regards sexual harassment, verbal conduct may, for instance, constitute in unwanted proposals, mocking, pressure to make the person participate in sexual activity, insinuating comments of a sexual character, and coarse language with sexual references. Non-verbal conduct may be whistling, staring, offensive gestures, or exposing pornographic pictures. The physical conduct may involve anything from unwanted physical contact such as touching, patting, pinching, or stroking to outright sexual assault.

Although no intention or purpose to harass is needed, there is a clear requirement that the offender must be aware that the conduct or action is unwanted. Some actions are obviously offensive in themselves, whereas in other less the alleged victim might be required to indicate clearly that the conduct is unwanted. Just like in cases of harassment, it is the experience of the exposed person is to be taken as the starting point for the assessment of whether a conduct constitutes sexual harassment.

To safeguard the rights accorded by the DA, the Act also contains a ban against reprisals. An employer may thus not subject anyone protected by the Act to reprisals because that person has reported or called attention to the fact that the employer has acted contrary to the Act, participated in an investigation under the, or rejected or given in to harassment or sexual harassment on the part of the employer, Chapter 2 Section 18.

An alleged victim can bring action before court against the employer in cases regarding harassment, sexual harassments and reprisals. For legal support, the employee may turn to the trade union of which he or she is a member, the Equality Ombudsman, or to an independent lawyer. The dispute resolution process starts by grievance negotiations (if the employee is represented by the trade union), or with a communication from the Equality Ombudsman (if the employee is represented by this authority), or with communication or an application for summons (if the employee is representing him- or herself or is represented by a lawyer).

In large workplaces, where the acting employer has superiors, the employee, him- or herself or through representation by the trade union or the Equality Ombudsman, normally starts by reporting the harassing or sexually harassing conduct to the person in the workplace appointed

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26 Government Bill Prop. 2004/05:147, 492.
by the employer to be the recipient of such reports. As will be describe below, both the DA (see Section 4.4) and, the Work Environment Act (1977:1160) with the adjoining statutory instruments (see Section 5.2) requires all employers to have and make visible instructions for employees on whom to turn to in a case of harassment, sexual harassment or reprisals. In a small workplace, it may be meaningless to report an harassing employer to a superior, as the harassing person is the highest in position.

Trade unions have the right to represent their members before the Swedish Labour Court, Chapter 6 Section 2 of the DA. Around 70 percent of the work force are trade union members. It bears noting that the vast majority of individual labour are solved though grievance negotiations, and never reaches the court.

If the trade union chose not to represent its member, or if the person is not a trade union member, the person may be represented by the Equality Ombudsman. The Equality Ombudsman has the right to represent employees in court, but is not obliged to do so, Chapter 6 Section 2 of the DA. Most cases that are handled by the Equality Ombudsman ends in settlement, which is in accordance with what is prescribed for the authority.28

The person may also chose to be represented by a non-profit organisation whose statutes state that it is to look after the interests of its members, Chapter 6 Sec. 2 of the DA.

If the person choses to bring action independently, without the support of a trade union, the Equality Ombudsman, or a non-profit organization, the legal costs can be very high. A lawsuit initiated by an individual employee must be filed with the District Court, and involves an application fee of 280 Euro.29 There are no other fees to be paid to the court, but if the dispute is lost, the employee must pay the litigation costs (i.e. the attorney’s costs) for the winning side in addition to the employee’s own litigation costs.30 Application can be filed for means-tested financial legal aid, but such aid is only granted to persons who have a very low income (not more than about 2,200 Euro per month) and who do not have valuable property. The financial legal aid normally covers only part of the costs for claimant’s own lawyer (recipients of financial legal aid are exempt from the application fee to the court).31 More importantly, the legal aid does not cover the other party’s litigation costs in the event that the claimant loses the dispute.32

The sanctions for an employer who violates the prohibitions of discrimination or reprisals is liability for compensation regarding the offence resulting from the infringement. The same provision applies for employers who fail to fulfil their obligations to investigate and take measures against harassment or sexual harassment, which will be described in the following section. An employer who violates the prohibition on discrimination shall also pay compensation for the loss that arises. The DA states that when deciding on compensation, particular attention shall be given to the purpose of discouraging such infringements of the Act. Scholarship shows that this ambition has not been met; generally, the level of the damages in discrimination cases correspond to the level in other labour law cases.33 In recent case law on

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29 Ordinance on Fees at the Public Courts (1987:452). For disputes involving less than 2,200 Euro, the application fee is reduced to 90 Euro.
30 There is no official statistical information available as regards the share of District Court cases where the employee represents him- or herself, and the share of cases where the employee is represented by a lawyer. For this chapter, information on the matter has been provided by District Court judges.
31 Legal Aid Act (1996:1619).
32 When the parties reach an in-court amicable settlement, the parties normally bear their own litigation costs.
sexual harassments the compensation has amounted to between 25 000 (2500 euro) and 50 000 (5000 euro).  

The ban on discrimination is only of relevance when an employer carries out the harassment or sexual harassment. In cases where the perpetrator is a co-worker, the employer instead must act to cease the violations. These requirements are described in the following.

4.3. A duty to investigate and take measures against harassments and sexual harassments

If an employer becomes aware that an employee considers that someone performing work or carrying out a traineeship at the employer’s establishment has subjected him or her in connection with work to harassment or sexual harassment, the employer must investigate and, if needed, preventive take measures, Chapter 2 Section 3 of the DA.

The harassment or sexual harassment must have occurred in connection with work. This means that not only actions that have happened at the workplace is covered, but also actions in business trips, conferences, and company events etc. The duty to investigate and, if needed, take measures arises immediately when the employer gains knowledge of the incident. Such knowledge may come from the victim, form other persons, or from the employer’s own observations. Suspicions, rumors, and observations are enough to give rise to an obligation to carry out a preliminary investigation, which normally means to ask the alleged victim. As soon as the employer gets a confirmation that the person perceives him or herself subject to harassment or sexual harassment, there is an obligation to carry out a proper investigation. The investigation, as a rule, includes conversations with the alleged victim and the alleged offender, and must be handled with great discretion. In addition, the employer must always take measures to support of the victimized person.

If the investigation shows that preventive measures must be taken to make sure that the harassment or sexual harassment does not happen again, the employer must do everything to reach this end. Most of the times, it is enough to explain that this kind of conduct is not accepted. In difficult cases, the measures may also involve relocation of the person who is harassing och sexually harassing. Ultimately, the person may be dismissed, as harassments or sexually harassments constitute reasonable ground for dismissal in the meaning of Section 7 of the Employment Protection Act (1982:80).

Normally, the employer do not contact the police in cases where an employee have harassed or sexually harassed a co-worker. Instead, in the process of supporting the victimized person, the employer should encourage him or her to report the incident for persecution bring action, if suitable. Harassments and sexual harassments may constitute a crime under the Penal Code, and the victimized person may bring action before a civil court for damages from the perpetrator on the basis of the Liability Act 1972:207.

However, for employers in the public sector, a duty to report serious cases of harassments and sexual harassments follows from Section 22 of the Public Employment Act (1994:260). A public employer has a duty to report an employee for prosecution in certain cases where the employee is reasonably suspected of having committed an offence in the employment. One of these cases is where for which it can be assumed that there will be a sanction other than a fine (such as imprisonment, electronic tag, or conditional sentence).

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34 Swedish Labour Court judgements AD 2001 No 13, AD 2016 No 38 and AD 2016 No 56.
35 Government Bill Prop. 2004/05:147, 297.
If the employer fails to initiate an investigation or to take preventive measures in a case where an employee has been harassed or sexually harassed by a co-worker, an employee can bring action before court against the employer. The procedures and sanctions are the same as in discrimination cases, which has been described in the previous section.

Besides the ban on discrimination and the requirement for employers to investigate and prevent harassments and sexual harassments, the DA also requires the employer to work proactively to promote equal opportunities and to prevent discrimination harassments and sexual harassments. These provisions will be described in the following.

4.4. Active preventive measures to promote equality in the workplace

Since its very introduction in 1979, Swedish legislation on equal treatment in working life has combined the ban on discrimination with a statutory requirement on the employer to pursue active measures to create an including and accessible workplace. The work on active measures to bring about equal rights and opportunities in working life must be carried out in collaboration with employees, Chapter 3 Sec. 11. If there is a lack of collaboration between the employer and the trade union, this should be noted in the documentation.

In 2017, the provisions on active measures in the DA were revised. Up until then, the employer’s work on active measures were to be carried out in three year-cycles (or, before 2008, once every year). The three year-cycle is now repealed; instead the employer must continuously and actively seek information from their employees on needs that may arise in relation to different grounds for discrimination within the areas of working conditions, pay and other terms of employment, recruitment and promotion, and education and training.\(^{36}\) The area of working conditions includes harassment or risk of harassment in relation to all seven protected grounds, as well as sexual harassment or risk of sexual harassment.\(^{37}\) The information gathered must then be transposed into active measures to create an including and accessible workplace. Employers with at least 25 employees are required to document all elements of their work on active measures. The implications of this new working process on active measures is yet to be seen.\(^{38}\)

In addition to the systematic gathering of information and the putting into place of active measures, the DA requires the employer to take specific measures with regards to harassment, sexual harassment and reprisals. These measures are to be taken irrespectively of the outcome of the information gathering in the area of working conditions. The employer must thus adopt guidelines and procedures to prevent harassment, sexual harassment and reprisals. The guidelines shall make clear that harassment, sexual harassment and reprisals are not permitted in the workplace. The procedures shall include an action plan for the employer in the case that someone reports harassment, sexual harassment or reprisals; instructions for employees on whom to turn to in a case of harassment, sexual harassment or reprisals; and information about who is responsible for the investigation of a claim regarding or an occurrence of harassment, sexual harassment or reprisals. The employer must follow up and evaluate these guidelines and procedures, as a part of the continuous process on active preventive measures, Chapter 2 Section 6 of the DA.

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\(^{36}\) The investigation must aim to gain knowledge on the general level of the needs represented within the organisation. The employer is not meant to map out ethnicity, religion, sexual orientation or other personal conditions on the individual level, and shall not increase the registration of personal data, Government Bill Prop. 2015/16:135, 37.


\(^{38}\) Government Bill Prop. 2015/16:135, 32.
Again, it is important to underline that the provisions on active preventive measures do not correspond to any particular rights for individual employees, and can not form the basis for a legal claim for compensation.

5. Harassment, sexual harassment and other forms of victimization as a matter of work environment

5.1. General features of the regulation on work environment

The Work Environment Act (1977:1160) (hereinafter WEA) requires the employer to prevent occupational injuries. Thus, the regulation is proactive in character. The employer must systematically plan, direct and monitor activities in a manner that ensures that the work environment meets the prescribed requirements for a good work environment, Chapter 3 Section 2a of the WEA. These activities are to be a natural part of day-to-day activities in the organization. It shall comprise all physical, psychological and social conditions of importance for the work environment. The employer shall make sure that the persons assigned with work environment tasks have sufficient knowledge for the assignment, and must also educate the employees in this area. The systematic work environment management means that the employer must investigate work-related injuries, continuously investigate the risks involved in the activities and take the measures required as a result. A timetable must be set for measures that cannot be taken immediately and, the employer must document the work environment and measures adopted with respect to it. In connection with this, the employer must draw up action plans.

The Work Environment Act is based on the premise that employers and employees should cooperate at the local level on issues concerning the working environment. Though health and safety is primarily the responsibility of the employer, the Act makes clear that employers and employees together should achieve a healthy work environment. Every worksite in which at least five employees are employed must have at least one safety delegate, normally appointed by the trade union. Larger work sites, with at least fifty employees, must appoint a safety committee, composed of representatives from the employer and from the employees on the work site. If possible, one of the employer’s representatives shall have a managerial or comparable position, and thus possess the power to make decisions that are binding for the employer. Through collective agreement, the local parties may to appoint another body that counts as the safety committee, though it is called something else and though it also deals with questions other than those related to the work environment. The role of the safety committee (or the other form of collaboration) is to be proactive and to contribute to policy making in general questions about the work environment, and to participate in the planning and control of work environment.

40 Sections 6 and 7 of AFS 2001:1.
41 Chapter 3 Section 2a of the WEA.
43 Chapter 3 Section 1 of the WEA.
44 Chapter 6 Section 2 of the WEA.
45 Chapter 6 Section 8 of the WEA.
46 Section 8 of the Work Environment Ordinance SFS 1977: 1166.
The Work Environment Authority supervises compliance with this Act and regulations issued pursuant to the Act. The Authority is mandated to issue orders or prohibitions to secure compliance with the WEA or regulations issued pursuant to the WEA. Such an order or prohibition may be subject to a conditional financial penalty. An order or prohibition of this kind may be directed against both private and public employers.

5.2. Victimization as a matter of work environment

In the context of work environment, victimization is defined as recurrent reprehensible or 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. The definition comes from the predecessor of the current Work Environment Authority Provisions on the organizational and social work environment on AFS 2015:4 (hereinafter AFS 2015:4).

When it comes to the prevention and counteraction of victimization, first, the employer is required to inform and make clear to all employees that victimization is not accepted in the work place. This should preferably be done in written. Employees in a supervisory position have particular responsibility with regard to victimization, and the employer must make sure that these persons have sufficient knowledge to carry out this responsibility. The employer shall take actions to counteract conditions in the work environment that could give rise to victimization, and is encouraged to pay special attention to conflicts, collaborations and changes at work, as well as determination of workloads and allocation of work.

Furthermore, the employer is obliged to establish procedures for in cases where victimization occurs. These procedures must make clear where (which position in the organization) information on victimization is to be received, what is to be done with this information, and where to the victimized person shall turn in order to get help immediately. The employer shall make the procedures known to all employees. The General Recommendations of the Work Environment Authority states that victimization normally shall be is reported to the immediate a manager or, if this is impossible, to a manager further up in the organisational hierarchy. In addition, the employee can always turn to a safety delegate. It is important that the employee receive help without delay, as the situation may deteriorate. The employer may also engage the occupational health services or another specialist to provide support and help.

In line with the requirements as regards systematic work environment management, the employer must work to prevent that the victimization occurs again in the future. The General Recommendations underlines that a deficient investigation process as regards victimization may be harmful from a work environment and a health viewpoint, and that the person conducting an investigation must have sufficient competence, be unbiased, and have the trust of those involved.

5.3. Remedies and access to justice

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48 Chapter 7 Section 1 of the WEA.
50 Section 13 of AFS 1993:17.
51 Section 14 of AFS 1993:17.
It is important to emphasize that the purpose of work environment legislation is to prevent illness, occupational injuries and accidents. The regulation does not address issues regarding compensation or guilt. For individuals, access to justice must be sought in other ways.

However, victimization may also amount to a criminal offence. Besides the fact that the perpetrator may have committed a crime in the victimizing act (in cases involving violence, threats, violation of integrity, defamation, sex crime etc), also the employer may be charged with a criminal offence, called work environment crime. As regards victimization, the relevant provision are to be found in the Penal Code (1962:700), Chapter 3 on Crimes against Life and Health. Section 10 labels three types of crimes in the chapter as work environmental crime if the crime has been committed by a person with intent or by carelessly neglecting his duty under the WEA to prevent sickness or accidents. The crimes are causing another's death, causing bodily injury or illness, and creating danger to another. The punishment in these cases ranges from fines to imprisonment at a maximum of six years. There is only one court case on work environment crime, Krokom, Court of Appeal of Lower Norrland, 2015-03-03, B 399-14. The case concerned a social worker who had committed suicide after work place victimization ending in his dismissal. The District Court found that the employer had failed to properly investigate the allegations regarding victimization, and the employer had infringed both the WEA and a number adjoining statutory instruments, such as AFS 2001:1 on Systematic Work Environment Management and AFS 1993:17 on Victimization at Work. Two managers were found guilty of work environment crime. However, the Court of appeal changed the judgement, stating that although the managers had contravened a number of rules, none of these contraventions were, in itself severe enough to constitute work environment crime. In addition, the Court explained there are no detailed instructions on how to carry out an investigation in case of victimization.

In criminal cases, normally, the prosecutor claims damages for the victims. In other cases, the employee must turn to the trade union or pursue an individual legal process for compensation, in the basis of the Liability Act (1972:207), which is the general act in for cases regarding damages.

6. Conclusions

This section will sum up the most important findings in a discussion that highlights different aspects of the Swedish regulation on harassments, sexual harassments and other forms of work place victimization framed within the terminology of SWOT-analysis. SWOT analysis is a model that has been developed in the research field of corporate planning, to provide solid information and consideration in organizational decision-making. The model helps to consider simultaneously internal factors within the organization, and external factors that appear outside the organization, in the design and planning of corporate strategies. There is no unitary understanding of how a SWOT analysis should be carried out in order to provide a reliable result for future planning. Normally, a four box matrix is used to identify and capture the different elements that should be included. Within the four boxes, the internal factors Strengths and Weaknesses are listed, along with the external factors Opportunities and Threats.

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In this section, the legal analysis will connect to the terminology in the SWOT-analysis model. This does not mean, however, that an actual SWOT analysis will be conducted in the following. SWOT analysis is a complex method of strategic analysis covering the internal and external aspects of an organization or a project. A legal system, or part of such a system, is something very different from an organization or a project. Swedish law on harassment, sexual harassment and victimization at work is a product of political decisions during more than forty years, and it has profound connections with i.a. the general development of labour law, the subsequent expansion of gender equality policy, and the national industrial relations system. It would thus not be possible, or fruitful, to carry out a SWOT analysis of the regulation described in this report. However, the four categories Strengths, Weaknesses, Threats and Opportunities may provide a tool for screening and systematizing the most prominent and the most pressing matters in the area.

The Swedish legal framework addressing harassments, sexual harassments and other forms of work place victimization clearly makes a difference between on one hand harassment as a demeaning behavior that is related to a certain ground protected in non-discrimination law, and sexual harassments, and on the other hand other forms of victimization as a more general matter of work environment. This is an important strength of the law. Sexual harassment is a representation of a more general approach towards women as being primarily sexual objects and as being inferior in their capacity as employees and co-workers. This means that in a work place that permits sexually harassing actions, women typically are in a worse position than men. Counteracting sexual harassment is thus an important means to promote gender equality on a wider basis, and conversely: to counteract sexual harassments, the employer must work to promote gender equality in all aspects of the organization. The same reasoning applies for harassments with relation to grounds protected in non-discrimination law. Thus, the fact that harassment and sexual harassment primarily are conceptualized as a matter of non-discrimination and equal treatment provides for a more efficient management of these matters.

Another, closely connected, strength of the Swedish regulation is the emphasis on proactive and preventive measures, both in the DA and the WEA. A third strength is the instructive and quite detailed provisions on how the employer shall carry out the preventive work. A third obvious strength, that can not be stressed enough, is the strong collaboration between employers and trade unions, which means that a there is good possibilities for a continuous dialogue on these matters in the work place.
Regarding weaknesses, the great responsibility entrusted to the social partners may on the other hand result in low activity to combat harassments, sexual harassments and other forms of work place victimization. If the trade union representatives are not engaged, the employer will many times be free to ignore these issues. Another weakness is that the Work Environment Agency never engages in cases concerning individuals. Third, an obvious weakness is the general lack of monitoring from the supervisory authorities, mainly due to the fact that the social partners are expected to handle work place issues by themselves. A fourth weakness is that an employee who is not member of a union may have limited access to justice, as costs for litigation risk to be very high.

As regards threats, a declining percentage of unionized workers and weakened trade unions would is definitely constitute the most important threat to the proactive and preventive work against harassments, sexual harassments and other forms of victimization, which is the signatory trait of the Swedish approach to the area. This threat does not seem very urgent for the time being. Even if the unionization rate in Sweden has declined, it is currently at 69 percent, which from the international perspective is still a very high figure. Another threat is that the monitoring activities of the supervisory authorities, the Equality Ombudsman and the Swedish Work Environment Authority, and the litigation activities of the Equality Ombudsman are not prioritized. Downsizing of monitoring and litigation may be motivated by budgetary reasons; these activities requires resources in manpower and time. A downsizing may also be due to political ideas about how government policy and statutory law is best implemented in practice; by authorities that provide information and work to change the public opinion rather than by authorities that are involved in individual cases. In recent years, the Equality Ombudsman has been criticized for prioritizing extensive engagement in political discourses instead of the support of individuals in concrete cases.54

As regards opportunities, finally, the metoo-campaign had great impact in Sweden. It have raised awareness in organizations and generally in in society regarding harassments, sexual harassments and other forms of work place victimization. As the legal framework – both the provisions on work environment but especially the provisions in the DA – is comprehensive and detailed, the raising awareness provides important opportunities for more demanding strategies on the workplace level. Another important source of opportunities is the national industrial relations system, where strong and autonomous social partners are used to address and handle labour market challenges independently of the activities on State level. Following the metoo-campaign and inspired by the solutions from Canada, some trade unions have initiated public debate about how sexual harassments could be addressed in collective agreements. The trade union Vision has put forward a concrete proposal for such an agreement at local level in Gothenburg.55 Thirdly, after the Krokom-case, where an employee committed suicide after work place victimization ending in his dismissal (see Section 5.3 above), the Government decided to propose an increase of the corporate fine in cases of work environment crime. The change means an increase of the maximum fine from 1 million to 5 million Euro (from 10 million to 50 million SEK), and is to be applied from January 1 2020. This proposal must be categorized as an opportunity, in that higher fines may contribute to safeguard employers’ compliance with i.a. the requirement to prevent and counteract victimization.56

54 L. Svenaeus, Konsten att upprätthålla löneskillnader mellan kvinnor och män : en rättssociologisk studie av regler i lag och avtal om lika lön, Department of Sociology of Law, Lund University, Lund 2017, s. 274. 
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