Long Term Contracts Between Unequal Parties in Sweden
– a Comparison between Contracts of Employment, Franchising, Consumer Insurance and Residential Lease

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1 Introduction

This article consists in a comparison between the Swedish regulation of four different kinds of long-term contracts: employment contracts, franchising, consumer insurance and residential leases. The questions addressed concern the interrelation between mandatory prolongation of the contractual relationship and changes to the terms of contract. The regulation of these types of contract will be compared with the principles of general contract law.

Similar to contract law in many other western countries, classic contract law in Sweden has developed with the sale of goods on the commodity market as its social model.[1] Although the Swedish Contracts Act from 1915 is applicable to all types of contracts, including employment and franchise contracts, it is obvious that it has been drafted with sales on the commodity market as its paradigm. The Contracts Act provides no general codification of Swedish contract law in the way of, for instance, the German *Bürgerliches Gestezbuch*. The provisions of the Act were not intended to be exhaustive. Instead, the idea behind the Act was to limit the legislation to questions where there was a real need for legislation and where it was possible to formulate practical rules. As it stands, the Act provides only some major rules concerning the formation of contract, agency and invalidity. In addition to the generally applicable Contracts Act there are various other acts regulating different types of contracts. The most important is the Sale of Goods Act (the first from 1905 and the latest from 1990). In the absence of explicit regulation by contract or statute, the answers to legal questions have to be sought in the general principles and dogmas of contract law. These principles and dogmas are to a large extent derived by analogy from statutes, such as the Contracts Act and the Sale of Goods Act.

There are several important differences between the ways in which the sale of goods and employment relationships, in particular, are organised. It is important to note these differences in order to understand the differences in their legal regulation.

From an *economic* point of view it worth stressing the open-market nature of sales of commodities. In such markets, goods and contracts become standardised, and the identity of the parties is regarded as irrelevant. Further, the sale of a commodity is a momentary transaction, and its regulation is based on the idea that the content of the contract is exhaustive and definite at the time of contract conclusion.[2]

The employment contract is a long-term contract. It is dynamic in the sense that both parties typically intend that the content of the contract will change. Further, there is an essential personal element to the employment relationship. The mobility of employees between employers is limited. Companies frequently engage employees in lower positions, while higher positions are filled by people

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1 *Cf.* Nystén-Haarala, S., *The long-term contract* (Helsinki 1988) p. 17 ff.

2 *Cf.* Mcniel, I., *Contracts: Adjustment of Long-term Economic Relations Under Classic, Neoclassic and Relation Contract Law*, North Western University Law Review vol. 72 (1978) p. 854–906.

already working in the organisation. The training of employees, either in the form of in-house courses or by using a hands-on technique, is an important part of the relationship, and the know-how of employees is often specific to the firm for which they are working. Dynamic and personal aspects are prominent features also of franchise contracts and residential leases.

Also, from a *social* point of view, there are important differences between sale of commodities contracts and employment contracts. The point of departure in traditional contract law is that the parties have equal bargaining power. The parties are described in a very abstract way, such as buyers and sellers, without any reference to their social position. In labour law the point of departure is different. The basic assumption is that employees constitute the weaker party, and that they are therefore in need of protection. In fact, subordination of the employee is one of the characteristic features when defining an employment contract.[3] The employment contract is of greater importance to the employee than to the employer. Whereas the employment contract is usually one of many as regards the employer, it constitutes the necessary basis of daily life for the employee. Employment is also an essential element of what constitutes most people's social position. Further, the employer is better informed about his or her business and the law. These descriptions are also appropriate concerning contracts regarding residential leases and franchises.

2 Periods of Contract and Prolongation

2.1 Introduction

As regards long-term contracts, Swedish contract law distinguishes between contracts for a limited period of time (fixed-term contracts) and contracts of indefinite duration (open-ended contracts).[4]

Fixed-term contracts expire, in principle, at the end of the contract period, without prior notice having to be given. The contract period can be fixed in different ways. For instance, the end of the contract period may be stipulated as a certain date, or after a certain period of time, or on completion of the contracted service. There are no general principles providing for the prolongation of fixed-term contracts.

Further, a fixed-term contract may not be terminated during the contract period. Exceptions from this rule may follow from the contract itself. Each party is allowed to terminate the contract without a period of notice if the other party breaks the terms of the contract, provided that any such breach is of fundamental

3 *Cf.* Veneziani, B., *The Evolution of the Contract of Employment* in Hepple, B. (ed.) The making of European Labour Law, Mansell London 1986) p. 62–70.

4 For the same principle, *see* Hessellink et al, *Principles of European Law – Commercial Agency, Franchise and Distributions Contracts*, Oxford University Press 2006, articles 1:301–1:305.

importance to the one party and the other party could foresee this.[5] Further, a contract may be terminated in exceptional cases during the contract period due to a change in circumstances. There are several, partly conflicting, rules and principles applicable here, such as the general clause in section 36 of the Contracts Act, force majeure, and the doctrine of assumptions.[6]

An open-ended contract may be terminated by any of the parties for no specific reason without any threat of damages. Usually, a reasonable period of notice is required.[7] It is generally assumed that a long-term contract containing no explicit provisions on the contract period is to be regarded as an open-ended contract. This rule is applicable in circumstances where the parties continuously exchange their respective obligations, but not in cases where one of the parties has fully performed his or her obligations right from the start.[8]

In several types of contracts, such as contracts of employment and residential tenancy agreements, the legislator has adopted measures to secure the continuity of contract relations. As regards franchises, equivalent regulations are often found in standardised contracts.

2.2 Franchise Contracts

There is no legislation regarding the terms of franchise contracts. The need for legislation has been discussed on several occasions, but no legislation has been adopted.[9] In 2006 an act concerning information to franchisees was adopted. The franchisor shall provide information concerning, inter alia, the time of the contract, and the terms for amending the contract, prolongation and notice.

In the absence of a statute stipulating contract terms, the most important source of law concerning franchising is the contract between the franchisor and the individual franchisee. The contract is usually drawn up by the franchisor in the form of a standardised contract. The possibility for individual franchisees to influence the content of the contract seems to be very limited.

Franchise contracts are commonly concluded for a specific period of time, often 3-5 years.[10] These relatively short-term contracts (American franchise contracts are often for twenty years or more) are selected in order to be able to change the terms of a contract or to sign a new contract.

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5 This general principle is derived from, inter alia, section 25 of the Sale of Goods Act. *See* further Hellner, J., *Speciell kontraktsrätt II Kontraktsrätt*, 2 häftet, Norstedts Juridik Stockholm, 4 ed. 2006 p. 177 ff.

6 *See*, for instance, Nystén-Haarala, S., *The Long-term Contract*, Kauppakaari Helsinki 1998) p. 182–196 and Hellner, J., *Speciell kontraktsrätt II Kontraktsrätt*, 2 häftet, Norstedts Juridik Stockholm, 4 ed. 2006, p. 58 ff.

7 Support for this rule has been sought in, inter alia, section 24 of the Law of Commercial Agents and Chapter 2 section 24.2 of the Partnership Act. *See* further Hellner, J. *Speciell kontraktsrätt II Kontraktsrätt*, 2 häftet, Norstedts Juridik Stockholm, 4 ed. 2006, p. 61 and Rodhe, K., *Obligationsrätt*, Norstedts Stockholm 1956, p. 700.

8 NJA 1946 p. 697, NJA 1992 p. 439 and Bergström, S., *I vilka fall kan löften återkallas?* Tidskrift utgiven av Juridiska föreningen i Finland, 1973 p. 108 f.

9 *Franchising*, SOU 1987:71 and the governmental bill *proposition 2005/06:98*.

10 *Upplyst franchising*, Ds 2004:55, p. 36.

Franchise contracts frequently contain an option for the franchisee to prolong the term of the contract. These clauses normally give the franchisee the right to demand a new contract for the same period of time as the original contract. The franchisee does not have the right to extend the period of contract if he or she has not fulfilled the contractual obligations during the contract period (even when this does not mean a fundamental breach of contract).[11]

2.3 Consumer Insurance

The Swedish Insurance Contracts Act (2005:104) contains rules on, inter alia, liability insurance for consumers, i.e. against economic loss resulting from property damage, indemnification liability, or other pure economic loss. These rules do not cover personal insurance, such as life, medical and casualty insurance.

According to chapter 2 section 2 of the Act a period of contract longer than one year is not allowed, except where there are exceptional circumstances. The reason for this rule is that the consumer should then have the option to consider whether he or she would prefer to change or discontinue the insurance. The insurance companies do not mind this short duration of insurance, since they are given an opportunity to alter their premiums or other conditions (see below).

Upon the expiry of an insurance contract, it is renewed automatically unless notice is given (chapter 3 section 4). The possibility for the insurance company to give notice of termination is restricted, and it is only allowed under exceptional circumstances (chapter 3 section 3). For instance, an unusually large amount of damages or a refusal to follow safety requirements can be regarded as an exceptional circumstance. The insurance companies' reasons for not prolonging the contract shall be weighed against the interests of the consumer to continue with the insurance. If the insured does not except the notice of termination, he or she may contest the validity of the notice in court (chapter 7 section 3).

2.4 Residential Lease

Residential leasing is regulated in chapter 12 of the Land Law Code. The provisions are mostly mandatory in favour of the tenant. The landlord and tenant are free to agree on the duration of the contract. If duration is not stipulated in the contract, it runs for an indefinite period.

If one of the parties wishes to terminate an *open-ended* lease, notice must be given. The contract then expires on the last day of the third full month after notice.

If a *fixed period* has been agreed, no notice is required unless the total duration of tenancy is longer than nine months. The length of the period of notice depends on the duration of tenancy. The nine-month rule is a modification of the general rule described above. If neither of the parties gives notice of termination in due time, the contract is automatically prolonged, usually for an indefinite period. The same rules apply if a tenant continues using a residence

11 Sohlberg, S., *Franchisejuridik*, Norstedts juridik Stockholm, 3 ed. 2001, p. 68.

after a fixed-term contract has expired and the landlord has not requested him or her to move.

Of greater importance is the fact that, with some exceptions, the tenant has the right to prolongation of the contract even when the landlord has given him or her notice of termination, unless the landlord has good cause to end the lease. What constitutes good cause is described in section 46. This right to the prolongation of residential leases is referred to as legal protection of tenancy rights.

2.5 Employment Contracts[12]

The Employment Protection Act (1982:80) distinguishes, similarly to general contract law, between contracts of indefinite duration (permanent employment) and contracts for a limited period (fixed-term employment).

There are different legal effects with regard to these two categories of employment contract. Both the employer and the employee may terminate a permanent employment, following a stipulated notice period. However, dismissal by the employer must be based on just cause. A fixed-term contract, on the other hand, expires without the necessity of giving notice at the end of the contract period, or upon the completion of the contracted work. The reasons for not extending the term of a fixed-term employment contract may not normally be contested in court. Thus, the employment protection enjoyed by employees with fixed-term contracts is, generally speaking, inferior.

Whereas the objective of the Act is to ensure employment protection, combating the use of fixed-term contracts is considered to be the task of the law. This has been largely achieved in two ways. First, access to concluding fixed-term employment is restricted. In response to the need for greater flexibility on the labour market, however, Swedish legislation has become less restrictive in this sphere over the last two decades.[13] Since 2007 fixed-term contracts are generally allowed as long as the accumulated time of employment exceeds two years during a period of five years. A substitute employment, which is where one employee temporarily replaces another, may not exceed an accumulated duration of two years over a five-year period.[14]

Another way of counteracting fixed-term contracts is to establish a default rule stating that an employment contract is permanent unless otherwise agreed upon (section 4.1).

2.6 Concluding Remarks

The regulations concerning franchising, consumer insurances, residential leases and employment contracts described above aim at making it possible for the weaker party to insist on prolongation of contract. Nevertheless, the dividing line

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12 *Cf.* Numhauser-Henning, A., *Fixed-Term Work in the Nordic Labour Law*, Scandinavian Studies in Law, vol. 43, p. 277–310.

13 Eklund, R., *Deregulation of Labour Law – the Swedish Case*, Juridisk Tidskrift 1998–99 p. 534–538.

14 The governmental bill *proposition 2006/07:111*.

between fixed-term and open-ended contracts in general contract law are basically applicable to all these types of contracts. The special rules applying to them may be seen as amendments to the general principles of contract law, rather than as alterations.

The techniques that are used to promote the maintenance of a contractual relationship differ according to contract type. As far as the first three types of contracts are concerned, the rules are constructed so as to provide an option for the weaker party to renew or prolong a contract that has expired. In this way, fixed-term contracts are also protected. The construction of the Swedish Employment Protection Act, on the other hand, may be described as a ban on giving notice of dismissal without just cause. Since fixed-term employment terminates without notice of dismissal, it is not afforded protection. This difference explains why fixed-term contracts are perfectly acceptable to the legislator in the case of residential leases and consumer insurances, but not in labour law.

3 Changing Contract Terms

3.1 Introduction

The principle of a binding contract means that the parties shall fulfil the duties and enjoy the rights following from the contract. This principle is far from absolute. Under certain circumstances, contracts may be altered or terminated. Especially in long-term relations there may be reasons for altering the terms of a contract.[15]

The classical way of changing the terms of a long-term contract is to give notice of termination or await the end of the contract period, and then propose a new contract on different terms. If the counter-party accepts the offer, a new contract is concluded. If, on the other hand, the offer is rejected, the contractual relationship is ended.[16]

This simple case shows the three basic alternatives when a change in contract terms is desired: an agreement to change the terms of the contract, the preservation of the status quo, or the ending of the contract relationship.

The case also highlights the fact that the binding force of a long-term contract depends on the possibility of each party unilaterally to terminate the contract. As we have seen already, the possibilities of terminating a contract relationship differ according to whether a fixed-term contract or a contract of indefinite duration is concerned.

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15 In exceptional cases the terms of the contract may be changed by the courts or arbitrators, in accordance with, for instance, the general clause in section 36 of the Contracts Act or the doctrine of assumptions. For references, see Footnote 6.

16 It is preferable, of course, if an agreement between the parties can be reached. It is not possible to enforce an agreement on the parties. What is possible, however, is to make it easier for the parties to reach an agreement, for instance, through re-negotiation clauses or mediation. *Cf.* Grönfors, K., *Avtal och omförhandling*, Nerenius & Santérus Stockholm, 1995 and Lehrberg, B., *Omförhandlingsklausuler*, Norstedts Stockholm, 1999.

Termination of a contract does not lead, of course, to any change in the contract terms. But the opportunity to terminate a contract greatly influences the possibility of reaching an agreement on new terms and conditions. During the period when employment contracts could be terminated without any period of notice, or with only a very short one, and for no specific reason, changes in the terms of employment contracts did not give rise to any legal disputes. If the employee did not accept the terms proposed by the employer, the employment relationship simply ended.[17]

A special problem arises in the case of contracts where one of the parties is entitled to the prolongation of the contract. In such cases the third of the three basic alternatives (i.e. ending the contract relationship) is not available. For instance, it would be unreasonable not to let the landlord raise the rent in long-term leases. On the other hand, if a landlord could stipulate any conditions that he or she might think of in order to prolong the tenant's contract, the security of tenancy would be of minor importance. The same problems could arise in franchise, insurance and employment contracts. As we shall see, there are a variety of solutions to these problems.

3.2 Franchise Contracts

As has been shown, Swedish franchise contracts are usually fixed-term. According to general contract law, no changes in the content of a contract are allowed during the term of the contract unless the parties have agreed otherwise. Thus, changes in the terms of a franchise contract are normally possible only in connection with its prolongation.

If the contract carries no right of prolongation, the franchisee has to accept any offer that the franchisor proposes to him or her, or else the relationship will end.

The situation is somewhat different if the contract carries a prolongation clause. Such a clause in a franchise contract often stipulates that the content of the contract shall be the same after the prolongation as the content of other contracts that the franchisor concludes with new franchisees. This means that the franchisee has no right to the prolongation of the original contract, but he or she has the right to a new contract carrying the same conditions as contracts concluded with other franchisees.[18] In this way, the clause limits the franchisor's freedom with regard to offers that he or she might wish to make.

The purpose of the clause is to make it possible for the franchisor to make successive changes to his or her stock of franchise contracts while, at the same time, giving the franchisee some protection against arbitrary behaviour on the part of the franchisor.

The situation described above concerns the terms of the main contract. Swedish franchise contracts commonly contain enclosures that regulate issues concerning the product range, prices of goods or services, general terms of

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17 *See*, for instance, the judgement of the Labour Court AD 1933 no. 185.

18 Sohlberg, S., *Franchisejuridik*, Norstedts Stockholm, 3 ed. 2001, p. 67 and *Franchising*, SOU 1987:17 p. 55.

delivery used in relations with customers, manuals, and other practical aspects of co-operation. The contracts often state that a franchisee has to follow the latest editions of the enclosures. In this way, the franchisor is allowed to change the enclosures during the contract period. Sometimes the franchisee may terminate the contract if he or she thinks the change is too burdensome.[19]

As far as can be seen from the reports, these kinds of clauses have not been legally contested. Contract terms that enable one party to alter the terms of a contract unilaterally without a valid reason, as stipulated in the contract, are often regarded as unfair according to section 36 of the Contract Act.[20] It might be argued that the same should apply to the clauses described above. However, it is not unlikely that smooth operation of the franchise system would be regarded as a valid reason for accepting such clauses, at least if their application in individual cases would not have undesirable results.

3.3 Consumer Insurance

In relation to consumers, insurance companies commonly use standard terms. Thus, it is possible to talk about contract terms that are generally applicable between a company and its customers. The Insurance Contracts Act is based on this condition.

In the same way as in franchise contracts, the terms of consumer insurance contracts may be changed in connection with the renewal of a contract, usually once a year. Where the insurance company wishes to amend the insurance policy, the company shall specify the amendment in writing no later than in concurrence with the premium demand for renewal (chapter 2 section 5). The Act specifies the content of the information required. New terms and conditions must be stipulated separately (chapter 2 section 6). If the consumer pays the insurance premium, he or she is bound by the terms presented by the company.

This does not mean that the insurance company is free to propose any terms whatsoever. According to the *travaux preparatoires*, changes in contract terms are not allowed in individual cases if their purpose is to scare a consumer away. Such an offer would be regarded as a notice of termination, and any such notice is allowed only under exceptional circumstances.[21]

This regulation shows clear similarities to the prolongation clauses of franchise contracts. It does not intend to secure fair or balanced contract terms, but only to guarantee that individual consumers are not treated worse than the remaining consumer collective. In this way, the regulation gives the consumer some protection against arbitrary behaviour on the part of the insurance company.

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19 *Franchising*, SOU 1987:17 p. 61–62.

20 *See*, Judgements of the Supreme Court NJA 1979 p. 666 and NJA 1983 p. 332. This follows explicitly from the directive on unfair terms in consumer contracts (93/13/EEC), Annex littra J. However, the directive does not cover the relationship between merchants, even if they are of unequal bargaining power. See also the Government Bill *proposition 1994/95:17* p. 96–97.

21 Government Bill *proposition 1979/80:9* p. 47.

3.4 Residential Lease

The regulation of changes in terms of residential leases is more elaborate than those regarding franchising or consumer insurance.

If a landlord or tenant wishes to change the terms of a lease, he or she shall inform the other party in writing, stating that he or she wants to renegotiate some of the conditions. It is not necessary to give notice of termination of the leasing contract in order to initiate the process. Thus, the process of changing the terms of a lease is unrelated to the question of continuation of the lease. From the tenant's point of view this is very important, since he or she may initiate the process without risking losing the contract.

If no agreement can be reached, the party who has initiated the negotiations may apply to the Rent Tribunal, requesting the determination of reasonable conditions. According to chapter 12 section 54 of the Land Law Code, a rent is not reasonable if it is evidently higher than the rent for apartments with the same "utility value". Rents in privately owned housing are compared with rents in social housing. The latter are not supposed to generate profit. As regards conditions other than rent, the determination of what is reasonable is done in a discretionary manner.

Rent tribunals are public tribunals composed of one legally qualified member and two lay members. One of the lay members must be well versed in the administration of residential buildings, and the other shall have experience from housing disputes from the point of view of the tenant. The decision of the Rent Tribunal, or, if an appeal is made, the decision of the Court of Appeal, is binding on the parties.

Regulations concerning changes in the terms of leasing contracts are more interventionist than the regulations found in consumer insurance and those concerning prolongation clauses in franchise contracts. The principle of 'utility value' has a wider function than that simply of protecting the tenant's right to occupation of his or her residence. It also aims at providing a level of rent that will guarantee the majority of inhabitants high and equal housing standards.[22]

There are import rules as regards collective bargaining concerning rents and other terms of lease. Negotiations take place between the landlord (or an organisation of landlords) and an organisation of tenants. The parties may agree on the rent level. The agreement is then binding on the tenant if he or she has a collective bargaining clause in his or her contract, irrespective of whether the tenant is a member of the tenant organisation or not. These rules are not dealt with in this report, however.

3.5 Employment Contracts

The legal system provides a number of different methods for bringing about changes in the employment relationship during the period of employment.

The most important method for changing the content of the employment relationship is by means of *collective agreement*.[23]

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22 Christensen, A., *Hemrätt i hyreshuset*, Norstedts Stockholm, 1994, p. 381–382.

23 *Cf.* Malmberg, J. *The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions*, Scandinavian Studies in Law, vol. 43, p. 189–213.

Under section 26 of the Co-Determination Act, a collective agreement is binding on employers and employees who are members of the organisations, which are parties to the agreement. Employers and employees who are bound by a collective agreement cannot reach individual agreements that conflict with the collective agreement (section 27). Section 26 does not entail that collective agreements lack any significance for employees who are not members of a trade union party to such an agreement. If he or she is employed by an employer bound by a collective agreement, the provisions in the collective agreement, as a result of case law, usually fill out their employment contract. But here, the provisions of the agreement only have a default character in relation to the employment contract.

Thus, when a new collective agreement is concluded, the content of the individual employment relationship automatically changes. This is one of the strong sides of the collective agreement. The employer can conclude an agreement through negotiations with one party, or a small number of parties, which changes the terms and conditions of employment for the entire workforce, without having to negotiate with or dismiss individual employees.

Changes in the content of the employment relationship can also be made by means of individual *agreements between the employer and the employee*.

Further, as regards certain questions, the employer may *unilaterally decide on changes* in the employment relationship. This right of the employer is especially extensive as regards the employee's working tasks. Changes that can be decided upon unilaterally by the employer are said to lie *within the scope of employment*. The general rule as regards transfers of employees to other working tasks within the scope of their employment relationship is that an employee may be transferred without a period of notice. Nor has the transfer to be justified by quoting reasonable grounds. This rule is subject to many exceptions. For instance, a transfer may be contested in court if it is discriminatory or contrary to good practice.

If an employee refuses to carry out working tasks that lie within the scope of his employment, such refusal can constitute a just cause for dismissal. By contrast, should the employer request that an employee performs work that lies outside the scope of his employment for a lengthy period of time, this would be regarded by the law as dismissal in combination with an offer of new employment. The employer would then have to abide by the rules concerning just cause and notice of dismissal, as stipulated in the Employment Protection Act.

There is no general statutory provision regulating the work that an employee is obliged to perform. To determine what is permissible and what is not, it is necessary to resort to case law. According to the so-called 29/29 principle (originating from judgement no. 29 of the Labour Court in 1929) a blue-collar worker is obliged to carry out all work that is naturally connected with the employer's business activities and falls within the worker's general qualifications. Public employees are obliged to take on different working tasks as long as these do not involve a fundamental change in their category of employment.

If it is impossible to reach an agreement with either the individual employee or the trade union (in the form of a collective agreement), and if it is not a question on which the employer may decide unilaterally, the employment relationship must continue in its current form. If one of the parties is not happy with this, the only solution is to terminate the employment contract. The provisions of the Employment Protection Act become applicable when the employer resorts to dismissal. Thus, if it is the employer who wishes to change the content of the employment contract, he must show just cause.

3.6 Concluding Remarks

This section has discussed different methods of dealing with a contract that is no longer able effectively to regulate co-operation between the parties. In the light of this survey, the three basic methods (mentioned on page 410) can be supplemented two other methods. A full list of the basic methods is given below:

- Agreement on changing the conditions of a contract
- The contract remains unchanged
- Unilateral right to terminate the contract
- Unilateral right to change the contract
- Third-party decision

If no agreement can be reached and if it is impossible or undesirable to either end the contract relationship or leave it as it is, the only remaining alternatives are, as far as I can see, to let one of the parties, or a third party, decide upon the content of the contract.

The method of changing the terms of a contract unilaterally is used in consumer insurance contracts and employment contracts, and also in the extension clauses of franchise contracts. It is obvious that unilateral decision-making power must be restricted if this method is to be acceptable.

As regards consumer insurance and franchising, the freedom of companies and franchisors is restricted in two ways. First, they are not allowed to decide upon the terms of a contract on an individual basis. The members of the consumer collective as well as franchisees are to be treated equally. In this way, the principle of equal treatment gives them some protection against arbitrary treatment. A further restriction lies in the fact that consumers, and sometimes also franchisees, may terminate the contract relationship if the new conditions are unacceptable.

In Swedish labour law there are no generally applicable principles of equal treatment.[24] Instead, restrictions on the employer's unilateral right to change contract terms are constructed primarily as a ban on taking into account certain circumstances in his decision-making, such as an employee's membership of a trade union. In this respect, the restrictions placed on the employer seem to be less severe than those placed on insurance companies and franchisors. On the other hand, the employer's unilateral right to change contract terms is limited to certain aspects of the employment relationship, concerning mainly direction and distribution of work.

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24 *See*, for instance, Labour Court Judgement AD 1994 no. 60.

The only example in this survey where the third party method has been used concerns residential leasing. This method is also used sometimes, however, in long-term commercial contracts.[25]

25 *See*, for instance, about hardship clauses of the International Chamber of Commerce in Ramberg, J, *International Commercial Transactions*, Norstedts Stockholm 1997) p. 53–54.