

# **From Status via Contract and Social Private Law to the Free Movement – Regulation of Domestic Work in Sweden<sup>1</sup>**

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1 This article is based on material from my book on the regulation of domestic services, *Ett riktigt arbete? Om regleringen av hushållstjänster*, 2007.

In Sweden, the gradual disappearance of domestic work in private households in the last half of the 20<sup>th</sup> century was widely considered important from an equality perspective. In the 1970s and 1980s the need for paid labour in private homes was negligible, due, among other things, to the right to extensive parental leave and public childcare. In this Sweden differed from many other countries. However, in the past decade, the scale of paid domestic work has again increased strongly. A large amount of this work was performed without taxes and social charges being paid.<sup>2</sup> As a consequence of the high prices for domestic work in the legal market and the vast illegal market for the same work, an intense debate around tax reductions for domestic services evolved.

In July 2007, the new Swedish liberal government introduced legislation on tax reductions for people who engage other people to do cleaning or other household work in their homes.<sup>3</sup> The arguments for this, presented in the proposition, were to transform “black” domestic services into “white” work (citations mine) and to make it possible for women and men to increase their time in the labour market and also to create possibilities for people with little education to enter the labour market and for women and men to combine family and working life on equal terms.<sup>4</sup> In the proposition there is no mention of working conditions and relations in domestic work, although fear of a return to a system with maids and servants has been the main reason for the opposition to the reform.

In this article I want to discuss the role of social private law in the construction of domestic work, past and present. By *social private law* I mean legal regulation, which has as its aim not only clarity in trade and transactions, but also the achievement of a societal goal, such as equality, public health or integration. Social private law is only one piece in the construction of domestic work, which is dependent on legislation in many areas. The amount of domestic work required may be influenced by legislation on, for example, childcare or schooling or social and health services. The decision about who is to perform the work and on what conditions, may be dependent on legislation regarding parental leave, working hours or taxation. Such rules may imply that domestic work is performed by all the people in a household, by one or some of them, a relative or an outsider person. One may say that the state constructs domestic work in households in different ways at different times, through measures taken in these various areas.

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2 In an investigation into the attitudes to buying services on the “black” market made by Demoskop for the Tax Authorities in 2005, six percent of all people interviewed answered that they had bought cleaning, window-cleaning or domestic work (cooking, laundry, dish-washing) on the “black” market (*Skatteekonomiska meddelanden nr 50*, 2005, p. 9).

3 Government Bill 2006/07:94, SFS 2007:346.

4 Government Bill 2006/07:94, p. 1.

My discussion of the social civil regulation of domestic work is inspired by Aubert, Eckhoff and Sveri, three Norwegian scholars of sociology of law, who studied the regulation of domestic work in the 1950s.<sup>5</sup> Aubert, Eckhoff & Sveri concluded from their investigations that labour legislation had evolved from public regulation of status relations to contract and then back to public law regulation.<sup>6</sup> From medieval times and into the nineteenth century, certain layers of the population were obliged to serve other people. Their legal positions, and especially their obligations, were relatively firmly defined from birth, partly by legislation and partly through customs and deep-rooted conceptions about the social role of servants. Beginning in the nineteenth century, individual contracts played an increasing role, but in the middle of the twentieth century, public legislation emphasizing the rights of domestic workers emerged.<sup>7</sup>

According to the authors, the transition between the three phases had not happened simultaneously in all areas of society. In domestic work maids and housewives found themselves in a close relationship representing two groups of very different status in the social structure. Status had been valid viewpoint there for a longer time than in, for example, factory work. The authors' investigation showed that individual contracts in domestic work contained greater variety than those within many other professions. The contract point of view dominated, but at the same time there were both remainders from the old status system and a growing support for the new public law regulation. The authors felt they could discover geological layers in the legislation on domestic work, which mirrored the long evolution of the strivings of workers for equality.<sup>8</sup>

In this article I will start by giving an overview of the struggle between status, contract and social private law in the Swedish regulation of domestic work. Then I will discuss the influence of deregulation and the free movement on legislation of domestic work today. Finally I will reflect upon status, contract and social private law in the context of tax reduction for domestic services.

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5 Vilhelm Aubert, Torstein Eckhoff, & Knut Sveri, *En lov i søkelyset, Sosialpsykologisk undersøkelse av den norske hushjelplov*, Oslo, 1952.

6 In this the authors were inspired by Henry Sumner Maine, *Ancient Law*, London 1876. William Blackstone, *Commentaries of the Laws of England*, London, 1809, and Karl Renner, *The Institutions of Private Law and their Social Functions*, London, 1949.

7 What in this article is called social private law.

8 Aubert, Eckhoff & Sveri, p. 26.

## 1 Compulsion and Exclusion from Social Legislation

In Sweden, until 1926, the so-called *Tjänstehjonsstadgan*,<sup>9</sup> an act that regulated the relationship between the master and his servants, compelled people with no other means for survival to enter into an employment relationship. The *Tjänstehjonsstadgan* contained both provisions of public law, aimed at creating order in the indentured service system and provisions of civil law, regulating the relationship between masters and servants. A person who did not adhere to the provisions in entering the relationship could be fined, a sign that society considered respect to the labour contract a societal goal.<sup>10</sup> Furthermore, the master had the right to apprehend the servant with the help of the police authorities, if he or she did not enter into service at the agreed time or escaped from service.<sup>11</sup>

As to the private law regulation of the statute, the contract between master and servant has been described as a contract where one person, while observing certain legal formalities, gave the right to another person to use his labour in any reasonable work tasks within a legally determined period of time.<sup>12</sup> The *Tjänstehjonsstadgan* prescribed a strict subordination of servants to masters, simultaneously implying that, in certain respects, the servants were treated like members of the employer's family. Above all, the Statute regulated the obligations of the servants and gave them little or no right to autonomy or personal integrity. No rules about working hours or tasks existed, meaning that only customs and reasonability limited the prerogatives of the master. Furthermore, a servant who opposed the master in word or deed could be punished.<sup>13</sup> In return the master was obliged to provide certain care for a servant who fell ill and those with long service had the right to stay in the home of the master in their old age. The servant was not allowed to terminate the relationship before the agreed time had expired, whereas the master had the right to end the employment, if the servant was negligent, careless or incompetent. The relationship was a pronounced status relationship.

In the nineteenth century, in many professions including domestic work, labour organised in trade unions. Domestic workers struggled for the abolition of the *Tjänstehjonsstadgan*, for regulation of working hours and for equality with

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9 An approximate translation would be *The Act governing Indentured Service*.

10 See for example 23–25 §§ *Tjänstehjonsstadgan*.

11 45 § *Tjänstehjonsstadgan*.

12 According to an investigation of *Tjänstehjonsstadgan* in the Government Bill. No. 1926:183, p. 24. Such general labour contracts were for a long time common in wide areas but were later limited to agriculture and domestic work.

13 See 10–17 §§ *Tjänstehjonsstadgan*.

industrial workers<sup>14</sup> – i.e. for a social private legislation. They were strongly opposed by housewives, whose unions refused to conclude collective agreements. The lack of a counterpart in negotiations and resistance on the part of housewives meant that the domestic workers' unions could no longer act as trade unions but instead engaged in practical activities such as education, employment agencies or support of unemployed servants.<sup>15</sup>

Other trade unions and social democrats sometimes supported the unions of domestic workers with the aim of making them strong enough to enforce negotiations and collective agreements. But there was also a reluctance to support the organising of domestic workers. Most domestic workers worked in the homes of earners of high incomes and the question raised was whether the unions should work on issues concerning a system that would soon wither away. Many unionists believed that evolution would lead to society taking over the tasks of domestic workers.<sup>16</sup>

As to the general social regulation of working life, domestic work was exempted when working hours and occupational safety gradually came under regulation in most areas of the labour market. Employers were assumed to want their private lives protected, thus their homes were to remain free from control by inspectors as far as possible. Domestic work was also rarely considered to be in need of protection from legislation concerning occupational safety “because of its own nature”.<sup>17</sup> It was considered less physically and psychologically tiring than other work, although working hours were sometimes twice as long in domestic as in industrial work.<sup>18</sup> Furthermore, the tasks of domestic workers were supposed to be of such an individual and varied nature, that it was impossible to stipulate working hours in advance.<sup>19</sup>

In excluding domestic work one may say that early social regulations concerning working life contributed to the assignment of domestic workers to the periphery of the labour market. Domestic work was often not seen as a profession for the very reason that law or collective agreements did not regulate it. When the *Tjänstehjonsstadgan* was abolished in 1926, domestic work was unregulated by law or collective agreements and exclusively regulated by individual contracts. The absence of protective legislation mirrored the status

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14 Kerstin Moberg, *Från tjänstehjon till hembiträde*, 1974, p. 62 and 224.

15 Kerstin Moberg, p. 62.

16 Kerstin Moberg, p. 222.

17 *Report given on the 9 December 1909 by the Committee on Occupational Safety*, p. 60.

18 According to an investigation carried out by the social authorities, average working time was 80 hours in the towns and 90 hours in the countryside (Government report 1939:15, p. 36 f.).

19 Government Bill 1944:217 p. 40.

relationship between the parties and no societal goal was involved in regulating domestic work.

## 2 Social Private Legislation in the 1940s – a Population Issue

For a long time, domestic work was the only profession available to many women, but as more and more professions became accessible to women, the supply of labour for domestic work decreased.<sup>20</sup> Domestic work was the least desirable job because of the strict confinement involved and the low social value attached to it.<sup>21</sup> In competition with factories, retail trade and restaurants, domestic work was not considered attractive.<sup>22</sup> At the same time the demand for maids increased as bourgeois professions expanded. The well-to-do classes wanted to maintain a certain level of comfort and this required servants.<sup>23</sup>

In the 1930s and 1940s, issues of decreasing birthrates and depopulation of the countryside were hotly debated in Sweden. So were the rationalization and the professionalisation of domestic work. These issues were among the priorities in the creation of the Swedish welfare state and were the subject of quite a few state investigations. As to domestic work, the Population Committee underlined the great importance of increased recruitment to such work in order to maintain the standard in families with children at a satisfactory level. It was considered crucial that housewives in families with children had a reasonable workload and satisfactory working conditions. If this need was not met, the housewives would be unwilling to raise children.<sup>24</sup> The shortage of women willing to engage in domestic work could therefore imply "fatal consequences to the homes and to society".<sup>25</sup> Regulation of working conditions – social private legislation – in domestic work seemed to be a necessary condition for better recruitment.<sup>26</sup>

The *Act (1944:461) on Domestic Workers*, which came into force in 1944, aimed at improving conditions for domestic workers, but its main purpose was to recruit labour for the households. The act applied only to fulltime employment in one household, the kind of employment for which it had been especially difficult to find labour. Contracts concerning less than one month or less than six days a week were excluded from social private legislation. Such contracts were said not

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20 Kerstin Moberg, p. 25, referring to Government report 1937:16, p. 36 and 42 f.

21 Kerstin Moberg, p. 28 ff.

22 Government report 1939:15, p. 30.

23 Kerstin Moberg, p. 223.

24 The Population committee cited in Government Bill 1944:217, p. 36.

25 Government report 1939:15, p. 53.

26 Government report 1939:15, p. 46 ff.

to be of such importance for the domestic worker, that there were social and political reasons for protection. This was considered true even if the worker was occupied full time by work in several families.<sup>27</sup> Thus social private law constructed domestic employment as full time work in one household, whereas persons working under other conditions were referred to contract regulation. Work performed by housekeepers was also left unregulated. It was stated that in the same way as it was not possible to regulate the work of a housewife, it was not possible to include housekeepers in the legislation on housemaids.<sup>28</sup>

The idea was that regulation per se would raise the status of the profession. Thus, the provisions of the act mainly built on prevailing conditions in domestic work and real changes were postponed to a later date. The Domestic Work Act was a compromise, where the interest in keeping the employers' homes free from state intervention played a powerful role. Aubert, Eckhoff & Sveri saw the Norwegian legislation as a compromise, where domestic workers formally acquired their material rights, whereas employers were protected from sacrifices through inefficient implementation.<sup>29</sup>

Also the formal entitlements of domestic workers were limited in comparison with employment rights in most other professions. According to the Act, the regular working day was to end at seven o'clock p.m., but for domestic workers taking care of children there was no such limitation. Leisure time was limited to every third Sunday or after one p.m. every second Sunday and also after two p.m. once a week.<sup>30</sup> This may be compared to the general Working Time Act, which ruled an eight-hour working day and a 48-hour working week. The compromise between the social private regulation and the old status system was also obvious in the regulation concerning minors in domestic work. The social legislation for the protection of minors were seen as necessary for recruitment,<sup>31</sup> but a proposition regarding night rest for minors was rejected as being impossible to adhere to in agriculture.<sup>32</sup>

The flight from domestic work continued. The lack of domestic workers was partly solved by temporary means, like through household-service companies, providing cleaning and washing or publicly employed Home Service Sisters. During and after the Second World War, Swedish policies regarding refugees and aliens became a means for recruiting labour to areas, where there was a

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27 Government report 1939:15, p. 85, Government Bill 1944:217, p. 44.

28 Government report 1939:15, p. 157 f., Government Bill 1944:217, p. 51.

29 Aubert, Eckhoff & Sveri, p. 184.

30 Government Bill 1944:217, p. 89.

31 Government report 1939:15, p. 66.

32 There had been a suggestion for a provision requiring eleven hours nightly rest for minors (Government Bill 1944:217, p. 122).

shortage, domestic work among others. Also the shortage of housing was conducive to the recruiting of domestic workers.<sup>33</sup>

### 3 Social Private Legislation of the 1970s – Equality and Efficiency

When women with small children started to engage in paid work in the 1960s and 1970s, a great need for childcare emerged and there was no longer a supply of labour from Germany or neighbouring countries. Young women from the Swedish countryside were again recruited to domestic services, especially as nannies.<sup>34</sup>

In the strivings for equality in the late 1960s and the 1970s, the regulation concerning domestic work was modernised. The social element of private law was reinforced when the *Act (1970:943) on Working Time etc. in Domestic Work* replaced the *Act on Domestic Workers*. The concept “worker” replaced the concept “domestic worker” and the entitlements of workers in private homes were made equal to those of other workers – as far as was considered possible.

In the preparatory works it is unclear why the act was introduced other than to advance the principle of equality. To this end, the limits were changed concerning what was considered possible to regulate. The preparatory works underline the similarity between domestic work and other professions and show a growing tolerance for issues such as inspection in the homes. It was stated that those engaging unknown persons for work in their homes, had to submit to inspection by the authorities, when violation of protective legislation was suspected.<sup>35</sup> Thus also the employer was increasingly placed on an equal footing with other employers. Furthermore the personal scope of the act was extended, as it was made applicable to housekeepers and part-time employees. Comments in the preparatory works give the impression that the act was written in the conviction that work in private households was disappearing and was going to be replaced by more collective forms of work, where labour could be used more efficiently.<sup>36</sup> At the same time it is obvious from the preparatory works that the problem of childcare remained unsolved.<sup>37</sup> The need for childcare (young people babysitting at nights) was later used as an argument for the lack of adaptation of

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33 Government report 1968:67, p. 19 f.

34 Experience of working in private households was a requirement for access to many kinds of education.

35 Government report 1968:67, p. 52, Government bill 1970:150, p. 19.

36 Government report 1968:67, p. 49.

37 Government report 1968:67, p. 56 ff.



the provisions on domestic work to the *Work Environment Act*<sup>38</sup> and to the *Convention of the Child*.<sup>39</sup>

Despite the principle of equality, the legislator decided to retain a special act concerning domestic work, referring to the difficulties surrounding the regulation of working hours in domestic work.<sup>40</sup> This later opened up for strong but less visible influences of the status point of view on the provisions on domestic work. (These special features exist also today, as the Act is still applicable to domestic work in Sweden). Domestic work was exempted, when the *Act (1974:12) on Employment Protection* was introduced. It was stated that the protection for domestic workers could not be constructed in the same way as for other categories of workers, as domestic workers occupied a special position in relation to the employer.<sup>41</sup> Thus only the rules of the *Act on Working Time etc. in Domestic Work* were applicable. This meant an employee in a private home could be dismissed with a certain time of notice but without the employer having to give any specific reason. (In employment in other areas, according to the *Act on Employment Protection*, dismissal could only occur if there was just cause). The principle of equality with other work was thus eroded and the status relationship maintained. The same was true for the rules on immediate termination of the employment in cases, where one of the parties had severely violated the agreement. In the *Employment Protection Act*, the time limitation for reacting applied only to the employer and was two months, but in domestic work both parties had to react within one week of the occurrence of the violation.

Domestic work was also exempted from the *Working Environment Act (1977:1160)*. According to the special legislation on domestic work, inspection of work environment and working time in a home could only occur on the demand of one of the parties or if there was a special reason. This also applied if the employee was a minor. An employer could be punished for demanding too much overtime from a domestic worker in his or her household, but only if an injunction from the *Work Environment Board* had not been followed.<sup>42</sup>

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38 Government Bill 1977/78:121, p. 21 f.

39 Government Bill 1989/90:107, p. 74 f.

40 The National Board of Health and Welfare was of the opinion that the general Act on Working Time ought to be applicable, suggesting that the *Act on Working Time etc. in Domestic Work* had preserved obsolete labour market relations (Government report 1968:67, p. 58).

41 Government Bill 1973:129, p. 195.

42 As there is no inspection in domestic work, there can in practice be no injunction and therefore no punishment.

#### 4 Summary of the Historical Background

In the regulation of domestic work a struggle has been going on between preserving the traditional status relationship and creating a social private legislation. In this struggle the status point of view has most often been the winner. In the preparatory works for all regulation of domestic work there have been arguments *for* better conditions of domestic workers and *for* treating domestic work and other kinds of work equally. Regulation has been considered necessary to prevent exhaustion, to open possibilities for studies and outdoor life and for seeing friends and family<sup>43</sup> or considered important in order to protect young domestic workers who were not supported by trade unions.<sup>44</sup> In the final construction of the rules, however, the strivings for a social private legislation has mostly been subordinated to status arguments.

The arguments *against* social private legislation – against regulation *per se* and against equality with other professions – have been that private life and family life *ought not* to be regulated, that domestic work *cannot* be regulated and that the household community is so special that regulation *is not appropriate*.<sup>45</sup> These arguments have been supported – especially concerning the regulation of working time – by societal interests: the country's need for a growing population, the need for labour in agricultural homes or the need for the labour of married women outside the home, all in line with the period of time in question.

The differences between domestic work and other work have been especially obvious regarding the distribution of power in the relationship employer/employee, that is in the regulation of the right to file a suit, inspections and sanctions. Although the legislator must have been aware that litigation concerning domestic work hardly ever reached the authorities or the courts, these rules were made especially restrictive. Aubert, Eckhoff & Sveri discussed similar rules on inspection and sanctions in the Norwegian domestic work act emphasizing that the offended party must herself take the initiative in effectuating the sanction. According to the authors, this was common in many legal areas but not in respect to work protection and other social legislation. In such cases public controlling organs were usually active and the arguments for control were as valid for domestic work as for other work. The authors assumed that the legislators had been conscious of this but had been reluctant to enter into

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43 Government Report 1939:15, p. 46 ff.

44 Government Bill 1970:150, p. 17.

45 The argument about the sanctity of private life had not protected servants whose private lives were subject to far-reaching regulation in the *Tjänstehjonsstadgan*. What was protected by this argument seems to be the prerogative of the employer rather than private life *per se*.

the sanctity of private life through inspecting homes. Therefore the act opened practically no way for the domestic workers to have their demands met.<sup>46</sup>

## 5 Domestic Work in Sweden Today

In recent years the demand for household-services has increased in Sweden as in many other countries in Europe and for similar reasons. Cuts have been made in the provision of care within institutions and in other social services, with the result that work and responsibility have been transferred to private households. Increasing demands in working life have led to an increased demand to be relieved of housework in “dual career families”. At the same time an increasing wage differential has made it easier for some people to buy services from others. Unemployment also seems to be of importance in the growth of domestic work, as both historical and comparative investigations show that women engage in work in private homes only when there are few or no other alternatives.<sup>47</sup>

Lately internationalization and particularly the enlargement of the EU has led to increased access to labour from countries with considerably lower wages than Sweden. Meanwhile, the existence of Internet-based employment offices, such as Au Pair Agencies, facilitates international employment agreements. This means that the free movement of workers within the EU is a reality in the sphere of domestic services.

Today, the extent of paid domestic work in private households in Sweden is difficult to define. Official statistics still do not include such a category as “domestic work“, “work in private households” or the like. Furthermore, no record is kept by the migration authorities concerning the kind of work performed by people entering Sweden from other countries in the EU. However, the tax authorities have conducted investigations, which show that a great number of agreements concerning domestic work are made, which never reach the authorities because neither tax nor social insurance is paid.<sup>48</sup>

A number of household-service companies also perform domestic services. Some twenty companies are members of the employer’s organisation Almega.<sup>49</sup> The number of unorganised companies is not known, as household-services are not a statistical category, but may occur under various professional or company

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46 Aubert, Eckhoff & Sveri, p. 183 f.

47 See Government Bill 1944:217 p. 27, Government report 1968:67, p. 14, Aubert, Eckhoff & Sveri, p. 133, and Kerstin Moberg, p. 25.

48 See for example *Användning av svart städhjälp de senaste 12 månaderna*. SIFO Research & Consulting, 2004. *Skatteekonomiska meddelanden nr 50*, 2005 and *Skatteekonomiska meddelanden nr 56*, 2006.

49 Inger Jonasdotter, Almega.

labels. The number of individuals who have received a new F-tax card<sup>50</sup> for a cleaning business has grown from 2 828 persons in 2004 to 3 104 persons in 2005 and 3 458 in 2006.<sup>51</sup>

## 6 Regulation of Domestic Work in Sweden Today

Regarding labour law regulation, today there are at least three different cases for household-services, depending on the existing situation. A person may 1/ be employed in a household to do work in that household, 2/ be employed by a company providing household-services or 3/ perform household work within a business of their own.

1/ When a person is employed by another person to do housework in his or her home, the employment relationship is regulated by the above-mentioned *Act on Working Time etc. in Domestic Work*. The act applies for example to housekeepers, maids, nannies or au pairs. Today this regulation differs from general labour legislation in several important respects, some of which have already been discussed. The status relation in domestic work has been maintained or strengthened through the implementation of EC directives, exempting work in the employer's household. One example is the exclusion of domestic work from the EC regulation on working time.<sup>52</sup> As a consequence, in Sweden working hours for a person taking care of children may still be extended to 52 hours a week on average.<sup>53</sup> This is more than regular working time and also more than the average working time including overtime allowed according to the directive, which is 48 hours. Another example is the exemption of domestic work from the employer's obligation to provide written information about employment conditions.<sup>54</sup> A written agreement has to be established only

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50 To receive an F-tax card a person must already have or be starting a business, which aims to make a profit and is considered stable and independent. Another requirement is that the person has made tax returns and paid taxes. As opposed to an employee, a person who runs a business and has an F-tax card is responsible for paying taxes and social insurance fees.

51 Information from Bodil Gawell, the Tax Authority, October 2007.

52 Employments in households are exempted from the Framework Directive 89/391/EEG on the introduction of measures to encourage improvements in the safety and health of workers at work and thereby from the Directive 2003/88/EG concerning certain aspects of the organisation of working time. In article 3 a/ of the Framework Directive a worker is defined as any person employed by an employer, including trainees and apprentices but excluding domestic servants.

53 2 § 2 mom. the *Act concerning working time etc. in domestic work*.

54 Domestic work was exempted by the implementation in Sweden of the Directive (91/533/EEG) on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

if one of the parties demands it. In this context it may be pointed out that the investigations of Aubert, Eckhoff & Sveri showed that written agreements were favourable to the employees, as the lack of fixed norms gave more room for the stronger party in a status relationship. While written agreements tended to build on actual conditions in the labour market, informal norms were more influenced by the traditional status relationship.<sup>55</sup>

The social context of employment in private households differs radically from the social context for the rest of the Swedish labour market. One most important difference is the absence of trade unions and collective agreements. The wages for domestic work are, therefore, entirely dependent on supply and demand and on the power relationship between the two parties in the individual employment agreement. The same is true for the outcome of negotiations concerning agreements in writing, overtime and work tasks. This means that “the Swedish model”, where trade unions have the right to influence decisions in many circumstances and where statutory law may be replaced by provisions in collective agreements, is non-existent when a person is employed in a private household. There is no organisation to take industrial action, which in turn means there is no *right* to take industrial action as this right is limited to organisations.<sup>56</sup>

The status point of view in the construction of the social private legislation on domestic work has probably been conducive to the fact that the *Domestic Work Act* is almost invisible in the courts and in the activities of authorities. There have been only two cases concerning the application of the act in the Labour Court<sup>57</sup> and there have been no interventions on the part of the Work Environment Board in employment in private households.<sup>58</sup>

2/ If the person performing the work is employed by a household-service company, general labour legislation – the *Employment Protection Act (1982:80)*, the *Working Time Act (1982:673)*, the *Working Environment Act (1977:1160)* and the *Co-determination Act (1976:580)* – and sometimes collective agreements, are applicable. This means the social private law of “the Swedish model” is applicable. The regulation of employment and working conditions in household-service companies therefore does not differ greatly from conditions in other working areas, but there are some differences, which can be said to mirror and reinforce the status relationship between customer and employee. Inspection of the working environment may only occur on demand of one of the parties or

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55 Aubert, Eckhoff & Sveri, p. 120.

56 One consequence of this is that probably very few employees in private households have unemployment insurance, which in Sweden is usually connected with membership of trade unions.

57 Labour Court rulings 1991 no. 71 and 91.

58 According to information from Lennart Adèrn, the Work Environment authorities.

if there are special reasons (the same rules for inspection are applicable as in the *Act on Working Time etc. in Domestic Work*). The anti-discrimination legislation is not applicable as far as the relationship between the customer and the employee is concerned.

All in all the general regulation of employment in household-service companies differs strongly from the regulation of employment directly in the homes, but the fact that the work takes place in a private home makes it less protected by legislation than other work.<sup>59</sup> Both inspections of the work environment and protection against discrimination and harassment may, however, be dealt with in agreements between the company and the customer, if the company so wishes.

3/ If the person performing domestic services does this within self-employment, labour regulation is not applicable. Instead the contract between the buyer and the seller regulates the conditions of work, for example the remuneration, the time and the way in which the work is performed.<sup>60</sup>

Defining a limit between employment and self-employment is decisive for the application of labour law and also most often for the obligation to administer the paying of taxes and social insurance.<sup>61</sup> A few years ago a Swedish court resolved three cases, which involved drawing a limit between employment and self-employment in domestic work.<sup>62</sup> The cases are interesting as they address what is probably a common situation. They concerned a Lithuanian cleaner who had been hired by four households in Sweden. The relationship, according to the court, was not to be considered an employment relationship but self-employment. The reasons for this was that it had not been proved that the people hiring the cleaner had been executing labour management or control over her work. Arrangements had been relatively informal in the sense that agreements about the work were made from time to time and the remuneration was paid on every single occasion. The ruling seems to be in accordance with Swedish case law on the issue, as the work in question had been performed rather independently, the agreement concerned only cleaning and the cleaner had several customers.

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59 An investigation of the personal scope of some EC-directives has showed that the employment most protected is that in companies selling on a market, where the receivers of the commodities or the services are also companies (see my article *EG-Arbetsrättens personkrets – exempel anställda i hushåll*).

60 Contract law may be applicable in the interpretation of such a contract.

61 Tax legislation regarding F-tax (see below) is closely related to the concepts employment/self-employment.

62 The Court of Appeal for Western Sweden, cases no. 3148-03, 3257-03 and 3259-03. The question was whether a work permit would be required for the Lithuanian woman (this was before Lithuania became a member of the EU). A work permit was required for employment but not in self-employment.

To summarise, in today's Swedish market for household-services there exist, side-by-side, old-fashioned status relationships regulated by *the Act on Working Time etc in Domestic Work*, business contracts "between equals" and household-service companies regulated by rather far-reaching social private legislation of the so-called Swedish model. The general evolution of the labour market with internationalisation, deregulation and technological change has influenced domestic work as it has influenced other areas.

## 7 Contract and Social Private Law in the Context of the Free Movement and Tax Reduction

The tax reduction introduced for purchasers of household-services amounts to fifty percent of the expenses and applies to work tasks very similar to those covered by the *Act on Working Time etc. in Domestic Work*. This includes, for example, cleaning, care of clothes, cooking and gardening, childcare and care of old or handicapped people or people with permanent illnesses.<sup>63</sup>

However, a prerequisite for tax reduction is that the person or the company performing the work is paying F-tax and is the holder of an F-tax card.<sup>64</sup> This means that traditional status relationships through employment directly in the household as housekeepers, maids, nannies or au pairs regulated by *the Act on working time etc. in domestic work*, are not included in the tax reduction. Because of the requirement for F-tax, household-services have been constructed as business.

Unless customers prefer the illegal market, tax reductions may be expected to increase considerably the demand for domestic services and to turn the supply of household-services into a dynamic area. The buying of household-services will be legitimate to an extent that it has not been for many years. And, as has already been mentioned, the access to labour is very good, as the regulation on free movement for labour is generous and certain countries with high unemployment and low wages have become members of the EU. This raises some questions concerning the struggle between status and contract and concerning the functioning of social private legislation within an EU context.

One question concerns wages and other employment and working conditions in expanding household-services. The predominant collective agreement in domestic services is the agreement for Home Service Companies

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<sup>63</sup> Government Bill 2006/07:94, p. 41–44.

<sup>64</sup> See note 50. One reason for the limitation to F-tax payers is that including work performed under the A-tax schedule is considered as too demanding for the buyer and the seller of the services. Another reason is the risk of tax evasion and fraud through false verifications. Government Bill 2006/07:94, p. 47.

(*Hemserviceavtalet*),<sup>65</sup> where the minimum wage is 15 730:– SEK (1 April 2007). In companies without collective agreements, wages may be freely agreed upon between employer and employee, as there is no minimum wage regulation in Sweden.<sup>66</sup> Then the question is on which level the wages will land. Already today very low prices may be found in the market for household-services. For example cleaning of a private home may cost 118 SEK per hour, all taxes, social insurance, holiday fees and sickness benefit included.<sup>67</sup> Partly the low prices may be explained by the fact that certain companies engage foreign temporary employment agencies to perform the services. In such cases the wages are set in the country in question through individual or collective agreements or possibly through legislation on minimum wages.

The possibilities to conclude collective agreements will be crucial for wages and for the working of "the Swedish model" and for the elements of social private law in the regulation of household-services. However, the trade union, the Swedish Municipal Workers' Union<sup>68</sup> may have difficulties. The level of organisation is very low among those employed in household-service companies in the big cities, about 20 percent,<sup>69</sup> and there is no trade union representative in either of the companies in Stockholm.<sup>70</sup> Through the new tax legislation the Swedish Municipal Workers' Union will be an agent in an expanding private labour market, where – at least initially – a number of companies will not have collective agreements. If the union decides to take industrial action, when companies engage personnel from other countries, the union may end up in conflicts similar to the Vaxholm conflict.<sup>71</sup>

Not only wages but also working conditions may be changed when the market expands and competition increases. In that context the special circumstances in work in private homes without insight from the outside is of

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65 The agreement has been concluded between the employer organisation Almega and the Swedish Municipal Workers Union.

66 In principle the 36 § on unfair contract conditions of the *Act (1915:218) on Contracts* could be used. What would be considered *fair* conditions in such cases is a very interesting question.

67 "www.renthosdig.se" the 26th of August 2007.

68 Through an agreement between the *Swedish Municipal Workers' Union* and the *Building Maintenance Workers Union* persons employed in household-service companies are to be organised in the Municipal Workers' Union, which has the right to conclude collective agreements in the area.

69 Åsa Andersson, manager of Hemfrid, the biggest household-service company i Sweden.

70 Inga Lundvall, the Swedish Municipal Workers' Union.

71 The so-called Vaxholm conflict, which is discussed in Labour Court rulings 2004, No. 111 and 2005, No. 49, concerns the legality of industrial action taken by Swedish trade unions against a Latvian company performing work in Sweden.



importance. The special features of working environment legislation and of discrimination legislation in household-services have already been discussed. Some of the already established companies are trying to compensate for the lack of social private legislation through agreements on working environment with the customers. The question is whether also newly established companies will make such agreements with their customers or whether the status relationship between the customer and the domestic worker will be given free play.

As labour entitlements cost, international private social law is of great importance in international competition. To employees who usually perform their work in Sweden, Swedish labour law is applicable, but to workers who work in Sweden only temporarily, other rules may be applicable. If, for example, a foreign employment agency temporarily offers its personnel to a company in Sweden, the provisions of the *Act (1999:678) on the Posting of Workers* on minimum conditions may be applicable,<sup>72</sup> which means that the *Working Time Act (1982:673)*, the ban on discrimination and certain minimum entitlements according to the *Act (1977:480) on Vacation* and the *Act (1995:584) on Parental Leave* are applicable. Also in this case work performed in private homes is discriminated against. If a company abroad would offer their services directly to households in Sweden, the *Act on the Posting of Workers* would not be applicable, as this act is only applicable when the receiver of services is a company.<sup>73</sup>

A third question concerns the conditions in contract relationships, as household-services with tax reduction for purchasers may be performed also by self-employed persons paying F-tax. The number of self-employed persons with an F-tax card has increased considerably in recent years and may be expected to increase further, as the government aims at lowering the requirements for F-tax.<sup>74</sup> Also a foreign person who carries on or aims at carrying on a business in Sweden, may receive an F tax card, whether she is liable to pay taxes in Sweden or not. This means contract regulation in domestic work will probably become more common.

In a contract relationship between a household and a person performing household-services there is room for both status and equality, depending on the general economic situation of the parties involved and their need for an agreement with the particular party. The question therefore concerns the development of conditions in contract relationship and how these will influence the whole area of household-services, as self-employed persons will be

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72 The *Act on the Posting of Workers* is an implementation of the Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

73 See 3 § the *Act on the Posting of Workers*.

74 Dir. 2007:116.

competing with companies. Of course, the question is also whether people performing domestic services will actually provide themselves with F-tax cards, as the administration of taxes and social fees implies both work and responsibilities. Supposedly, many people will keep working without paying taxes and social fees.

The fourth question concerns whether the tax reduction will be limited to holders of F-tax cards also in the future or whether also employment directly in the households, typically with a strong status element, will enjoy tax reduction. The Government's position on F-tax was not of a principal nature and it remains open to considering the inclusion of people paying A-tax.<sup>75</sup>

To summarise, also after the tax legislation there will exist, side-by-side, status relationships governed by the special regulation for employment in households, business contracts "between equals" regulated by contract law and household-services supplied by companies, regulated by the social private legislation of the so-called Swedish model. Tax legislation will however favour companies and self-employment and may be expected to strongly increase the supply of such household-services unless customers keep preferring the illegal market. Aubert, Eckhoff & Sveri concluded that in the period they studied, the seller's market prevailed. This time the market for domestic work may probably rather be characterised as the purchaser's market. In the future struggle between status, contract and social private law, both supply and demand for labour and the actions of the trade unions will play an important role.

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<sup>75</sup> Government Bill 2006/07:94, p. 48.

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