Is Workplace Bullying a Conflict? Examples from Norwegian lawsuits

Jan Gregersen

Faculty of Education and International Studies, Oslo and Akershus University College of Applied Sciences, Oslo, Norway

The last decades have shown Norway playing a key role in the huge amount of international research on workplace bullying. Nevertheless, there is still some confusion concerning terms and definitions. The article reasons that this shows a need for exploratory studies on real-life cases, based on neutral sources. It focuses on the impact of viewing workplace bullying as a conflict. The article first addresses some different approaches among researchers and then analyses three transcripts from the Norwegian Appeal Court to illustrate the issue. The cases show that the term ‘conflict’ may encompass bullying in some sense, but this labelling can also be misleading and an obstacle in understanding the situation, especially from the victims’ angle. The article concludes that there is probably no way to evade the word ‘conflict’ in such a context. Nevertheless, those dealing with bullying cases should be aware what their conflict perceptions imply.

Key words: conflict; harassment; law; mobbing; workplace bullying.

Introduction

Many countries and federal states have introduced laws and regulations to secure employees’ well-being. These steps should also serve to prevent bullying and encourage the workplaces to take action when it occurs. Although only a few bullying cases will actually end up in the court-room, judgments of this kind have the potential to send a strong signal back to the workplaces as to how to understand and treat this phenomenon. Thus, this article finds that studies of legal transcripts should be of interest far beyond the circles of lawyers and legislators. That includes anyone who could somehow end up playing a role in this kind of event, especially when there is a distance in time or space between those directly involved and the ones in charge.

Yamada (2011) examined legislation around the world and concluded that there was a significant need for in-depth study of the effectiveness of existing regulatory measures in this area. Other writers have pointed out that such anti-bullying laws have severe shortcomings. French, Boyle, and Muurlink (2014) wrote that the concept of workplace bullying had been dispersed across various pieces of Australian legislation and that the ‘lack of a “comprehensive or coherent” system had left employers and employees alike unsure of their legal rights and obligations’. Hoel and Einarsen (2010, p. 47) reported, ‘... the Swedish regulation against bullying has important shortcomings, frequently failing those it was meant to protect.’ Among possible reasons, the writers pointed out ‘the regulatory framework itself’, which, they

Correspondence: Jan Gregersen, Oslo and Akershus University College of Applied Sciences, P.O.Box 4 St. Olavs plass, NO-0130 Oslo/Norway. Email: jgregers@hioa.no

indicate, might be too specific and narrow, but also too vague and open to interpretation. Vickers (2006, p. 278) commented about legislative provisions of this kind in general: 'Unfortunately, legislation and policy initiatives designed to protect targets have the potential for paradoxical and unintended effects.' This article assumes that the reluctant comments above reflect basic obstacles in workplace bullying research.

A large amount of international research on bullying during the last decades has documented severe consequences for individuals and organisations (see Rayner, Hoel, & Cooper 2002). Notably, the Norwegian 'Bergen Group' (University of Bergen) plays a key role in this field. However, Rayner (2004) argued that there was no general agreement as to where boundaries of bullying lay. Researchers and practitioners have 'struggled to establish a single agreed-upon definition' (Saunders, Huynh, & Goodman-Delahunty, 2007). Branch and Murray (2015) discussed whether a lack of understanding was the reason for inaction in this field. Keashley and Jagatic (2011) summarised different words for bullying, (e.g., 'harassment', 'mobbing', or 'emotional abuse'), and stated that the definitions of these concepts varied and overlapped. They described their observations as 'the labelling and definitional dilemma: construct profusion and confusion'. (This article uses the terms 'workplace bullying' or just 'bullying', unless referring to sources.)

In that regard, scholars in this field discuss whether they should view bullying as a kind of conflict (Keashley & Nowell, 2011). This study behind this article started by examining old transcripts concerning bullying, in which the 'conflict' discussion appeared to overshadow other questions and found to be the most interesting limitation for further research.

Accordingly, this article aims to:

- (1) explain what these discussions concerning the relationship between bullying and conflict are about;

- (2) give a brief introduction to Norwegian regulations, especially when it comes to the question above; and
- (3) illustrate the issue with three transcripts from the Norwegian Appeal Court. (This article assumes that although these cases all originate from a Norwegian context, they reflect problems that can arise anywhere when dealing with the ambiguous bullying concept.)

Bullying and Conflicts, Different Approaches

Escalated Conflicts

A pioneer in the field of workplace bullying was the late Heinz Leymann. He was originally German, but his research was undertaken mostly in Sweden. Leymann (1996) argued that escalated conflicts, which management was not able to handle, were the roots of bullying. He was therefore particularly concerned about early intervention from management when conflicts arose and the use of external assistance when these were out of control. This attitude to conflicts corresponds to an early 'traditionalist' view, which claimed that conflicts are disruptive and need to be avoided (Robbins & Judge, 2013, p. 481). Heinz Leymann also argued that in researching bullying the focus should be on the participants' situation, not their personal traits. This is in line with a 'situationalist' view in psychology, which holds that personality is more influenced by external factors than by internal traits or motivations (see Mischel, 1968). Other researchers have questioned Leymann's assumptions.

Other Attitudes to Conflict

Ege (2002), also originally German but researching in Italy, challenged Leymann. He considered conflicts a 'zero condition' (prerequisite) for a bullying process, but not an explanation of why it happens. From his point

of view, conflicts go on continuously in organisations, and there is little reason for getting involved in or halting them. Management should, rather, watch out for conflicts with special characteristics. Ege labelled these ‘targeted conflicts’ or ‘stalking’, which are the useful precursors to bullying. He concluded that Leymann’s attitude to conflicts was much too negative. The writer added that their different views might be linked to cultural influence from the countries in which they carried out their research. (Scandinavia is often described as particularly ‘conflict-avoidant’, in contrast to Italy). Ege’s notion seems close to a ‘human relations’ view of conflicts, according to which these are regarded as a normal phenomenon in all groups and organisations and therefore inevitable (Robbins & Judge, 2013). Westhues (2004, p. 310–313) went even further in that reasoning by arguing that reciprocity and dialogue characterise well-functioning organisations, which also require room for bickering, debate, and friction – i.e., conflicts. Bullying implies, however, an almost total breakdown of such a dialogue. From Westhues’ view, all power is to a larger and larger extent transferred to the bully’s side, while the target is increasingly powerless. It is therefore not the conflicts that contribute to bullying, but rather attempts to suppress them through delaying tactics, abuse of power and retaliation. Westhues’ view may conform to what Robbins and Judge (2013) labelled an ‘interactionist’ understanding of conflicts. This approach assumed that harmonious and peaceful organisations would not be able to meet the challenges of the environment with necessary change and innovation. In line with this reasoning, conflicts are not a threat to organisations, but a prerequisite for their survival.

Example

The following example illustrates the impact of using different approaches (Bondi & Gregersen, 2004). A judge regarded a workplace bullying case, raised by a female employee

against her employer because of her male superior’s misbehaviour, as a ‘dual conflict’. Thus, the court ignored the possibility that the alleged ‘bully-boss’ could have targeted the woman and thereby forced her into a certain type of behaviour. The judge’s perception of the bullying as a conflict was therefore likely to have contributed to the loss of her compensation claim.

Bullying Unrelated to Conflicts

Einarsen, Glasø, and Nielsen (2008) supported the view that bullying could be conflict-related. However, they argued it could also be ‘predatory’ (or a mixture of both). Predatory was characterised in the way that the victim happens to be in a situation, in which someone carries out power abuse or is using aggression for their own personal gain. The distinction between these alternatives seems analogous to the concepts used in another survey, which relates to schoolchildren (Roland & Idsøe, 2001). Here, the authors concluded that ‘proactive’ aggression (the tendency to attack someone in order to achieve material or social benefits) was the dominant form of bullying, whereas ‘reactive’ aggression (the tendency to express negative behaviours when one was angry) seemed far rarer. The description of predatory bullying above may emphasise the victims’ innocence, but Roland and Idsøe (2001) seem more concerned about the perpetrators’ motives. Yet both of these approaches are overlapping and offer a dimension to the understanding of the link between conflicts and bullying that is fundamentally different from Leymann’s earlier model (1996). As mentioned, he implicitly assumed that all bullying was rooted in conflict.

Personal Traits

Bullying is also investigated from a non-situational approach. Nielsen and Knardahl (2015) found that *personality* has limited impact on later victimisation from bullying.

However, they asked for future research concerning how individual dispositions predict perpetrated bullying. Keashley and Nowell (2011) went further in emphasising the possible impact of personality. They wrote that the label of conflict in bullying cases creates the sense of shared responsibility and that a person (the perpetrator) is not the problem. The authors claimed that such a presupposition is usually wrong. Therefore they cautioned professionals not to describe bullying as a conflict but 'instead to consider what the conflict perspective might offer in understanding and ameliorating this extremely hostile and devastating phenomenon'. There is considerable literature about notorious troublemakers (e.g., Arnulf, 2014; Crothers, Kolbert, Albright, Hughes, & Wells, 2014; Hare, Hart, & Harpur, 1991). These sources point out that there are people who are constantly likely to become involved in destructive actions against others, if only they get in position to do so. Models that take for granted that all bullying is rooted in situations can ignore that such destructive personalities exist. Alternatively, the researchers behind them may view such cases as a different phenomenon. If so, there are two schools of bullying research, which apparently have little or nothing in common with each other.

Norway as Frontrunner in Workplace Legislation

Norway introduced its Working Environment Act in 1977. At the time, the nation viewed itself as front-runner concerning workers' rights and as a potential model for other countries. This law made Norwegian employers responsible for their employees' well-being and liable for damages that the work environment might cause. Workplaces (of more than 50 employees) also had to elect both health-and-safety representatives as well as work environment committees. The surveillance and control of acts and regulations came under the jurisdiction of the Labour Inspection Authority. The law has been revised

several times, and the paragraphs were shuffled in 2012. It now includes especially the obligation of employers to avoid harassment (Working Environment Act, 2012, section 19.1.). However, this article assumes that these later revisions of the law are unlikely to affect cases like the ones that are presented here.

A Norwegian author attempted, in his text-book for students of law (Pedersen, 2002) to clarify a few conceptual problems. He wrote that it was difficult to give the concept of harassment a precise juridical definition without simultaneously limiting its ambit too much. The author also pointed out that harassment encompassed the concept of bullying according to notes from legislators. He wrote that although the law does not define these concepts, the Norwegian Labour Inspection Authority had chosen the following guidelines: 'It is harassment when one of more individuals repeatedly and over time is exposed to negative actions from one of more other individuals' (Pedersen, 2002, p. 97–98). Concerning *conflicts*, he mentioned that these are often defined as 'being different types of hostile relations, in which the goals/wishes of one party is perceived to be in contradiction to the other party's goals/wishes' (Pedersen, 2002, p. 52).

This reasoning does not clarify whether the 'conflict' actually encompasses 'bullying', whether the concepts overlap each other, or whether they are viewed as distinctly different phenomena. Nevertheless, it states that workplace bullying differs from conflict in general in that there are measures of frequency and duration in addition to imbalance of power. However, Chan-Mok, Caponecchia, and Winder (2013) commented that requiring 'repetition of behaviours' could be a health-and-safety risk to those exposed. The authors recommended further consideration of the way theory, policy, and legal practice can learn from each other to tackle this phenomenon. Clayborn, Spinner, and Malcom (2014) argued that bullying definitions should emphasise harassers' intent and the effect of their

actions, but tone down the importance of *repeated* misbehaviours. These considerations are referred to in the following analysis.

Case Studies

Methodology

Need for Case Studies

‘If concepts are to serve the functions of communication, sensitivity to and organisation of experience, generalisation, and theory construction, they have to be clear, precise, and agreed upon’ (Frankfort-Nachmias & Nachmias, 1992, p. 29). These criteria do not seem to be reached in the field of bullying. Therefore exploratory studies can be useful to question existing theories and to establish new hypotheses. Pure text analysis of court transcripts is here the chosen method. It may then be important to discuss perspectives other than those planned in advance to avoid subjective biases (Grønmo, 2004) and also to analyse what is *not* written in the documents (Patton, 1990). This article is written in accordance with these guidelines.

Neutral Sources

Transcripts as source have the advantage of being produced by a neutral authority. In addition, judges are not experts on workplace bullying and are unlikely to be linked to (or biased with) any particular school of bullying research. In this sense, they present an ‘amateur’ perspective, which, some scholars argue, could ‘aid a more detailed understanding’ than traditional psychological research in this field (Clayborn et al., 2014; Liefvooghe & Olafsson, 1999).

Facts in Transcripts

Nevertheless, although court judgments should distinguish facts from interpretation, there is reason to bear in mind the factual aspects that have undergone editing at different stages. First, the lawyers will probably

identify the parts of the clients’ stories they find suitable for proceedings. Then, it is up to the parties themselves to provide evidence and present their cases. Thus, a poor performance in the courtroom can ruin an otherwise strong case. What the transcripts show is primarily how the judges *interpret* the parties’ arguments and what happened in the courtroom. Finally, this article presents these cases for a particular purpose, which is primarily to illustrate some intricacies in this kind of decision-making.

Consequently, although the presentations below are rooted in real-life cases, the editing at different stages can differ from the previous sources.

Selection of Cases

This study focused originally on how courts treated such cases. It examined all Norwegian Appeal Court transcripts from a chosen decade and selected those cases in which the employees’ well-being was the main issue and the injured party had achieved compensation in the Appeal Court or the previous court. Four cases satisfied these criteria. One of them is analysed in detail and has already been published (Gregersen, 2014a, 2016). The present article includes the remaining three cases and has a narrower limitation relating to the impact of viewing the hostile events as conflicts.

Case 1: The Rescue Service

The men in the local road-rescue team were upset with the company’s Head Office because of understaffing. During a heated dispute over this issue, a new female manager took over in the local office. Thereafter, her men targeted her. The rescuers taped a living spider on her office wall, threatened to lock her up in their morgue, and placed a condom on the windscreen-wiper of her car. The court described these and some other incidents as improper activities. The woman also complained about several other hostile actions,

which the court viewed as 'normal conflict behaviour' and thus irrelevant for her compensation claim. During the foregoing events she did not report the incidents to the Head Office at once, but she was given no support when she later did. Since these episodes, the plaintiff claimed to be unable to work. Her employment lasted about five months. The appeal court found the employer liable for past and future damages because of her subordinates' improper behaviour. The plaintiff had also sued the men who had actually harassed her. The court viewed this as a matter concerning their 'subjective' (personal) guilt, which had requirements for evidence that were different from employers' 'objective' responsibility in such cases. The judges did not find the men liable for damages, because they could not have foreseen the serious impact of their actions on their target's health.

Comments

The text does not clarify why the rescuers were so upset by the understaffing or why the Head Office was so reluctant to meet their requests. However, this is about a rescue service, and the demand for such services is likely to vary considerably with seasons, weather conditions, or other situations. This is a challenge for the management in charge of planning human resources as well as for those who actually have to carry out the tasks on the spot. It is also easy to imagine that the rescuers can be very frustrated if they feel unable to help people sufficiently in the context of emergencies. Apparently, the men disliked that their new leader had not made it a requirement that the staffing problem was resolved before she took the post. There is no information about how the Head Office had dealt with the problem, but it seems to have ignored their complaints. If the Head Office usually deals with difficult problems this way, it could be an example of *laissez-faire* leadership. Hauge & al. (2007) found that this is among the strongest predictors of

bullying (as cited in Salin & Hoel, 2011), but such a conclusion would require further investigation. The transcript did not explain the new manager's role in the staffing dispute, but it seems clear that it started before her appointment as leader. The text gives reason to assume that the men targeted her primarily because she happened to be in the wrong position at the wrong time.

If the Head Office had intervened earlier, for example by starting a fruitful dialogue, perhaps there would have been no damage. At a glance, this case fits the early modelling of bullying as a stage in an escalating conflict (Leymann, 1996). However, this reasoning explains only the dispute between the rescuers and the Head Office. It does not clarify the position of the woman who was caught in the crossfire without being a party in the actual dispute. Her situation violates the perception of a conflict between parties about a matter in which *they* disagree. The subordinates stripped their boss of her authority and humiliated her as a woman. When she reported the incidents to her superiors elsewhere, they did not support her. Consequently, this female manager fully experienced not only feeling inferior, but also being almost defenceless. That very fragile position (not necessarily the actual hostile actions) could be what really broke her down. Such a situation is what Westhues (2004) characterises as a 'mobbing' (bullying) case, which distinctly differs from a conflict in the sense that the weaker party cannot influence the outcome. From this modelling, the conflict itself was not the cause of the mistreatment but, rather, the Head Office's suppression of the issue in question. As mentioned, the author emphasised that conflicts have elements of dialogue, even if the means are harsh. In contrast, bullying has none.

The definitional guidelines from the Labour Inspection Authority (mentioned earlier) describe workplace bullying in terms of measures of frequency (e.g., at least once a week) and duration (e.g., at least half a year), as well as an element of power imbalance.

The court distinguished between ‘normal conflict behaviour’ and ‘improper activities’. When the ‘normal conflict behaviour’ does not count as bullying, there is reason to question whether the frequency of the remaining (relevant) ones really occurred at least once a week. Furthermore, the events lasted only five months, and the plaintiff had considerable *formal* power as manager. Thus, her case would not satisfy the Labour Inspection’s definition of bullying. If the court had adhered strictly to these guidelines, the woman’s case would probably have been much weaker. As discussed earlier, Clayborn et al. (2014) suggest putting less weight on these time aspects but, rather, emphasising perpetrators’ intent. Perhaps in some cases plaintiffs could take advantage of such an approach. Unfortunately, it is very difficult to verify what goes on in the mind of another person. Rayner et al. (2002) argue that ‘intent’ should not be included in definitions of bullying for that very reason.

Case 2: The Local Council

AA was in permanent employment at the local Council. His superiors accused him of wrongfully using its vehicles privately. Faced with a possible dismissal process, he accepted a reprimand and reduction of his powers as leader. The court case concerned the later events. AA experienced bullying, and after a while, the superiors criticised him for engaging other employees for private purposes, but AA claimed to have acted in line with present practice. The superiors also accused him of having stolen items from the Council, but AA denied that he had ever done so.

Later, the Council suspected embezzlement, because fees had disappeared. They did not know who was responsible and reported the case to the police. In addition, the Council also mentioned the previous cases concerning AA. Due to this, the police took an interest in him. The story was leaked to the press, who negatively exposed AA to the public as a possible suspect of the crime. The police later

closed the case without conclusion. For a while, AA went on sick-leave, but later he started to work again part-time.

In court, AA claimed that the council had reported the old accusations without substance to the police in order to put focus on him rather than other possible suspects. From his view, the employer was liable for having contributed to damaging both his reputation and his mental health.

Ahead of the proceedings, the lower court had agreed that the employer’s report to the police concerning AA was irregular and found that he had the right to compensation for the damage it had caused. In the Appeal Court, a minority of the tribunal reached the same conclusion; the majority, however, did not see that the company had acted in a way that would give a reason for compensation. Consequently, AA lost his case. However, as the judges had reached different conclusions, he did not have to pay his part of the cost of the trial.

Comments

Here the judges were interested in just one single episode – i.e., the employer’s dubious reporting of AA to the police. As some definitions require minimum frequency and duration to label a case bullying, this shortened version of a much longer story would have fallen outside their framework, as mentioned above. If the Clayborn et al. (2014) definition were used, AA would probably have faced problems in proving his opponents’ intent, as mentioned in the comments to Case 1.

However, there is more to the story. In some sense, the foregoing events could give the impression of a conflict. An employee wanted to keep and perhaps increase his fringe benefits. However, the Council, as keeper of taxpayers’ money and as employer, considered that it had the right and duty to mark out clear guidelines. If the way they carried out their authority was somehow improper, the events could fit the models, which view bullying or stalking as a stage in

an escalated conflict (e.g., Leymann, 1996 or Ege, 2002).

Nevertheless, the case could also be analysed from another perspective. AA stated in court that he had acted in accordance with present rules and practice. Thus, someone had fabricated the accusations, and the employer had knowingly handed the unsubstantiated allegations to the police to make him a suspect of the embezzlement. Then AA would not only be in an inferior position, but also a victim of destructive leadership games, as previously discussed under the heading 'Personal Traits'. (An example could be the so-called 'grassfire game' (Flaata, 1994) – i.e., perpetrators start new 'fires' continuously. The victims can do nothing but run from one to the next, increasingly defenceless). In such a situation, AA's case fits the description of 'predatory bullying' rather than 'conflict-related bullying' (as described by Einarsen et al., 2008).

Unfortunately, the transcript gives no information regarding whether AA had actually violated the internal rules apart from wrongfully using some vehicles. The court based its judgment solely on the dubious way that the Council reported AA to the police.

After the presentation of this case for a group of practitioners and theoreticians at an international conference on workplace bullying (Gregersen, 2014b), the audience took great interest in the *traits* of the individuals involved – on both sides. Although the text provided no information for clear answers, it is interesting that the group focused on personal characteristics rather than situational ones. That approach is not consistent with the recommendations of Heinz Leymann and other scholars, who argued that bullying research should focus not on participants' personality, but on their situational context.

Case 3: The Restaurant

A Pakistani immigrant, BB, had worked in a restaurant for four years. There he took occasional jobs as a waiter and had a permanent position as part-time cleaner. One day BB

went on holiday to his homeland. When he came back, the employer denied him further employment. However, with support from the Labour Inspection Authority, BB was re-employed. Thereafter, the company rarely called on him for jobs as a waiter, and he felt degraded. BB joined a union and took an active role in its activities. His colleagues disliked this and became hostile. They started to act disrespectfully by giving him negative nicknames, referring to his union membership, the colour of his skin, and his religion. His colleagues also hindered his work physically. BB's mental health worsened. He went on sick-leave until National Insurance allowed him disability benefits. An expert (psychologist) witness confirmed his mental damage arising from stress. During the proceedings, the employer pointed out that BB also had serious problems to cope with in his private life. From BB's point of view, the management had not only deliberately ignored the bullying, but had also sometimes taken an active part in it. The court did not find sufficient evidence for that part of the accusation, but accepted by and large the rest of BB's account. On this basis, the judges found that his employer had been negligent and liable for past economic and non-economic problems. However, the court did not regard his employer accountable for BB's future loss of income, because the judges found its link to the misbehaviour 'inadequate'.

Comments

The company did not want to re-employ BB after his holiday, but the transcript gives no information why – e.g., his ethnic background, or something he might have done. Thus, there is reason to assume that the work conditions had been satisfactory until then. Perhaps the company just did not need more cleaners when BB came back.

Employees have the right to work and to receive salary. Employers have the authority to instruct and dismiss workers. When they do, conflicts can arise. There is nothing abnormal

about that. However, employers have to adhere to the laws and refrain from discrimination. In this case, BB lost his work after his holiday in a seemingly inappropriate way. BB used his legal right to seek assistance from the Labour Inspection Authority. There is reason to think that his employer disliked such interference. When BB got his job back, he joined a union, which angered other workers, and they started to behave badly against him. Union membership is a universal human right (United Nations, 2015, Article 23.4). Thus, the workers' behaviour was more than a conflict of crossing interests or opinions: it was an attempt to breach a colleague's fundamental human rights. The word 'conflict' could, therefore, be misleading. Finally, BB ended up in a desperate situation. The court found that the actual mistreatment was unlikely to explain his permanent inability to work. In reaching such a conclusion, the judges may not have taken into account the fact that, in addition, the man was probably desperate at being without income and felt left alone and defenceless in his new country. Such despair could have a more severe impact on his health than the actual behaviour of the others. By seeking external support, he seems to have become a target for resistance against unions. That position is somewhat similar to the manager's situation in the rescue company above (Case 1), in which she was caught in a crossfire. In BB's case, a more general dispute between unions and those who oppose them entangled him as an individual. If the management really supported the bullying, this could be another example of destructive leadership, as discussed earlier. Instead of dismissing employees formally, a company can choose much more unpleasant ways of ostracising them.

Discussion

Participants' Roles in Court

The primary purpose of workplace bullying research is to deal with the phenomenon on the spot or to prevent it occurring at all. In the courtroom, the situation is different.

The damage has already happened. The events have reached a point at which one party claims economic compensation, and the other party does not want to pay. That is primarily what the court has to decide. There is reason to assume that the discrepancies go deeper, which worsen tensions. The victim probably wants to blame someone, whereas the other side does not want to accept the blame. In that sense, the two sides participate in a courtroom conflict, which the court can solve by making a decision and in that way ease further hostilities between the parties. As the previous events had been hostile as well, the situation in the courtroom could lead to the impression that participants were 'parties' in a dual dispute all the way. For people in the position of being a 'judge' (or 'mediator') in bullying cases, such an approach could be a – perhaps subconscious – choice of convenience. Once they state that a case is one-sided mistreatment (bullying), their position of being a neutral third party is lost. Instead, the 'in-between' person will have taken the role of a counterpart to perpetrators, which is likely to be a far less comfortable position. Probably this is less problematic in court than in the workplace. Judges can finish their cases and then walk away from it all. In contrast, decision-makers elsewhere (e.g., employers or labour inspectors) may still have to face the participants for a long time, no matter what has been decided.

Traditional Criteria

The three lawsuits presented differ in terms of alleged hostile actions and situations, which illustrate that in such cases it is difficult to find common factors and, in turn, definitions. As pointed out earlier, a way to distinguish bullying from conflicts is to measure the frequency and duration of unacceptable incidents. In one case (Case 3), this might have been possible if more details had been available. For the other two (Cases 1 and 2), these criteria are not fulfilled. Another criterion to

identify bullying is that perpetrators have acted intentionally to cause harm; the court did not accept that this happened in any of the cases. In other words, a strict definition in either direction would have further weakened the victims' cases.

No Damage, No Lawsuit

Nevertheless, the three transcripts do share *some* characteristics. The plaintiffs have experienced damage because of a bad workplace environment. On the spot in the workplaces, there may be reason to consider whether this criterion should be required in the definition of bullying. If it were, then cases in which *no damage* has taken place or the victim *does not admit* being victimised would fall outside the framework. However, in the courtroom this criterion seems unnecessary. If there were no damage, the plaintiffs would have no reason to raise compensation claims.

Common Sense Evaluation

What the courts did was, first, to describe the situation in question. Then the judges considered whether any of the perpetrators' actions exceeded the limits of acceptable behaviour. The transcripts did not mention definitions, but gave the impression of 'common-sense' judgments in that regard. Then the courts considered whether the unacceptable incidents *in sum* could explain the damage.

Fragmentation

However, this approach means that the foregoing events are fragmented and less suited to understand the plaintiffs' position. Apparently, the victims took no hostile actions against their counterparts, apart from, obviously, trying to defend themselves. Most likely, they could not do much, being on their own, stripped of power, and entangled in something outside their control. Furthermore, the plaintiffs are likely to have interests at stake that are more essential. All three

victims were probably concerned about their dignity as human beings and worried about losing their jobs or even spoiling future career prospects. In addition, they worked continuously in a hostile environment in which the working hours were probably unpleasant, even when nothing particular took place. There is reason to think that the situation *as a whole* was damaging for health – not only the culprits' actions, which exceeded certain limits of decent behaviour.

A 'Situationalist' View

This form of legal proceedings is close to 'conflict' and 'situation-determined' modelling. Disputes concerning understaffing (Case 1), fringe benefits (Case 2), or attitudes to unions (Case 3) are not abnormal. This approach may contribute to an understanding of perpetrators' behaviour in these cases. It supports the idea that the hostilities are inherent in social interaction and thus unavoidable in the organisational context, and, hence, culprits' motives and behaviours are, if not justified, at least to some extent rationalised. When viewing the cases as conflicts, an observer might take for granted that the victims have choices similar to those of their aggressors. Such an assumption can be very wrong. Thus, the idea of shared responsibility can make the victim accountable for 'the hostility of another person', as discussed earlier. This reasoning may also contribute to overlooking the fact that systematically destructive leadership styles and dishonourable troublemakers do exist. To avoid this sort of possible modelling bias, there may be reason to look for organisational or behavioural *patterns* rather than emphasising single incidents of inappropriate action (see Gregersen, 2016).

Conclusion

The question raised in this article is whether 'conflict' is an appropriate label in workplace bullying cases. The literature reviews (presented earlier) confirm that both concepts are

very ambiguous. Imprecise legal definitions and frameworks reflect a lack of consensus among researchers. After decades of research, there is reason to assume that this uncertainty will remain, and that there will be no way to evade those words in these kinds of cases. Practitioners are likely to rely on a somewhat intuitive or private understanding. As shown, this could, in turn, lead to biased judgments, which creates a need for decision-makers to be aware of what their conceptual perceptions actually imply. For such a purpose, this article suggests training, using studies and discussions of documented cases from neutral sources and with the help of tools from a variety of research approaches, for those who are or likely to be dealing with bullying incidents. The aim of such studies is not to find a general answer as to whether bullying cases are a kind of conflict, but the way in which these concepts might apply to the case in question.

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Judgments

- Case 1: Agder lagmannsrett LA-1995-00036 1996-01-03 Kristiansand, Norway.
- Case 2: Gulating lagmannsrett LG-1993-01339 1994-10-29 Bergen, Norway.
- Case 3: Borgarting lagmannsrett LB-2000-0134 RG2001-1226 (167-2001) 2001-04-23 Oslo, Norway.