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## REGULATION OF THREATS AND VIOLENCE IN SCHOOLS IN SWEDEN

Occupational health and safety (OHS) deals with the duty of the employer to ensure the safety and health of workers regarding every aspect related to the work<sup>1</sup>. One of these aspects is *violence and threats* towards workers, which is the subject of this article. More specifically, this article deals with threats and violence in the educational sector. It provides a legal perspective on preventing threats and violence, addressing new legislation in Swedish OHS law and potential legislation in educational law.

This article consists of four sections. The first section gives a legal background on the regulation of threats and violence in Swedish OHS law, which includes a description of new legislation on this topic. The second section deals with education law, describing why this legislation matters for school staff from a OHS point of view. In the third section, an account is given of forthcoming Government Inquiries that might lead to changes in educational law. In the fourth section, some concluding remarks are given on the Swedish approach to regulating of threats and violence in schools.

### I - NEW OHS LAW - BUT WHAT IS REALLY « NEW » ABOUT IT?

Swedish Work Environment Act (Arbetsmiljölagen, 1977:1160, hereafter «SWEAct») states that employers shall take all measures necessary to prevent illness or accidents among its employees<sup>2</sup>. The duties of the employer are regulated in detail in certain provisions from the Swedish Work Environment Authority. Each of the provisions cover a different aspect of OHS, such as the current provisions on violence and threats (hereafter AFS 1993:2). Although, as per January 2025, the current provisions in OHS law will be replaced by several new ones. One of these provisions will contain rules that specifically apply to risk of violence or threats of violence (hereafter AFS 2023:2)<sup>3</sup>, whereas another one will apply to work performed for employers in general (hereafter 2023:1)<sup>4</sup>. Compared to current regulation, there is nothing substantially new about these two provisions in matters concerning threats and violence. The « new » regulation can be summed up as follows:

1 See article 5.1, Council directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89 / 391 /EEC).

2 Chapter 3, section 2, SWEAct.

3 See Chapter 5, section 1, AFS 2023:2. Cf. Section 1, AFS 1993:2.

4 See AFS 2023:1.

The employer shall prevent, as far as possible, the risks of violence or threats of violence. Moreover, the employer should have safety procedures regarding work which can lead to risks of violence or threats of violence. The employer also has the duty to follow up the safety procedures, and to make employees aware of them<sup>5</sup>. Also, if there is a risk of recurring violence or threats of violence, employers have the duty to provide employees with support and supervision<sup>6</sup>. The employer should ensure that employees have sufficient knowledge about the work and work related risks. This should be done in order to prevent sickness and accidents, but also to achieve a satisfactory work environment. If there are severe OHS risks, there should be written instructions on how to perform the work in a safe way<sup>7</sup>. The employer must not let the employee perform a task alone if there is a substantial risk of violence or threats of violence<sup>8</sup>.

The employer is also responsible to locate, design and equip workplaces in order to prevent the risk of violence or threats of violence as far as possible<sup>9</sup>. Furthermore, the employer should make it possible for the employees to summon assistance in case of threats or violence. This implies a duty to provide equipment for alarm if needed, but also to ensure maintenance and control of the alarms. Moreover, the employer has to ensure safety procedures regarding the use of the alarm. The employer shall also provide regular training in applying these safety procedures<sup>10</sup>.

In general, the employer also has the responsibility to evaluate the risks of work and take measures in order to prevent these risks<sup>11</sup>. Notably, the new legislation does not point out the evaluation of *specific* risks relating to threats and violence. In this regard, the new legislation is more general than (and thus slightly different from) the current one<sup>12</sup>. However, this slight difference implies no substantial legal change. In fact, the general wording of the forthcoming legislation suggests that the employer has to evaluate and prevent *all* risks at work, including the specific risks of threats and violence.

To sum up, the forthcoming Swedish legislation on threats and violence is new in form, but old in substance. As is the case with current legislation, the legislation contains general demands on preventing threats and violence. Notably, there are still no specific demands that apply to certain branches of work (such as education). From that perspective, it is an *old truth* in Swedish OHS law that employers have a general duty to prevent threats and violence in all branches of work. However, in some branches of work, employers also have to comply with other legislation than OHS law. Due to the demands (and restrictions) of such other legislation, employers may lack the legal authority to take certain measures in order to protect

5 See Chapter 5, section 3, AFS 2023:2. Cf. section 3, AFS 1993:2.

6 See Chapter 5, section 4, AFS 2023:2. Cf. section 5, AFS 1993:2.

7 See Section 10, AFS 2023:1. Cf. section 4, AFS 1993:2. However, in contrast to the new regulations, AFS 1993:2 does not explicitly regulate the use of *written* instructions.

8 See Chapter 5, Section 7, AFS 2023:2. Cf. section 8, AFS 1993:2.

9 See Chapter 5 Section 5, AFS 2023:2. Cf. section 6, AFS 1993:2.

10 See Chapter 5, Section 6, AFS 2023:2. Cf. section 7, AFS 1993:2.

11 See Sections 11 and 13, AFS 2023:1.

12 Cf. section 2, AFS 1993:2.

the work environment of employees. The demands of OHS law, then, can possibly “collide” with the specific demands of other legislation<sup>13</sup>. In the educational sector, for example, it may be unlawful to take certain measures towards students even if these measures aim to protect the work environment of school employees. Indeed, it follows from the Swedish Educational Act (Skollagen, 2010:800, hereafter *EdAct*) that schools can *only* take a limited set of disciplinary measures towards students under certain conditions<sup>14</sup>. But to what extent can schools take disciplinary measures towards students in order to protect school employees from threats and violence? The section below sheds light on this question, specifically discussing some of the disciplinary measures regulated in the *EdAct* (*suspension, temporary placement and physical intervention against students*). As we shall see, these measures are subject to potential *legal changes* that could be relevant to the prevention of threats and violence against school staff.

## II - DISCIPLINARY MEASURES TOWARDS STUDENTS - A MATTER OF PROTECTING SCHOOL STAFF?

Disciplinary measures towards students according to Chapter 5 of *EdAct* do not serve the general purpose of protecting the work environment of school employees. Rather, Chapter 5 of *EdAct* generally aims to ensure a safe and peaceful learning environment for students<sup>15</sup>. For that reason, it is generally not possible to take disciplinary measures towards primary school students with the sole aim of promoting the work environment of staff. Following legal changes from 2022, however, primary schools can *suspend* students who take actions that are considered a threat to the safety of other students *or school staff*. This applies to urgent situations that are potentially harmful for students or staff, either collectively or individually, for example if there is a risk of violence<sup>16</sup>. Even if these conditions are met, there are *time limits* regarding the suspension of students. Students in primary school can only be suspended for a maximum amount of two times every six months, and only one week at a time at most<sup>17</sup>. Notably, there are no exceptions from these time limits, even if such exceptions would mitigate OHS risks for school staff.

When it comes to less coercive disciplinary measures in primary school, such measures serve other purposes than protecting the safety of school staff. For example, a student in primary school can be *temporarily placed* in a different part of school if necessary to achieve a safe and peaceful learning environment for *students*. This only applies if other actions are insufficient<sup>18</sup>. If such temporary placement is not possible, or if this measure is not considered coercive enough, a student can also be

13 Cf prop. 1976/77:149 s. 220, framing this issue as a conflict of interest, which allows for a balancing of interests according to OHS law. However, the legislator has not made clear *how* to perform such a balancing of interests between two conflicting areas of law.

14 See Chapter 5, sections 6-23, *EdAct*.

15 Chapter 5, section 3, *EdAct*.

16 See for example Prop. 2021/22:160, pp. 191 and 243.

17 Chapter 5, section 15, *EdAct*.

18 Chapter 5, section 12, *EdAct*.

temporarily placed in another school<sup>19</sup>. In both these cases, the maximum duration of temporary placement of a student is four weeks<sup>20</sup>. As in the case of suspension, no exceptions can be made to this specific time limit (e.g. no matter if this would be beneficial for OHS of school staff).

Moreover, school staff has the legal authority to make *physical interventions* against students in order to prevent violence, degrading treatment. This follows from the right to take the immediate and temporary actions needed to provide *students* with a safe and peaceful study environment. Under these conditions, physical force against students can only be used if proportionate<sup>21</sup>. Otherwise, there is no legal ground to intervene physically against students (i.e. even in cases of threats and violence towards school staff). Indeed, the constitutional rights in Sweden include protection against forced bodily interventions and bodily searches<sup>22</sup>. These constitutional rights can only be infringed through explicit law<sup>23</sup>. In lack of such explicit law, there are a number of instances where schools do not have the legal authority to intervene physically against students. To name an example from case law, schools do not have the legal ground to subject students to bodily searches<sup>24</sup>.

### III - POTENTIAL LEGISLATION IN EDUCATIONAL LAW - PROMOTING THE AIMS OF OHS LAW?

In short, schools have limited possibilities to take disciplinary measures towards students in order to prevent threats and violence against its employees. Although, this could change according to potential new legislation, which seems to deal with the disciplinary measures mentioned above (*suspension, temporary placement and physical interventions*). While there is no law proposal on this matter (as of February 2024), there are forthcoming Government Inquiries concerning different aspects of disciplinary measures. A few of these aspects will be discussed below.

As indicated in the EdAct, there is little room for primary schools to take measures concerning suspension and temporary placement of students in the interest of OHS for staff. Moreover, there are time limits for both of these measures, and no exceptions can be made<sup>25</sup>. A forthcoming Government Inquiry, however, seems to indicate that the legislator will re-evaluate the conditions and the time limits for disciplinary measures. Taking into account the demands of OHS law, the Swedish Government has stated e.g. that time limits for these measures may risk the safety of *school staff*. The Government specifically points out the risks that occur when a violent student comes back to school after one of these measures<sup>26</sup>. Thus, a Government Inquiry will analyze if, and how, temporary placement and suspension

19 Chapter 5, section 13, EdAct.

20 Chapter 5, sections 12 and 13, EdAct.

21 Chapter 5, section 6, EdAct.

22 See e.g. Chapter 2 section 6, The Swedish Instrument of Government (Regeringsformen).

23 See e.g. Chapter 2 section 20, The Swedish Instrument of Government (Regeringsformen).

24 See e.g. JO 2022/23 s. 463 on bodily searches in secondary school, which was considered a breach of the right to protection against bodily searches.

25 See section 2 above.

26 Dir. 2023:154, p. 16.

of students school staff could occur in even more cases and for even longer periods of time. If there is a need for such regulation on this matter, it will be proposed in the Government Inquiry<sup>27</sup>. This raises the question if there will be new legislation on the conditions and time limits of certain disciplinary measures in order to prevent threats and violence towards school employees.

As for bodily searches, the Swedish government seems to have taken steps to provide school staff with the legal means to search students. This is implied in another forthcoming Government Inquiry on safety in schools, which aims to provide students *and school staff* with a safe learning and working environment<sup>28</sup>. The Government Inquiry will analyze if school staff should have the authority to perform bodily searches of e.g. students. If there is a need for such regulation, it will be proposed in the Government Inquiry<sup>29</sup>. It remains to be seen if there will be a law proposal, allowing school staff to perform bodily searches in order to promote their own work environment.

## Conclusion

As discussed above, the case of Sweden shows how « new » OHS law regulates the general *duty* of the employer to prevent threats and violence<sup>30</sup>. When it comes to taking more *specific* measures in certain workplaces, such as in schools, the question is if employers have the legal authority to do so. Indeed, as seen above, Swedish educational law regulates if (and to what extent) schools are allowed to take disciplinary measures towards students. This is the case, even if such measures would prevent threats and violence against school staff<sup>31</sup>. The question, then, is if there will be any proposed legislation in the field of educational law which gives schools further authority to take measures towards students<sup>32</sup>. If so, it will be interesting to see whether such future legislation would provide schools with the means to promote the work environment of school staff. Only time will tell. But for now, the case of Sweden shows how potential legislation in educational law could promote the aims of « new » OHS law.

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27 Dir. 2023:154, p. 18.

28 Dir. 2022:86, p. 1.

29 Dir. 2022:86, p. 13.

30 See section 1 above.

31 See section 2 above.

32 See section 3 above.