

Paper to be presented at the 9th European Congress of the International Industrial Relations Association (IIRA), 28 June-1 July 2010, University of Copenhagen

Track 1, Employment & Labour Market Policies

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Migrant domestic workers – beyond regulation regimes?¹

1. INTRODUCTION

The topic of this paper is paid domestic work, the conditions for those who carry out the work, and the regulatory framework for domestic work and services. The academic and political discourse on domestic work has over the last years mostly been related to situations where house work is performed by household members, while paid house work has received less attention, both in Norwegian and international research². A few studies have aimed to map Norwegian household's use of domestic services,³ but when it comes to wage and working conditions or how these are regulated, few or none empirical studies have been carried out since the 1950-ies.⁴ An obvious reason for this is that the occurrence of domestic workers/house maids decreased rapidly in the post-war period. However, during the last few years, more Norwegian households are again using such services, and especially in dual income urban middle class families. This is both due to a higher income level and a large growth in available persons in the labour market who are willing to take on such work. As earlier, most of the domestic workers are women. But unlike before, most of them are migrant workers. The regulation of domestic work is on the global labour agenda this year, being one of the main topics at ILO's international labour conference in 2010. The ILO conference report states that: *Domestic work is undervalued and poorly regulated, and many domestic workers remain overworked, underpaid and unprotected. And: Because they often have no clear status under modern labour legislation, domestic workers tend to be excluded de facto from formal*

¹ The paper is a part of a research programme on labour and service mobility after EU enlargement, financed by the Research Council of Norway.

² Anderson, B. (2000), *Doing the Dirty Work? The Global Politics of Domestic Labour*. London: Zed Books

³ Kitterød, R.H. (2002), *Få har rengjøringshjelp, men stor variasjon mellom grupper*. In: Samfunnsspeilet 4-5/02. Oslo: Statistisk sentralbyrå

⁴ Aubert, V., T. Eckhoff, K. Sveri (1952), *En lov i søkelyset, Sosialpsykologisk undersøkelse av den norske hushjelpslov*. Oslo: Akademisk forlag and Aubert, Wilhelm (1956), *The housemaid – an occupational role in crisis*. In: *Acta sociologica*, Volum 1, p. 149-158.

*regulations and their enforcement.*⁵ These statements point directly towards the main themes of this paper.

In the paper we will look closer into the current situation for domestic workers in Norway, and in particular for migrant domestic workers from Poland - both when it comes to the regulatory framework and their actual wage and working conditions. With basis in the legal developments this area in Norway during the last century, as well as a short look to some other countries, we will discuss the viability of the regulatory regime for paid domestic work in Norway today, and some possible tracks forward.

The analysis presented in the paper is based on studies of legal documents and other relevant texts, and data from a survey among Poles in the capital area of Norway - the 'Polonia survey'. The survey was conducted through so-called respondent driven sampling (RDS). In short, this sampling methodology is based on a form of snowball sampling, with a particular incentive system and a mathematical model that weights the sample to compensate for the fact that the sample was collected in a non-random way. The survey was carried out in the autumn of 2006, and totally 510 Polish migrants were interviewed.⁶ In addition, the analysis benefits from information from qualitative in-depth interviews with 13 Polish women in late 2009, who were working as domestic workers/cleaners in private households in Norway.

2. POLISH LABOUR MIGRANTS - NORWAY'S NEW HOUSE MAIDS?

While housemaids in the past came from the rural areas of Norway, today's domestic workers or 'cleaning ladies' tend to be migrants, and in particular from Poland. This is in line with more global trends, according to a recent ILO report one of the most striking changes in domestic work in the past 30 years has been the growing prevalence of migrant workers.⁷ Norway introduced a full stop on immigration in 1975, and has since then practiced a restrictive policy on labour migration for citizens from countries outside the Nordic region or outside the EU/EEA-area. This means that persons from countries that in the global context is known to be exporters of domestic workers, for instance the Philippines, do normally not have access to the Norwegian labour market.⁸ The Norwegian membership in the EEA⁹ in 1994 opened the Norwegian labour market for citizens from the EU/EEA-area, who then could seek for work in Norway, not

⁵ ILO (2010), Decent work for domestic workers. Report IV(1). International Labour Conference, 99th Session, Geneva: International Labour Office, paragraph 3 and 39.

⁶ See Friberg, J.H. og G. Tyldum m. fl. (2007), Polonia i Oslo. En studie av arbeids- og levekår blant polakker i hovedstadsområdet. Fafo-rapport 2007:27, p. 10-17 for more information on the methodology of the survey. Fafo, in cooperation with the Center for Migration Research (CMR), University of Warsaw, conducted a new and similar survey among Poles in Oslo in the first quarter of 2010. The data from this survey is yet not ready for analysis.

⁷ ILO (2010), op.cit.

⁸ There is a certain inflow to Norway of au pairs from the Philippines, but they do not have work permits, as they take part in a "cultural exchange programme" (Øien, C. (2009), On equal terms? An evaluation of the Norwegian au pair scheme. Fafo-report 2009:29

⁹ The Agreement on the European Economic Area was signed by EU and the EFTA countries, and in practice includes the EFTA countries Norway, Iceland and Liechtenstein in the EU's inner market. On the occasion of the enlargement of the EU in 2004 and 2007 it was agreed to extend the EEA Agreement correspondingly.

depending on national labour demands or needs. However, upon till 2004 very few Europeans migrated to Norway.¹⁰ Since then, the picture has changed dramatically. In the aftermath of the EU enlargements in 2004 and 2007 we have seen large waves of labour mobility across Europe, and a high increase in labour migration also to Norway. The inclusion of Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Bulgaria and Romania into the EU implied a merger of labour markets with enormous differences in wage and working conditions. In spite of certain transitional restrictions, the inflow of migrant workers into Norway exceeded most expectations. In the period from May 2004 to April 2009¹¹ there was issued more than 150 000 first time work permits and around 135 000 renewals. Most of the permits were granted to workers from Poland and the Baltic states.¹² In addition, an unknown but probably huge number of posted workers, service providers and migrants without permits entered the Norwegian labour market. In 2006, only 13 percent of the registered Polish migrants were women, while based on the Polonia survey Fafo estimated the real share to be 26 percent. The majority of the men worked in construction, while most of the female migrants were found in the cleaning/domestic sector.¹³

The average age of the Polish domestic workers in Oslo in 2006 was 32 years (they were all females), compared to 37 years among the male Polish migrants (who mostly worked in construction). Two thirds of the women did not have children living with them, neither in Poland nor Norway. One common assumption is that female Polish migrants just follow their partners, and that their earnings only serve as an addition to the men's income. However, only a third of the Polish domestic workers had a spouse or partner in Norway. Close to 50 percent were not married or had a partner, while the rest (21 percent) had a partner in Poland. The majority had taken the decision on going to Norway independently from other family members. The main reason for their migration to Norway was the wage levels and/or having friends or family in Norway. Almost everybody knew someone in Norway before her departure. When it comes to length of stay in Norway, the domestic workers were in line with the rest of the sample; about four in ten had been in Norway one year or longer at the time of the survey, and two thirds had no plans of return to Poland in near future (excepts for holidays etc). Compared with Polish migrants in general, the education level among domestic workers was more dispersed; we found more people with low education as well as more people with high education than in the total sample. Close to 25 percent had higher education, while the rest had vocational training (38 percent) or was lower skilled (38 percent). Hardly anybody said that they had any use of their qualifications in their current jobs, or that they had any work experience as domestic workers or cleaners before coming to Norway. Approximately 50 percent was unemployed in Poland before migrating, while the rest had been working, studying etc. Less than 10 percent had been full time housewives before their departure.

¹⁰ Dølvik, J.E. and L. Eldring (2006), The Nordic Labour Market two years after the EU enlargement. Mobility, effects and challenges. TemaNord 2006:558. Copenhagen: Nordic Council of Ministers.

¹¹ Norway's transitional restrictions for workers from EU-8 were repealed in May 2009.

¹² Norwegian Directorate of Immigration, Various monthly statistics 2004-2009.

¹³ Friberg and Tyldum, op.cit.

The Polonia survey documented that one-quarter of the Polish migrants worked illegally in Norway. More specifically, they paid taxes to neither Norway nor Poland and/or did not have work permits. This was particularly rampant among those who worked as cleaners/domestic workers in private households. Only 17 percent of the women that worked in cleaning had legal work, compared to 65 percent of the men working in construction. Undeclared work in the domestic sector is not a new phenomena, and this sector has also been notorious difficult to regulate when it comes to wage- and working conditions. A report from Statistics Norway in 1938 states that: *"A specific legislation for domestic work do only exist in a very few countries (...). The establishment of collective agreements in this area is difficult (...). Beyond that we do not find any proper legislation in most countries. Whatever exists is so outdated that it is of little use."*¹⁴ As we will see in the following paragraphs, more than 70 years later this is still a fairly accurate description of today's situation in Norway.

There is one major and very important difference between the new migrant domestic workers and the traditional 'house maid' from earlier times; the house maids would most often would be employed full time by the household and even live in the same house. This is definitely not the case today. The main activity of the modern domestic workers is cleaning, and within a very limited timeframe in each household. A large portion - 86 percent - of the Polish domestic workers/cleaners claimed to be *self-employed*. And furthermore, among the minority that indicated that they were employed, most work for agencies/cleaning companies and not as employees in the private households. Considering the rate of undeclared work, one could argue that the distinction between being employee and self-employed is only of theoretical interest, but as we will elaborate later on, this situation has major implications when it comes to regulation of the domestic work sector.

3. REGULATIONS IN NORWAY

3.1 HISTORICAL VIEW

Problems related to regulating employment conditions for domestic workers have existed since the issue first appeared on the national agenda in the beginning of the 1900s. While men working within the manufacturing industry were covered by worker protection legislation from the end of the 18th century, women conducting domestic work still had to wait half a century before the first protective legislation came into force. And by then the peak of employment in the domestic industry had passed.

At the beginning of the century, working within the domestic industry was the second most common job for women in Norway. In 1930 one out of five women were employed within this sector. The trade union organising these women *Hushjelpenes Fagforening* asked in 1936 the Norwegian Parliament for housemaids to be included in the new employment protection act that was to be adopted. Their first request was however rejected. The Ministry responsible claimed

¹⁴ Norges Offisielle Statistikk. IX. 146, Arbeidsvilkårene for hushjelp i norske byer, Oslo 1938, p.2.

that it would be problematic to have legislation that would intervene into domestic working arrangements. However, following a request from the Parliament a committee was established to expound the field.

An act of law came into force after the Second World War in 1949.¹⁵ The act was revised several times, and finally replaced by an administrative regulation in 2002.¹⁶ Traditionally, minimum wages is not the domain of the legislator in Norway, but left to the social partners to negotiate. This was also the case with the act on domestic work. However, other issues as working time, overtime pay, time off work, and the right to a written employment contract were all addressed by the act. Shortly after the act came into force it was subject to a sociological study.¹⁷ It showed that the new legislation had little impact on the employment conditions of the maids. As few as one out of ten of the work-relationships included by the survey were in full conformity with the law. The regulation on maximum daily working time was infringed in more than half of the employment relationship, and the duty to pay wages every fortnight was violated in three out of four households. In other words, the act could not be seen as having established a new practice for Norwegian housemaids.

The study also showed that even though many had heard of the act, few had any thorough knowledge of its content. 36 per cent of the housemaids and 26 per cent of the housewives could not name a single provision of the act, and the rest could often name just one area covered by this legislation. As few as 10 per cent of the maids and 17 per cent of the housewives mentioned the act when they were asked which factors they had to have in mind when agreeing on the working conditions. As many as 82 per cent of the maids and 70 per cent of the housewives believed, erroneously, that the parties were free to arrange their relationship in the way they wanted.

In Aubert et al. (1952) several explanations on the dysfunction of the act were given. Some of the explanations were related to this special type of employment relationship, while two others can be said to have more universal validity. As regards the first category, Aubert et al points out that housemaids and –wives had traditionally not been active players as regarded legislation and contact with public authorities. They were women and not unionised. Furthermore, the act applied to an area that previously had been exempted from for public inspection and control, and the work was conducted isolated from other workers, compared to the work in factories and so on. Being a housemaid was also an occupation on the border between working life and private life, and it could sometimes be hard to distinguish between the worker and the family member. Many housemaids were young, had little experience and were not accustomed to the city life. They considered their jobs to be temporarily and the turnover rate was high. The more experienced housemaids, those who could more easily have worked to improve the working conditions, quitted the industry.

¹⁵ Midlertidig lov av 3. desember 1948 om arbeidsvilkår for hushjelp.

¹⁶ Forskrift av 5. juli 2002 nr. 716 om husarbeid, tilsyn og pleie i private arbeidsgiveres hjem eller hushold.

¹⁷ Aubert, Eckhoff & Sveri, op.cit. and Aubert (1956), op. cit.

The two other explanations had more general application. Firstly Aubert et al pointed out that some of the wording used in the act was hard to understand for persons who were not familiar with legal texts. The act was written with another audience in mind. It was based on traditional legal language and was not meant to give guidance to ordinary people. The act was written for legal scholars, and meant to be used in dispute solving. However, such dispute solving was never a real alternative in this area. If the act was to have any significance it therefore would have to be written in a way that could be understood by the housemaids and their housewives. Secondly, the act could be seen as balancing opposing interests. In the Parliament there were parties representing the view of the housewives as well as parties representing the view of the housemaids. The adopted act managed to please both sides. On the one hand the act constituted a reform, and thereby obliging the housemaids' representatives. On the other hand, the lack of enforcement mechanisms that did make it hard for the housemaids to fulfil their rights made the reform possible to accept for the housewives' representatives.

3.2 HAS THE LEGAL PROTECTION OF HOUSEMAIDS IMPROVED?

While the housemaid at the beginning of the 20th century mainly was employed by a single family, often full time, the domestic workers of today operate in another setting. In Norway, neither the demand for domestic help nor the financial situation in most domestic households creates a market for full time employees in this industry. Today, families paying for domestic services mostly do this by hiring a company or a self-employed. The contract often comprises services of a few hours a week or a month.

This means that there are some major differences between the 1930 housemaids and the women cleaning houses of Norwegian families in 2010. Less is employed directly by the families, and the domestic workers do often have several employers throughout the week. What regulations the domestic worker is covered by, will depend on her legal status. As similar to many other countries, Norwegian law draws a distinction between a worker and a self-employed. It is mainly the worker that gains protection from the legislative framework. However, determining what category that applies to a domestic worker in could be a problem. The legal distinction between these two categories is not easy accessible, but based on a total evaluation of the relationship, where several factors are to be included. In other words, a test that is not easy for other than legal trained persons to complete. Whether the Polish domestic workers are employees or self-employed (as the majority claim to be) is hard to decide without examining every relationship. And as the domestic work is conducted in private homes, that are still are exempted from public inspection and control, and often within the black economy, it is hard to reveal the fictive relationships.

Since most of them operate within the black market, one could say that this is of less importance. But as the difference is so important when it comes to rights and protection, this can be said to be an essential question when it comes to which regulations that can be introduce to solve the problems in this industry.

In a legal context one may divide the domestic workers into three main categories. Those employed by a cleaning company, those employed directly by a household and finally, self-employed. The first group is the one that gains best protection from the legislator. They are fully covered by the working environment act, and some of them are even covered by collective agreements with minimum wage regulations.

A domestic worker that is employed directly by the household is not given the same protection as other workers on the Norwegian labour market. The administrative regulation that replaced the Housemaid act in 2002, settles that only parts of the working environment act apply¹⁸, and only to those who work at least eight hours a week for a single employer. Thus, hardly anyone directly employed by a household is protected by labour legislation. Furthermore, there exist no collective agreements for this group of domestic workers, meaning working conditions and wages are fully fixed on an individual basis.

Self-employed are not covered by the working environment act¹⁹. They are, by the legislator, in general considered to be the strong part in a relationship where the contractor is a consumer. They will therefore have to comply with consumer legislation, giving the household mandatory rights.

So, while the Housemaid act was repealed in 2002 due to it being out-dated, having not functioned in accordance to its purpose, and giving the workers a sub-standard level of protection compared to other workers, it seems that what came instead has not been able to improve the situation for these kinds of workers.

The inflow of Polish workers to Norway came after the EU-enlargement in 2004. Several legal initiatives have been taken by the Norwegian government to protect the migrating workers and the Norwegian labour market from low wage competition. Firstly, Norway introduced a transitional period, lasting until May 2009, where all labour immigrants from the new Eastern and Central European member states had to gain a work permit. To do so they had to present a contract with an employer at least 80 per cent working time position and employment and working conditions in line with Norwegian standard. It is obvious from the data collected that many of the women working within the cleaning industry never would have managed to fulfil these conditions. One thing being the employment conditions, but even harder the term of regarding working hours.

Secondly, the first decision to extend a collective agreement in Norway was a reality. The decision was based on a request by the Norwegian Confederation of Trade Unions (Landsorganisasjonen i Norge, LO), and covered mainly construction work.²⁰ A few more decisions to extend collective agreements have been widespread, but most imply that a collective agreement has been extended. Thus, in areas where this is not the case, these

¹⁸ That covers among other things working time, rest periods, HSE-regulations, and employment protection. However, the employment protection is inferior to that applicable to other employees.

¹⁹ Except for some HSE-regulations.

²⁰ Alsos, K. and L. Eldring (2008), Labour mobility and wage dumping: The case of Norway. In: European Journal of Industrial Relations 14(4):441-459.

measures are of little effect. Consequently none of the measures introduced in the aftermath of the EU-enlargement have aimed at Polish workers within the domestic industry. This group can in this sense be said to be ignored by the Norwegian legislator.

4. WAGE AND WORKING CONDITIONS AMONG THE POLISH DOMESTIC WORKERS

As described above, the regulatory situation for the domestic workers is complex. Furthermore, most of them work in the black market where regulations probably have only limited effects. However, this does not make issues regarding actual wage and working conditions less important. The main findings from both our quantitative and qualitative studies indicate clearly that the Polish domestic workers constitute a vulnerable group located in the fringes of the labour market and the society as such. Their irregular status excludes them from basic rights as well as elementary welfare benefits. The following examples illustrate their difficult situation:

- Only half of the domestic workers would see a doctor in Norway if they became ill. 80 percent had never been in touch with the Norwegian health care system. Less than 25 percent said that they had access to free health care in Norway.
- Eight in ten could not speak any Norwegian or only a very few words. Two thirds had not had any language training at all.
- Employment or service contracts were almost non-existent, and hardly no-one received holiday pay or earned pension rights.
- The average hourly wage was 105 NOK, and median wage 100 NOK. The wage levels varied more in this group than for other Polish migrant groups; 35 percent earned less than 80 NOK per hour, and 35 percent earned more than 100 NOK per hour. Information from the qualitative interviews in 2009 indicates that due to hard competition on jobs there has been a downward pressure on wages, and it was said that "going rate" in late 2009 was 80 NOK per hour.
- There was a huge problem with underemployment, so even if hourly wages was acceptable, most struggled to earn a proper monthly wage. 40 percent worked less than 30 hours per week.
- Between 10 and 20 percent of the domestic workers reported that they had experienced situations with hazardous work, bad treatment by employers/clients, or sexual harassment.

In spite of all this, three of four respondents said that their life had improved after coming to Norway, and that they could provide for themselves (and if relevant for their families) through their earnings. The majority did not consider the work as dangerous and very few agreed in a statement saying "I am afraid to go to work". However, domestic work is performed behind closed doors, and given the irregular forms under which the work is done, it is obviously a

greater possibility for experiencing harassment and bad treatment than in ordinary and more transparent work places.

Nevertheless, the Polish domestic workers in many ways stand out as resourceful persons. Many of them have more education than the average among Polish migrants in Norway, and their migration to Norway is the result of an active decision to improve their life and living conditions. Most of them would not have moved to Norway if they could decent work in Poland, but in spite of this very few stated that they wished that they did not have to be in Norway.

The lack of language skills contributes to the domestic workers' weak and vulnerable situation in the Norwegian labour market. The language barriers are enormous, and create a huge dependency to employer/clients and intermediaries in this particular job market. To get Information on rights - and to demand rights - is probably an overwhelming and almost impossible task for newly arrived domestic workers. They also rely heavily on informal networks and support to get jobs and clients. The qualitative data shows that the intermediation of jobs often is done through networks and agencies/companies of Polish origin that operate in the black market. Back-payment of parts of the salary to these agents is not unusual. To register an own company or to bring the employment into legal forms, will often seem unbearable for the single domestic worker. For most of them, the solution to their difficult situation will not be to improve their situation as domestic workers, but to strive to get legal employment in a different sector.

5. REGULATIONS IN OTHER COUNTRIES

As Norway seems to have been unsuccessful in protecting domestic workers, it is timely to see if practices of other countries can be of any help. We have therefore looked at three countries with different regulation models. Those are Sweden, Germany and the UK.

In Sweden, employment conditions are traditionally the domain of the social partners. Statutory minimum wage is non-existent. So are *erga omnes* measures. If there exist no collective agreements, wages are fixed in an individual agreement between the employer and the employee. In many ways the situation is comparable to the Norwegian one. However, collective agreements are more widespread in Sweden than in Norway. While 70 per cent of Norwegians are covered by collective agreements, the same counts for 94 per cent of the Swedes. And within the private sector the numbers diverges even more. In Norway only 53 per cent are covered by collective agreements compared to Sweden's 90 per cent.²¹ This could indicate that a Swedish domestic worker would be more likely to be covered by a collective agreement than a Norwegian domestic worker. However, also in Sweden there is a lack of trade unions organising domestic workers.²² For domestic workers employed by the household directly, there exist no collective agreements and therefore no minimum wage. The situation is somehow different as

²¹ Lismoen, H. (2006), Low-wage regulation in Scandinavia. In: Schulten, T., R. Bispinck and C. Schäfer (eds), Minimum wages in Europe, pp 253-76. Brussels: ETUI

²² C. Calleman (2007), Ett riktigt arbete? - regleringen av hushållstjänster. Säter: PANG förlag

regards workers employed by companies. However union density is low, only around 20 per cent, compared to 70 per cent in Sweden as a whole.²³ The trade union organising these employees have entered into collective agreements with five companies in the Stockholm area. There exists a separate collective agreement for these companies, were the conditions are similar to that found in the collective agreement for the cleaning industry. However regulations on minimum wage, holiday pay, and payment for inconvenient working hours, are worse than for the cleaning industry agreement.

In UK the statutory national minimum wage (NMW) covers all employees. From October 2009 workers aged 22 and more are entitled to £ 5.80 per hour. Thus, all employers are obliged to an hourly wage no lower than the statutory minimum. The NMW also covers domestic workers, unless they are genuinely self-employed. Compliance and enforcement are achieved by means of a combination of institutional oversight, legal sanctions and publicity campaigns.²⁴ Estimates of the proportion of UK jobs in all, paid below the NMW were in 2008 between 1.1 and 1.7 %.²⁵ However, there seems to be low level of awareness about entitlements in particular amongst vulnerable groups, domestic workers included.²⁶

In Germany,²⁷ the trade union density and collective bargaining coverage rate has been declining the last years, and the low-wage sector has been growing. As of today, three laws regulate legal extension of collective agreements and other forms of statutory minimum wage protection; Tarifvertragesgesetz §5 (AVE), Arbeitnehmer-Entsendegesetz (AEntG) and Mindestarbeitsbedingungengesetz (MiArbG). Among these, the newly revised MiArbG (2009) may be of most significance when it comes to domestic workers - although it has not had any relevance for this sector (or any other sectors) so far. The intention of the law is to make it possible to regulate minimum wages also in less organised sectors (there is a criteria of 50 percent collective agreement coverage to use the ordinary *erga omnes* measures). The government and the social partners can suggest sectors that should have a minimum wage regulated through the MiArbG. A commission with representatives from the social partners will then decide upon the matter, and if positive, the government can then issue a decree on minimum wages. The trade unions have been sceptical to the MiArbG, claiming that it will not solve the existing problems within the growing low-wage sectors. So far, the law has had no practical effects. There is no national statutory minimum wage in Germany, but this issue has been high on the the trade unions' agenda for some years. They argue that the existing regulations do not offer protection to low-paid workers especially in the service sectors. However, the current government it is unlikely to introduce such a measure, which is strongly opposed from the

²³ Calleman, *ibid.* and Kjellberg, A. (2010), Kollektivavtalens täckningsgrad samt organisationsgraden hos arbetsgivarförbund och fackförbund, Lund: Departmenet of Sociology, Research-report 2010: 1.

²⁴ Burgess, P. (2006), The statutory minimum wage in the UK. In Schulten, T., Bispinck, R., Schäfer, C. (eds), *Minimum Wages in Europe*. Brussels: ETUI

²⁵ Hicks, S., S. Conn and J. Johnson, Characteristics of those paid below the National Minimum Wage, *Economic & Labour Market Review* volume 3 2009

²⁶ Burgess, *op.cit.*

²⁷ Eldring, L. (2010), Allmenngjøring og minstelønnsregulering i Tyskland. In: Stokke, T. Aa. (ed.), *Allmenngjøring i EU og Norge*. Fafo-rapport 2010.

employer's side. According to Lutz (2008),²⁸ there is a trend towards increased employment in the German domestic sector, but most of the workers work illegally.

Compared to the situation in countries without statutory minimum wages it seem reasonable to believe that the British system at least in principle should offer most protection when it comes to wages. There is a general challenge in all the mentioned countries with the domestic sector being outside the scope of most trade unions and ordinary organising and bargaining processes. Furthermore, the high degree of illegality in the sector seems to undermine even relevant regulations.

6. TENTATIVE CONCLUSIONS

In our opinion there seems to be a need for regulations that are easy accessible for both households and domestic workers. Such regulations should be combined with measures enduring an effective enforcement. Since the sector is consisting of both workers and self-employed, a two track solution will be required. There would hardly be any point in forcing women that voluntary have set up their own companies into an employment relationship. However, it might still be necessary to ensure that also these women gain protection from being exploited.

Workers, employed by a cleaning company or a household, can be protected by the use of minimum wage regulations. Wage regulations have in Norway traditionally been the domain of the social partners, and the governments have seldom intervened in this field. Some exceptions can be found, but even in those cases the link to the autonomy of the social partners is still strong. For instance, workers from new EU member states that had, due to the transitional regulations, to gain a work permit, had to have a wage that was in line with the wage level laid down in collective agreements. So, even if the conditions were set down by act of law, the actual wage level was laid down by the social partners.

Still, a system where the applicable minimum wage only can be found in collective agreements is not very transparent for immigrant workers who may not be familiar with Norwegian collective agreements. For workers who during the transitional periods applied for work permit, the applicable wage level was determined by the immigration authorities. Where a work permit is not needed, such guidance will not be obtained. Furthermore, domestic workers are often operating in an undeclared labour market, where there is no contact with public authorities. One may ask if a statutory minimum wage will have any effect in this area. In our opinion a clearly defined minimum wage, that might be settled by negotiations between the social partners, but are easy accessible, could have an effect. As the results from the Polonia study showed, there seems to have been a widespread misunderstanding among the Polish domestic workers that such a minimum wage already exists. If this actually had been the case, the authorities would have had a possibility to peg this wage, and not leaving this to be determined by the undeclared

²⁸ Lutz, H (2008), When Home Becomes a Workplace; Domestic work as an ordinary Job in Germany? In: Lutz, H. (ed.), Migration and Domestic Work. Hampshire: Ashgate

part of the domestic labour industry. A statutory minimum wage for the industry can be said to be even more important now as the transitional period has ended, and there exists no mandatory regulations as regards wages in this field.

Regulating this field by the use of collective agreements seems difficult. Even in countries with long traditions on this field struggle to fit these kinds of workers into the system. This is especially so with those employed directly by the household, but even with those employed in companies providing domestic services. The situation seems to be very much the same as regards erga omnes measures. Such measures are based on the existence of collective agreements in the sector. Where no such exists, there are no provisions to be extended. A national minimum wage seem however somehow of being more helpful, at least when it is well-established. However, implementing a national minimum wage will affect the labour market as such and not only the domestic services industry. So this might be described as cracking nuts with a sledgehammer, and it is unlike that such a measure will be introduced in Norway in the near future.

According to the Polonia survey, the vast majority of domestic workers were self-employed. A statutory minimum wage for this industry would therefore have little effect for these women. Self-employed are subject to the principle of unrestricted price-fixing. However, even if these women are self-employed there seems to be need for some protective legislation. They are dependent on their contractor; their employers are often resourceful people that are in a position that can be compared to an employer, they have term of notice unless this is laid down by the contract, and their wages are fixed solely by the market.

One may argue that a statutory minimum wage for employees may have a spill over effect to self-employed. In our opinion, one has to look at other measures as well. One may implement a minimum price legislation that covers this group of domestic workers. Such regulations are not common in Norway, but there already exists legal basis for introducing a measure like this. In accordance to the Norwegian *Pristiltaksloven*²⁹ the Office of fair trade (Konkurransetilsynet) may decide to fix minimum prices where it is necessary to promote a social responsible movement of prices. In other words, the competition authorities may decide that domestic services are subject to a certain minimum price. In this way one may ensure that the competition between the self-employed does not end up as a low wage competition. To avoid unfair competition such regulation would have to apply to all companies conducting domestic services, it being large companies with hundreds of employees or a one-woman-business. A possible downside effect can however be that more companies are moving to the undeclared part of the industry, just to avoid such a regulation. The question of enforcement would therefore be an important one. And a fixed minimum price would make it easier to supervise this industry – today controlling the conditions would be meaningless as there are no conditions to control.

To summarize; the ILO's diagnosis³⁰ of domestic workers being in a particular vulnerable situation due to their unclear status under modern labour legislation and the exclusion of

²⁹ Act of 11 June 1993 no. 66 Law on price measures (Lov om pristiltak), § 1.

³⁰ ILO (2010), op.cit.

domestic workers from formal regulations and their enforcement unfortunately seems to be fully valid also for today's domestic workers in Norway.