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Paid Domestic Work in Iceland
– from informal to formal

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Summary

The demand for domestic work has increased in Europe since the 1990's due to decreasing welfare services, increasing demands for performance in the labour market and financial ability to pay for domestic work. In addition, the free flow of labour within the European Union and the EEA-area meets these demands when labour force from the poorer areas become available for households in countries with better economies. No research is available in Iceland on the extent of paid domestic work or the situation of domestic workers but there are strong indications that the trend is similar to the European trend.

This thesis sets out to research the legislative position of domestic workers in Iceland with special attention to the concerns raised by the International Labour Organization. These concerns regards the areas of vulnerability due to the special conditions for domestic workers, where the workplace is a private household and the worker is isolated from others in same position. The market is to a great extent informal which makes the situation of domestic workers even more challenging and the need for change alarming. The legal position of informal domestic workers is compared to the situation of formal domestic workers and models for converting an informal market to a formal market are introduced.

The Icelandic legislation regarding domestic workers is found to be outdated and an offspring of long gone society. However, formal domestic workers are protected both by fundamental rights and labour legislation with some exceptions regarding working hours and working environment. Fundamental rights are applicable to informal domestic workers but they are in a difficult situation for claiming those rights. The interest in turning an informal market to a formal market is great and the experience from Sweden is applicable to Iceland. In addition there are some existing models in the Icelandic labour market and tax legislation that can be proven useful. In changing the legislation, special attention must be shown to groups such as teenagers, au pairs and migrant workers as well as the culture in Iceland of youngsters participation in the labour market.

Sammanfattning

Efterfrågan efter hushållsarbete har ökat i Europa sedan 1990-talet på grund av minskande välfärdstjänster, ökade krav på prestation på arbetsmarknaden och bättre ekonomiska förutsättningar att betala för hushållsarbete. Dessutom uppfyller det fria flödet av arbetskraft inom EU och EES-området efterfrågan eftersom arbetskraft från fattigare områden blir tillgänglig för hushållen i länder med bättre ekonomi. Ingen forskning finns på Island angående omfattningen av betalt hushållsarbete eller situationen för de anställda, men det finns starka indikationer på att trenden är den samma som i övriga Europa.

Uppsatsen syftar till att undersöka den rättsliga situationen som hembiträden på Island befinner sig i med särskild uppmärksamhet på de problem som ILO har lyft. Dessa problem gäller utsatthet på grund av de speciella villkoren för hushållsarbetare när arbetsplatsen är ett privat hushåll och arbetstagaren är isolerad från andra i samma situation. Marknaden är till stor del informell, vilket gör hushållsarbetare ännu mer utsatta och behovet av förändring akut. I texten är det rättsliga läget för informella hushållsarbetare jämfört med formella arbetare och modeller för att omvandla en informell marknad till en formell marknad är presenterade.

Den isländska arbetsmarknadslagstiftningen över hushållsarbete visar sig vara omodern och en avkomma av en tid som gått. Formella hushållsarbetstagare skyddas dock av både grundläggande rättigheter och arbetsrätt, med vissa undantag när det gäller arbetstider och arbetsmiljö. Grundläggande rättigheter gäller för informella hushållsarbetare, men de befinner sig i en svår situation för att begära dessa rättigheter. Intresset för att vända en informell marknad till en formell marknad är stort och erfarenhet från Sverige är tillämplig på Island. Dessutom finns en del modeller på den isländska arbetsmarknaden som kan visas användbara. I förändringsprocessen bör särskild uppmärksamhet visas för grupper som tonåringar, au pair och migrerande arbetstagare. Även bör ta hänsyn till den starka kulturen på Island angående ungdomars deltagande på arbetsmarknaden.

Samantekt

Eftirspurn eftir starfsfólki í heimilisstörf hefur jafnt og þétt aukist í Evrópu frá tíunda áratug síðustu aldar og er það rakið til skertrar velferðarþjónustu, aukinna krafa á vinnumarkaði og meiri fjárhagslegrar getu til að greiða fyrir slíka vinnu. Framboðið hefur að sama skapi aukist vegna hins frjálsa flæðis vinnuafis innan Evrópusambandsins og EES-svæðisins þar sem fólk frá fátækari svæðum býður fram starfskrafta sína til heimila í ríkari löndum. Engar rannsóknir eru til á Íslandi um umfang þessarar starfsemi en sterkar vísbendingar eru um svipaða þróun á Íslandi og í Evrópu.

Ritgerðinni er ætlað að kynna lagalega stöðu fólks í heimilisstörfum á Íslandi en útgangspunkturinn eru þær áhyggjur sem Alþjóðavinnuárástofnunin hefur lýst vegna þessara starfa. Þær varðar þau skilyrði sem hljóta af sérstökum vinnuskilyrðum þeirra sem starfa innan einkaheimila annarra þar sem starfsmaðurinn er einangraður frá öðrum í svipuðum sporum. Markaðurinn er að stóru leyti óformlegur sem gerir starfsfólk á heimilum jafnvel berskjaldaðra og réttarbætur knýjandi. Borin er saman lagaleg staða þeirra sem vinna á hinum óformlega markaði heimilisstarfa og hinum formlega auk þess sem hugsanlegar breytingar eru kynntar til sögunnar.

Íslensk löggjöf um starfsfólk á heimilum er afsprengi hins gamla bændasamfélags og bergmál úreltra sjónarmiða. Starsfólk á hinum formlega vinnumarkaði er hins vegar verndað af grundvallarmannréttindum auk vinnulöggjafarinnar með nokkrum undantekningum þó sem varða vinnutíma og aðbúnað. Starfsfólk á hinum óformlega vinnumarkaði nýtur einnig verndar gegnum mannréttindasáttmála en geta traúðla sótt þessi réttindi. Það eru ríki hagsmunir til að breyta óformlegum vinnumarkaði í formlegan og reynslan frá Svíþjóð getur nýst vel í því tilliti. Að auki eru til fyrirmyndir á innlendum vinnumarkaði og í skattalöggjöfnni sem hægt væri að nýta. Í slíku ferli ber að gæta sérstaklega að hópum eins og unglingum, fólki í vistráðningum (au pair) og innflytjendum. Þá ber að hafa í huga að á Íslandi er atvinnuþátttaka ungmenna rótgróinn hluti menningarinnar sem getur af sér óformleg störf innan heimila.

Preface

I thank all the people that have shown interest in this research and were willing to discuss and mediate knowledge and practical information. In the process I've contacted numerous public officers, institutions and organizations and have been met everywhere with interest and willingness to assist. Some of these people are cited in the thesis but many others deserve gratitude.

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Abbreviations

ASÍ	Alþýðusamband Íslands – Icelandic Confederation of Labour
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
EC	European Council
ECHR	European Convention on Human Rights
EEC	European Economic Community
EEA	European Economic Area
EFTA	European Free Trade Association
EMU	European Monetary Union
EU	European Union
FRA	European Union Agency for Fundamental Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Labour Conference
ILO	International Labour Organization
OECD	Organisation for Economic Co-operation and Development
ROT	Reparation och underhåll, ombyggnad, tillbyggnad
RUT	Rengöring, Underhåll, Tvätt
SA	Samtök Atvinnulífsins – Confederation of Icelandic Employers
SCB	Statistiska Centralbyrån – Statistics Sweden
SGS	Starfsgreinasambandið – Federation of General and Special Workers in Iceland
UN	United Nations

1. Introduction

The inspiration for this thesis comes from reading Swedish literature about women throughout the 20th century who managed to coordinate work with the duties at home by outsourcing domestic work. Some of these women, for example Alva Myrdal and Barbro Alving became influential in public debate and put the issues of domestic work on the agenda. It is interesting that seventy years ago there were ideas about public involvement in domestic work for the purpose of unburdening women and make them able to participate in the labour market. These ideas required that domestic work would be defined as any other work with the same rights and obligations, executed for the benefit of working class homes. The ideas were based on an interaction between labour market and domestic work and the demand for state participation in creating a new balance. This demanded a rethinking of the employment relationship and what should be regarded as real work with the legal protection it provides. When Alva Myrdal wrote in 1944 "Marriage is a very personal form of labour contract"¹ she shed a light on the domestic work women executed without remuneration and sowed the idea that such work could be considered real and integrated into the labour market.

Needless to say the ideas of making domestic work formal never became common practice except for care taking through kindergartens and other institutions and still today the strive for balance between work and home is the issue of research and political debate. In the search for this balance an informal market of domestic work has developed and international organizations as well as states are paying attention to a reality of a growing class of domestic workers that are overworked, underpaid and underprotected. Workers that find themselves in a grey area between the labour market and the home, between the public area and the private area. Looking back there is a lost opportunity to include domestic work into the labour market or at least develop a functioning balance between the two. This provides a situation where domestic work is not valued as real and domestic workers do not enjoy the legal protection of other workers. This thesis provides an analysis of this market in Iceland. The market is to a great extent informal and explores the options of state participation through legislative measures. What legislative tools are available to transform the market of paid domestic work from being in the grey area of informal work to become real work?

¹ Myrdal. A., 1944, *Folk och Familj*, Stockholm, p. 451.

1.1. Development of paid domestic work

To explore why domestic labour finds itself in this grey area between home and work a historical view of domestic work development in context with labour market is needed. With the industrialization of the western world beginning in the middle of the 19th century, dynamics and the division between work and home changed dramatically. While women continued for the most part their domestic work, men's workplace became separate from the home. The "labour market" was born, with men of the working class selling their labour and the industry buying it for production. Hilary Land, the British social scientist, claims that women occupied at home were at first counted among the economically active in Britain, and domestic work was seen as an important contribution to the industrial society. With the labour market increasingly developing, it became problematic to define concept as *work*, *employment* and *occupation* in the household and at the same time men used the breadwinner argument in the struggle for higher wages, namely the necessity to earn a living to provide for a wife and children. The idle wife became a status symbol for a growing middle class, i.e. the wife that did not have to participate in the official paid labour market for economical reasons.² Even if women's labour was for the most part unofficial and unpaid within homes there was also a functioning formal and informal paid domestic labour market in the dawn of industrial societies.

Prior to strong trade unions and comprehensive legislation regarding rights and obligations on the labour market, the division between formal and informal domestic work was not always clear. In the rural areas of the agricultural society of Iceland at the first half of the 20th century the class of servants, both male and female, was large and regulated by the Servants Act from 1928.³ Servants did not however organize into unions and revenues could be different between areas.⁴ With the development of urban areas a class of informal domestic workers developed as women cooked and cleaned for single men living in the city without family, in exchange for money.⁵ This class expanded drastically with the occupation of first the British army and later the army of the United states in World War II when Icelandic women executed well paid work doing laundry for the soldiers. An informal market for domestic work was the follower of urbanization and created opportunities for women to earn their wages as well as running their own household; raise children,

2 Land, H., 1980, Family Wage, Feminist Review No. 6, p. 55–77.

3 The Servants Act No. 22/1928.

4 *Ibid.*, According to the Servants Act, remuneration shall be decided according to tradition in respective region. Article 8.

5 Testimony of this work can be found in several biographies about this period. See for example writing of and about Þórbergur Þórðarson, Halldór Laxness and other poets.

take care of the elderly and disabled, clean and cook.

In Iceland, as well as in the other Nordic countries, women increased their participation in the official labour market in the second half of the 20th century. In Sweden, this development raised the issue of a formal market for domestic work as it created what has been called the “reproduction crisis” when women’s workforce were needed in the labour market, children were no longer considered the insurance for the older years and people had means for birth control. Declining reproduction was a social problem and the question arose how women could be encouraged to reproduce and at the same time participate in the labour market when needed? Alva Myrdal, the Swedish sociologist and politician, addressed this particular issue and presented solutions in form of child care centers and contract services for cleaning and cooking in the households of the welfare state.⁶ She introduced ideas of stimulating a formal labour market for domestic work as a solution to the reproduction crisis. Myrdal even designed an apartment building for professional women, with a restaurant at the first floor and apartments for domestic workers at each floor.⁷ The issue of domestic work was thus highly relevant in forming the Nordic welfare state. The actual development was building kindergarten and nursing homes for the elderly, unburdening care taking from the households and hence providing minimum assistance so that women’s work force could be available to the labour market. However, the development of state participations was far from being in line with the ideas of Myrdal and households were left in the situation of juggling the double shift of working outside the home and taking care of domestic work.

The Icelandic society developed in the same direction as other Nordic societies regarding increasing participation of women in the official labour market. Simultaneously the welfare developed with care taking institutions for children and the elderly. The reproduction crisis does not seem to have been a problem however and still today, Icelandic women have the highest employment rate of women in the Nordic countries with 77% of the female population at the age of 15-64 working in 2010.⁸ Meanwhile the fertility rate is also highest in Iceland among the Nordic countries according to OECD statistics from 2008 with 2,22 children born on average per woman during her childbearing period. The other Nordic countries have a fertility rate below the critical point of 2

6 Myrdal, A., 1944, *Folk och familj*, Stockholm.

7 Hirdman, Y., 2007, *Det tänkande hjärtat*, boken om Alva Myrdal, Stockholm.

8 OECD statistics database, Employment and labour markets, Employment rate of women - % of female population (15-64). According to these statistics the employment rate of women in Denmark is 71,1%, Finland 66,9%, Norway 73,3% and Sweden 70,3%. <http://www.oecd-ilibrary.org/employment/employment-rate-of-women_20752342-table5> visited 10 March 2012.

children per woman.⁹ In other words, Icelandic women have continued to reproduce whilst participating to a high degree in the labour market. This may be the reason why the question of stimulating a formal domestic work market has never been relevant in public debate in Iceland as it has been in Sweden. There was never a societal crisis situation regarding reproduction as a result of women's participation in the labour market.

1.3. Seeking the balance through paid domestic work

Although Iceland never faced a reproduction crisis, the issue of coordination between home and work is of course relevant and Icelandic homes have found the balance through outsourcing domestic tasks to some extent. Still today, the issue of domestic chores affects the lives of women to a much greater extent than men.

When asked in 2011, Icelandic women estimated that they carried out a little less than 70% of the domestic chores while men estimated their ratio to a third.¹⁰ Total work effort both inside and outside the home is estimated to 49,4 hours for women and 55,8 hours for men.¹¹ These statistics however do not include caretaking of children as it is hard to distinguish between work and pleasure in tasks that are related to care taking and upbringing of children. When an attempt is made to evaluate all paid and unpaid work including taking care of children, it becomes clear that mothers are the single hardest working group in the country whether they have a spouse or not, with work effort up to 90 hours per week. Fathers who are fully employed outside the home work about 80 hours a week when paid work, domestic work and attending to children is accounted for.¹²

It is clear that unpaid domestic work is carried out by women in higher degree than men in Iceland and to compensate, women work fewer hours outside the home. The pattern seems to be similar in Sweden and as comparative statistics reveal, in 2002 Swedish men spent 7,7 hours a week in domestic work (compared to Icelandic men in 2005 with 7,37 hours) and Swedish women spent 14,3 hours a week in domestic work (compared to 14,32 hours for Icelandic women in 2005).¹³ These statistics do not include taking care of children. When all is included women are primarily responsible for domestic duties and childcare and work fewer hours in the public, paid labour

9 OECD statistics database, Total Fertility Rate. According to these statistics from 2008 the fertility rate of Finland is 1,86, Denmark 1,84, Sweden 1,94 and Norway 1,98.

<http://www.oecd.org/document/0,3746,en_2649_201185_46462759_1_1_1_1,00.html> visited 10 March 2012.

10 Stefánsson, K. & Þórsdóttir, Þ. K., 2012, *Vinna og heimili fyrir og eftir bankahrun*, p. 34-35, (unpublished).

11 *Ibid.*, p. 37.

12 *Ibid.*, p. 38.

13 *Ibid.*, p. 38 and International Social Survey Programme 2002 <<http://zacat.gesis.org/webview/index.jsp?object=http://zacat.gesis.org/obj/fStudy/ZA3880%20>> visited 11 March 2012.

market than men. Icelandic women however work more outside the home than their sisters in the other Nordic countries and have more children.

Women in Iceland, as well as in other western countries pay a great price for higher involvement in domestic responsibilities. The gender pay gap is still a fact, advancement in work is harder for women and gender is a dominant factor in distributing power. From gender perspective the issue of domestic work is of great relevance and one of the keys for equality. The issue can be tackled in two ways; with higher participation of men within the household and/or by increased outsourcing of domestic chores. It is impossible and in a democratic grey area for a society to pass regulations about the division of unpaid domestic work within families. However, the possibilities of outsourcing domestic chores is a relevant political tool in pursuing gender equality.

1.4. International focus on domestic work

It is hard to assess the extent of domestic work world wide due to invisibility, lack of statistics and different definitions of domestic work around the world. A common belief is however that it has increased in the past 30 years. The forecast presented by ILO in 1970, that domestic work was declining, turned out to be incorrect due to several factors such as globalization of work force, massive incorporation of women in the labour force, the aging of societies, the intensification of work and the lack of ability to reconcile family life and work.¹⁴ The acknowledgment of domestic work as a factor of the labour market has thus inclined.

In 2002 the International Labour Organization (ILO) reviewed the legal perspective of domestic work in the publication series *Conditions of Work and Employment* and researched legislation about domestic work in 60 countries. Iceland is not one of these countries. The conclusion was that, although conditions vary from country to country, domestic workers are often excluded from national labour laws and when they are covered by legislation, they often have worse conditions of work and lower legal protection than other categories of workers.¹⁵ Part of the research on the legislative perspective on domestic work was to identify relevant ILO labour standards. Even though 30 up to date conventions were at the time relevant to domestic work, the conclusion was that specific national and international regulatory instrument were necessary due to the specific characteristics of domestic work; invisibility and vulnerability to unfair dealing and exploitation.¹⁶

¹⁴ ILO, 2010, International Labour Conference, 99th Session, 2010, Report IV(1), Decent work for domestic workers.

¹⁵ ILO, 2003, Conditions of Work and Employment Series No. 7 Domestic work, conditions of work and employment: A legal perspective, p. 69.

¹⁶ *Ibid.*, p 71.

In 2011 the International Labour Organization adopted the Convention Concerning Decent Work for Domestic Workers.¹⁷ The aim of the convention is to promote the rights of domestic workers and to make decent work a reality for domestic workers worldwide.¹⁸ Members are expected to take measures to ensure that the rights of domestic workers are consistent with national laws and regulations for workers generally. Specially noted are labour rights such as freedom of association and the right to collective bargaining, minimum age standards, fair terms of employment and decent working conditions, the right to information and written contracts, safety and health, social security protection and maternity leave, access to dispute resolution mechanisms, complaint mechanisms and labour inspection. In addition to this, the convention acknowledges the special conditions in which domestic workers find themselves by addressing specially the right to effective protection against all forms of abuse, harassment and violence, the right of migrant workers, the right to privacy and the importance of regulating recruitment agencies and processes.¹⁹

1.5. Questions at issue

The aim of this research is to give a labour law perspective on domestic work in Iceland. The country is a member of the International Labour Organization (ILO) that has increasingly shed the light on the situation of domestic workers and the lack of regulations concerning paid work executed within the sphere of the home. The ILO convention on domestic work adopted in 2011 obligates member states to take appropriate measures to ensure the effective promotion and protection of the human rights of all domestic workers, ensuring them minimum labour standards as other workers enjoy.²⁰

Limited measures have been taken in Iceland to research the magnitude or situation of domestic work even though it undisputedly exists. The backbone of legislation on domestic work, the Servants Act, has not been changed in content from 1928 and mirrors a long gone reality of agricultural society.²¹ In that aspect, Iceland is at the starting point of legislative measures for domestic work in modern society. That being said, domestic work is of course not in a legal vacuum. In Iceland as well as in other countries, other laws affects domestic work and to some

17 ILO, C189 Domestic Workers Convention, year 2011.

18 ILO, 2011, Resolutions adopted by the International Labour Conference at its 100th Session, Resolution concerning efforts to make decent work a reality for domestic workers worldwide, Geneva.
<http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_162049.pdf> visited 3 March 2012.

19 ILO, C189 Domestic Workers Convention, year 2011.

20 *Ibid.*

21 The Servant Act No. 22/1928. A few changes have been made on the Act where single articles have been incorporated into other Acts but no comprehensive revision has taken place.

extent manipulates the division between domestic work in the formal labour market, the informal labour market and unpaid work executed within homes.

The purpose of the thesis is to increase knowledge about the Icelandic legal framework relevant to paid domestic work. Due to lack of other research on paid domestic work in Iceland some attention will be directed at possible manifestation and how the culture of work can affect paid domestic work. The emphasis however will be on the legal protection of those who carry out domestic work in Iceland and the different situation of formal and informal workers. Finally ideas about possible incentives for formalizing the domestic work market are introduced, including mediating experience from Sweden.

The research questions are as follows: What legal protection is offered to employees in the formal market compared to the informal market of domestic work? What legislative measures can be used to develop the domestic labour market in Iceland from informal to formal?

1.6. Methodology

As Iceland is a country with small population it has limited means to do research prior to legislation and frequently uses the research and experience of other Nordic countries as they have similar social structure and the same legal heritage.²² In fact Iceland has to a great scale adopted legislation from the Nordic countries and that includes the legal framework of the labour market from 1938.²³ In the following text the research, experience and legislation aimed at domestic work in Sweden is used as comparison. The reason for special attention aimed at Sweden is twofold. First, this thesis is written in Sweden and that provides access to relevant research conducted in Sweden about domestic work. Secondly, Sweden has gone through the process of stimulating the market for domestic work to move from informal to formal by adopting a tax deduction reform for domestic work, known as the RUT-deduction.²⁴

To present the legal protection in Iceland for domestic workers an overview is provided of international commitments as well as state laws regarding the labour market as a whole, followed by specific legislation regarding domestic workers acting in the formal respectively the informal sphere of the labour market. As paid domestic work is to a great extent informal in Iceland the main focus will be on the legal protection of informal domestic workers, their health and safety, rights in

22 Iceland was a colony of Denmark until it gained independence in 1944.

23 Backman, A., Eydal, G., 1978, Vinnuréttur, Reykjavík.

24 RUT is short for Rengöring, Underhåll och Tvätt, in english translation: Cleaning, Maintenance and Laundry.

connection with injury, sickness and maternity, protection against discrimination and the situation of migrants. Namely the areas of vulnerability for domestic workers that have been the subject of concerns within the ILO. The basis for this analysis of legal protection are international commitments made by the Icelandic government, especially the European Convention of Human Rights, Icelandic laws and other regulations. Few court cases have a direct reference to domestic work but some relevant cases from the European Court of Human Rights (ECHR) as well as the Icelandic Supreme Court are used in the analysis. The Icelandic labour court has the function of ruling in disputes regarding work agreements but no cases relevant to domestic work have been received for adjudication the past ten years.

The gain and opportunities of turning an informal market of domestic work into a formal market is based on the results of the Swedish legislation, as well as past ideas of finding a balance between home and work and present legislation that can be adjusted to stimulate the market to develop into formal.

1.7. Delimitations

The scope of the thesis is limited to the situation of domestic workers as employees, both formal and in the situation of an informal employment contract. Self-employed workers are relevant actors in the market and are addressed in the discussion chapter but as there is neither a formal nor informal employment contract they are not included in the analysis. A second relevant group not included is the numerous workers within the social service executing domestic work for the sick and the elderly. Their position is mentioned in context with other domestic workers where relevant and as a model for a possible future development. However, as their work is of social nature and not on the free market of paid domestic work they are not included or addressed as a group. Needless to say, this thesis has great relevance to these groups, especially the coverage regarding fundamental rights and situations of special vulnerability regarding domestic workers.

The concept of domestic work can cover many tasks but in this thesis the definition of domestic work includes tasks that are outsourced but executed within the walls of the home. Care taking in institutions, restaurant visits and dry cleaning services are for example not included whereas cooking and cleaning within the home is of relevance.

1.8. Structure of the thesis

Due to the lack of previous research on domestic work in Iceland and its interplay with the labour market it is necessary to provide an insight into labour market structure and characteristics which can affect incentives to create a formal domestic work market. Chapter two provides that insight with focus on distinction in labour market culture between Iceland and Sweden. Chapter three gives a overlook over the international obligations and agreements regarding labour rights which the Icelandic state is a part of. Fundamental rights that are relevant to the situation of domestic workers are identified and explained in chapter 4. The legal protection in the formal and informal market of domestic work in Iceland is presented in chapter five with special focus on the exceptions from general labour market legislation for formal domestic workers and how the informal domestic workers are protected in their work. The interests of different actors in the labour market of turning informal work into formal is discussed in chapter six and possible models are presented with special focus on the Swedish way of tax deduction. In the discussion chapter the exceptions provided for domestic workers in legislation is addressed and the perspective of different groups of vulnerability is provided. A more free discussion is then provided about the tool kit for domestic workers right as well as the gender factor which cannot be overlooked when addressing domestic work.

2. Characteristics of the Icelandic labour market

The basis of the Icelandic labour legislation from 1938 known as the Act on Trade Unions and Industrial Disputes, is inspired by legislation and labour market agreements from Scandinavia, especially from Denmark and Norway.²⁵ The legislation as amended in 2001 covers the right of trade unions and their position towards employers, strikes and lockouts, conciliation in industrial disputes as well as the labour court.²⁶ The adoption of legislation from Scandinavian countries is a repeated theme in legislation of the Icelandic labour market as well as in other areas of legislation and the model for industrial relations is similar with some exceptions. One of the main differences between the Swedish and the Icelandic model is the role of the state in labour market negotiations. While Swedish labour market can be described as a two part relationship between the unions of employers and employees, the Icelandic market is closer to a three part relationship with variable degree of state involvement in collective agreements. Another contrariness is the degree of centralization within unions. For example, in Sweden the boards of the unions decide the outcome of agreements and when to use strikes in disputes. In the Icelandic legislation, the unions are obliged to organize votes among their members prior to strikes and after a collective agreement has been proposed to the members. It is therefore the majority of members who decide the outcome in each case and not the boards of the unions.

The trade union density in Iceland was around 80% in the year 2008, when statistics were last published. The union participation had then declined by about 10% from the year 2002 when it was 92,5%, making it the highest amongst the OECD-countries with published statistics.²⁷

Besides some fundamental differences in methodology, the minimum labour standards are similar between the countries although the culture of work and some labour market indicators varies. This cultural aspect and attitude towards work is bound to influence the situation of paid domestic work, the extent of it and motivation to turn an informal market into formal.

2.1. Attitude towards work

The Icelandic verb *vinna* can mean both to work and to win something. The positive meaning can be related to and viewed as a positive attitude by the nation towards labour resulting among the

25 Backman, A., Eydal, G., 1978, Vinnuréttur, Reykjavík, p. 15.

26 Act on Trade Unions and Industrial Disputes No. 80/1938.

27 OECD statistics database, Trade Union Density <http://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN> visited 10 March 2012. Trade union density in the Nordic countries in 2008 were as follows: Denmark: 67,6%, Finland: 67,5%, Norway: 53,3% and Sweden: 68,3%.

highest labour force participation rate amongst the OECD-countries with 89% in the year 2010.²⁸ This means that 89% of the working-age population in Iceland is available to the labour market and hence economically active. An important note is women's participation in the labour market as 85,5% of women in Iceland at working-age are available to the labour market compared to 92,5% of the men, according to OECD statistics, ranking them on top of the Nordic countries for both sexes and amongst the highest labour market participation in the world.²⁹ Low employment rates have also encouraged young people to work much, both in the summer time and in addition to attending school. In 2004, about 60% of students in secondary schools³⁰ were participants in the labour market and about a fourth of the students worked over 10 hours a week.³¹ One manifestation of the nation's positive attitude towards work and culture of work amongst young people is the Workingschool which municipalities in Iceland run during summer time and offers teenagers at the age of 13-16 at least three weeks of work, attending gardening and other maintenance of public areas.³² This work is specially excluded from the requirements of the main contract between labour unions and The Association of Local Authorities in Iceland as the pay is lower than collective agreements states.³³ The object of the Workingschools has been the same since their start in Reykjavik municipality in 1950; to ensure that youngsters have work during their summer vacation.³⁴ Another manifestation of the widespread participation of teenagers in working life is the regular seminars held by the Red cross in Iceland for children from the age of 12, working as babysitters. About 500 children, mostly girls, attend these seminars annually. In comparison with annual birth rate in Iceland, this is a considerable proportion of youngsters.³⁵ It is safe to conclude that most of these girls become a part of the informal labour market of paid domestic work in short periods. The special characteristics of the Icelandic labour market can hence be described by its high participation of both sexes, the positive attitude towards work, traditionally low unemployment rates³⁶ and the participation of children and teenagers in both formal and informal work.

28 OECD statistics database, Labour Force Participation <http://stats.oecd.org/Index.aspx?DatasetCode=LFS_SEXAGE_I_R> visited 10 March 2012. Denmark: 81,1%, Finland: 75,7%, Norway: 80,4% and Sweden: 81,3%.

29 OECD statistics database, LFS by sex and age – indicators <http://stats.oecd.org/Index.aspx?DatasetCode=LFS_D> visited 11 March 2012. Denmark: 77,1% women and 85% men, Finland: 73,2% women and 78,1% men, Norway: 77,3% women and 83,3% men and Sweden: 77,9% women and 84,6% men.

30 Secondary schools in Iceland are traditionally for young people at the age of 16 to 20.

31 Ólafsson, H. Í., Þorgeirsdóttir, B., Gíslason, G., 2006, Vinna framhaldsskólanema með námi, unpublished.

32 Regulation on the Work of Children and Teenagers No. 426/1999.

33 Article 1.4.4., Collective agreement between The Association of Local Authorities in Iceland and the Federation of General and Special Workers in Iceland, Validation 1 May 2011 to 30 June 2014.

34 The Website of Reykjavik Workingschools: Saga Vinnuskóla Reykjavíkur: <<http://www.vinnuskoli.is/?s=6&siduID=79&men=7>> visited 3 March 2012.

35 The Website of the Icelandic Red Cross <http://www.redcross.is/page/rki_frettir&detail=1027012> visited 3 March 2012. To give a view of present generation attending these seminars: Annual birth rate in 1999 was 4.100, in 2000 it was 4.315 and in 2001 it was 4.091, Statistics Iceland.

36 Statistics Iceland, 2011, Vinnumarkaður 2011, Reykjavik. Unemployment rates went from 1,6% of the working

2.2. Paid domestic work in Iceland

The situation of domestic workers varies gravely dependent on different types of relation with the employer. Three types of domestic work situations can be described: Live-in domestic workers, Live-out domestic workers with a stable employer and Live-out domestic workers with many employers.

A third group worth mentioning is the social service assistants that are employed by the state or municipalities. According to the Municipalities social service act in Iceland, municipalities have an obligation to provide social service within homes for their citizens if they are unable to take care of themselves and/or their home due to reasons of diminished competence, family situations, strain, sickness, childbirth or disability.³⁷ The objective is that people shall be made able to stay in their home for as long as possible and be active in daily life.³⁸ This is a substantial part of individual services that Municipalities provide but falls outside the scope of domestic work at issue in this thesis. However it is necessary to mention this service as it is an example of the community servicing individuals by providing domestic help in their home. This could prove to be a useful model in developing domestic work into real work.

In live-in situations factors such as communication outside of work, on-call work and privacy becomes highly relevant. The employee is not merely dependent on the employer for money in exchange for work but for fundamental life quality such as housing, access to hygiene and sometimes food as well. The power balance in such employment relationships can easily become very unequal between the actors resulting in isolation and vulnerability of the domestic worker. These types of employment relationships are more common in countries with poor welfare systems where families are dependent on domestic workers in order to pursue a professional life outside the home. The European Union Agency for Fundamental Rights (FRA) has stressed great concerns over the situation of live-in domestic workers, especially migrant workers without permits.³⁹ Live-in domestic workers are not common in Iceland but can be found as au pairs, which are a form of live-in domestic workers and as domestic workers in agriculture. There are however no signs of migrant live-in domestic workers without permits in Iceland, as the FRA is concerned about but of course their existence cannot be ruled out.

force in 2008 up to 8% in 2009 due to the financial crisis. In 2011 the unemployment rate was 7,1%.

37 Article 25, the Municipalities' Social Services Act No. 1991/40.

38 *Ibid.*, Article 1.c.

39 European Union Agency for Fundamental Rights (FRA), 2011, Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States, Luxembourg.

In the trade directory listed at the Commissioner of the Inland Revenue of Iceland, no firm or legal entity are registered in the category “Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use” except for one person running a private daycare center for children.⁴⁰ However, 58 individuals are registered as working within the category “Social work activities without accommodation for the elderly and disabled” but as the name indicates it is a business of care taking rather than domestic work such as cleaning and cooking.⁴¹ Public information on single-contractors acting as domestic workers on the labour market is scarce but it can not be ruled out that domestic workers are registered in other unrelated groups of classification. This is though hardly in any significant scale.

In the category “Services to buildings and landscape activities” within the Icelandic trade directory 77 firms are listed. Those firms include gardening, exterminators and industrial cleaning firms as well as domestic services. After reviewing the list it can be confirmed that 36 companies of the 77 do not provide domestic help. However, the information about another 32 companies is unclear as to whether they provide domestic help. In only 9 cases it is apparent that the companies in question do provide domestic help amongst other services such as cleaning in firms. These informations are gathered from the websites of the companies in question.⁴² No company was found that specializes entirely in domestic work. None of the companies that provide or possibly provide domestic services have registered the total number of staff at the Icelandic trade directory and through tracking websites or lack of them it is apparent that formal domestic work as an industry in Iceland is remote.

According to information from the office of Commissioner of the Inland Revenue, no systematic work has been executed to estimate the magnitude of labour within households, formal or informal, nor have systematic efforts been made to abolish informal domestic work within households beyond conventional surveillance.⁴³ However, an informal market of domestic work in Icelandic households undisputedly exists and the mediation between buyers and sellers in this market can be found on for example internet forums.⁴⁴ Leading up to the RUT-deduction legislation in Sweden, there was an estimation of the magnitude of black labour within domestic work. In 2006, the Swedish Tax

40 The Icelandic trade directory, ISAT2008 is concurrent with the International Standard Industrial Classification of All Economic Activities, ISIC Rev.4. The codes reviewed are No. 97: Activities of households as employers of domestic personnel and No. 98: Undifferentiated goods- and services-producing activities of private households for own use. Information gained through email from Creditinfo received 22 February 2012.

41 Email from the Inland Revenue of Iceland received 15 March 2012.

42 The websites were visited in March 2012 for the purpose of this thesis.

43 *Supra* note 41.

44 Icelandic Internet Social Forum of Bland <www.bland.is> visited 10 March 2012.

agency estimated that 0,5% of the total work time in Sweden was informal labour within households.⁴⁵

The special characteristics of the Icelandic labour market in relations to high tolerance of informal youth work and high labour market participation make ground for assuming that informal work within Icelandic households could be at the least at the same level as in Sweden in 2006, before special measures were taken to change the informal domestic work market into formal.

⁴⁵ Proposition 2006/07:94 Tax Relief for Household Services etc., p. 24.

3. International obligations relevant to domestic work

Iceland is committed to several international organs and treaties which affect Icelandic regulation of working life and domestic work. These include the UN membership and of course the ILO membership, the Council of Europe, the EEA-agreement and Nordic cooperation. In addition the Schengen treaty should be mentioned as it affects the possibility of migrant workers to enter Iceland and the issue of migrant workers is highly relevant to the situation of domestic workers.

3.1. *International Labour Organization*

Iceland became a member of the United Nations in November 1946⁴⁶ and has confirmed human rights treaties which are applicable to working life on a broad basis. These treaties include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁴⁷

The International Labour Organization is a specialized agency within the United Nations and brings together representatives of governments, employers and workers in a tripartite cooperation to shape policies and programs promoting decent work for all.⁴⁸ Iceland has been a part of the International Labour Organization since 1945⁴⁹ and has ratified 22 ILO-conventions, including all of the eight Fundamental human rights Conventions and all four Priority Conventions.⁵⁰ The ratification process of ILO conventions in Iceland is subject to political interest and resources available at each time

46 The official website of the Ministry for Foreign Affairs in Iceland, <<http://www.utanrikisraduneyti.is/verkefni/althjoda-og-oryggissvid/island-og-sameinuduthjodirnar/island-un/>> visited 5 February 2012.

47 United Nations Treaty Collection, <<http://treaties.un.org/>> visited 5 February 2012.

48 ILO website, about the ILO <<http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>> visited 5 February 2012.

49 ILO website, Iceland country profile <http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ISL> visited 16 April 2012.

50 Fundamental human right conventions as declared by ILO are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (C087), Right to Organise and Collective Bargaining Convention, 1949 (C098), Forced Labour Convention, 1930 (C029), Abolition of Forced Labour Convention, 1957 (C105), Minimum Age Convention, 1973 (C138) Worst Forms of Child Labour Convention, 1999 (C182), Equal Remuneration Convention, 1951 (C100), Discrimination (Employment and Occupation) Convention, 1958 (C111). The International Labour Organization, 2002, International Labour Organization's Fundamental Conventions. Priority Conventions as declared by ILO are: Labour Inspection Convention, 1948 (C081), Employment Policy Convention, 164 (C122), Labour Inspection (Agriculture) Convention, 1969 (C129), Tripartite Consultation (International Labour Standards) Convention, 1976 (C144).

according to the chairman of the National Tripartite Committee⁵¹, Gylfi Kristinsson.⁵²

The committee has prioritized the conventions which ILO has declared as fundamental conventions and priority conventions. It is safe to say that Iceland is not one of the most progressive countries in ratifying conventions submitted by the International Labour Organization. This is not likely to change the forthcoming years according to Mr. Kristinsson as the focus in international relations is currently on the ongoing negotiating process with the EU.⁵³ After the historic financial crisis in Iceland in 2008 and the shift of regime in 2009, Iceland is in the process of restructuring the administration. At this point it is unclear where the responsibilities of international cooperation on the field of labour will be located.

The ILO Convention concerning decent work for domestic workers from 2011 is neither classified as a fundamental nor priority convention and is therefore unlikely to be ratified by the Icelandic state in the nearest future. The convention however provides international guidelines which are traditionally taken into account in Icelandic labour legislation. It is therefore likely to have an effect on possible amendments in legislation regarding domestic work in Iceland.

No country has yet ratified the convention⁵⁴ due to its recency but the conference delegates at the 100th annual ILO conference adopted it by a vote of 396 to 16, with 63 abstentions and the accompanying recommendation⁵⁵ by a vote of 434 to 8, with 42 abstentions.⁵⁶ One delegate from Iceland was present at the voting, the representative from the Icelandic Confederation of Labour (ASÍ) and voted in favor of the convention.⁵⁷

3.2. Council of Europe

The Council of Europe was established in 1949 with the aim of safeguarding and realizing the ideals and principles which are the common heritage of European countries, and facilitating their

51 National Tripartite Committee consists of one representative from the ministry of Welfare which holds the seat of chairman, one representative from the Confederation of Icelandic Employers (SA) respectively one from the Icelandic Confederation of Labour (ASÍ).

52 Interview with Gylfi Kristinsson, chairman of the National Tripartite Committee 7 February 2012.

53 The Icelandic Parliament Alþingi agreed to apply for EU membership 16 July 2009, Document No. 283, Legislative Session No. 137.

54 ILOLEX Status Report for Implementation of C189 <<http://www.ilo.org/ilolex/cgi-lex/ratfice.pl?C189>> visited 3 March 2012.

55 ILO, R201 Recommendation concerning decent work for domestic workers.

56 ILO Press release from 16 June 2011 <www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm> visited 3 March 2012.

57 *Supra* note 52.

economic and social progress.⁵⁸ Iceland joined the Council of Europe in 1950.⁵⁹ Within the Council, more than 200 treaties have been signed for the purpose of creating a common democratic and legal area throughout the European continent, ensuring respect for its fundamental values: human rights, democracy and the rule of law.⁶⁰

When the Council of Europe was established a common understanding of human rights through drafting a human rights charter was considered a high priority.⁶¹ In 1953 the Convention for the Protection of Human Rights and Fundamental Freedoms entered into force.⁶² Iceland ratified the convention in 1953 and fully implemented it into Icelandic laws in 1994.⁶³ The convention has a special status as a human rights instrument as it was followed by establishing a system of supervision over the implementation of the rights at the domestic level.⁶⁴ In 1959, the European Court of Human Rights was set up to rule on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. Since 1998 individuals can apply to the court directly. The convention sets forth a number of fundamental rights and freedoms including prohibition of slavery and forced labour, the right to liberty and security, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association and prohibition of discrimination.⁶⁵ Through these rights, the convention is of great importance for working conditions and hence domestic workers.

While the European Convention on Human Rights guarantees civil and political human rights the European Social Charter guarantees social and economic human rights including the right to work, the right to fair remuneration, rest periods, holidays, limited working hours and the right to a safe and healthy workplace. It was adopted in 1961 and revised in 1996.⁶⁶ Iceland ratified the charter in 1976 but has not yet ratified the revised edition of 1996.⁶⁷

58 Article 1.a. Statute of the Council of Europe CETS No. 001.

59 Official website of the Council of Europe, Country profile for Iceland <<http://www.coe.int/t/portal/en/web/coe-portal/country/iceland>> visited 3 March 2012.

60 *Ibid.*

61 Gomien, D., 2000, Short guide to the European Convention on Human Rights, 3rd edition, Council of Europe Publishing, Strasbourg.

62 European Convention on Human Rights as amended by Protocols Nos. 11 and 14, European Treaty Series - No. 5.

63 Bill on the ECHR Document No. 105, Legislative Session No. 117 and Act No. 62/1994 European Convention on Human Right.

64 ILO Press release from 16 June 2011 <www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm> visited 3 March 2012.

65 Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and 14, European Treaty Series - No. 5.

66 The European Social Charter, Strasbourg, 3 May 1996.

67 The European Social Charter, Act No. 3/1976.

In addition to the Human Rights convention and the Social Charter, the Council of Europe has agreed on a Code of Social Security which opened for signature in 1964 and was revised in 1990. Even though only 14 countries have signed the code and only one, the Netherlands, has ratified it,⁶⁸ the code has proven to be valuable in setting social security standards and secure common values in the field of social cohesion amongst member states of the Council of Europe.⁶⁹ The code represents minimum standards regarding medical care and benefits in situations of sickness, unemployment, old age and employment injury as well as family benefit, maternity benefit and invalidity benefits and survivors benefits.⁷⁰ Iceland has not signed or ratified the code nor the protocol to the code.⁷¹

Besides the fundamental agreements on human rights and social security, there is one agreement within the Council of Europe which is of special interest regarding domestic work, namely the European Agreement on Au Pair Placements, opened for signatures in 1969 and entered into force in 1971.⁷² The aim of the agreements is to secure au pairs adequate social protection reckoned with the European Social Charter although recognizing that au pairs are neither students nor workers, but a feature of both, requiring special arrangements.⁷³ Iceland has not signed nor ratified the agreement.⁷⁴

3.3. EEA / EU – labour market legal frame (directives)

The European Economic Area-agreement (EEA) is a treaty between the European Union (EU) and three out of four states that form The European Free Trade Association (EFTA), namely Iceland, Norway and Lichtenstein.⁷⁵ The fourth EFTA state, Switzerland, has its own bilateral agreements with the EU. The EEA-agreement gives the three EFTA-states access to the European internal market and includes them into EU legislation covering the four freedoms, the free movement of goods, services, capital and persons, and hence the EU-legislation covering the labour market. The EEA-agreement does not cover the common Agriculture and Fisheries Policies of the EU, nor

68 European Code of Social Security (Revised) CETS No. 139 and Status Report for the European Code of Social Security <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=139&CM=8&DF=13/02/2012&CL=ENG>> visited 13 February 2012, the condition for the code to entry into force is two ratifications which has not been reached.

69 Nickless J. 2002, European Code of social security short guide, Council of Europe publishing, Strasbourg.

70 European Code of Social security (Revised) CETS No. 139.

71 Status Report for the European Code of Social Security <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=139&CM=8&DF=13/02/2012&CL=ENG>> visited 13 February 2012.

72 European Agreement on Au Pair Placement CETS No. 068, status report 13 February 2012, <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=068&CM=8&DF=13/02/2012&CL=ENG>> visited 13 February 2012.

73 European Agreement on Au Pair Placement, CETS No. 068.

74 *Supra* 72.

75 Grønningsæter, T., 2012, This is EFTA, Brussels.

common trade policy, common foreign and security policy, justice and home affairs nor the Monetary Union (EMU).⁷⁶ However, Iceland is a part of the Schengen agreement which regulates free movement within Schengen and restrictions for people entering the borders of Schengen area.⁷⁷

According to the EEA-agreement, Iceland is obliged to implement EEC regulations within the agreement into the countries legal order. An act within the agreement corresponding to an EEC directive however can be implemented with a form and method of choice of the Icelandic authorities.⁷⁸ This means that directives regarding health and safety at work, labour law and equal treatment for men and women can be implemented by laws, regulations or for instance in collective agreements. In Annex XVIII with the EEA-agreement, the relevant acts in the area of labour law are listed with the absence of two relevant directives, namely the Council directive establishing a general framework for equal treatment in employment and occupation (2000/78/EC) and the Directive on temporary agency work (2008/104/EC). According to Halldór Grönvold assistant manager at the Icelandic Confederation of Labour, the main rule is to implement directives into collective agreements and the initiative of implementation lies frequently at the trade unions.⁷⁹ Both mentioned directives, 2000/78/EC and 2008/104/EC are in the process of implementation through legislation and in the current collective agreement between the biggest actors on the labour market,⁸⁰ legislation regarding Temporary Agency Work is especially encouraged.

3.4. Nordic cooperation

The Nordic cooperation was established in 1952 when the Nordic Council was formed and includes the sovereign Nordic countries; Iceland, Norway, Sweden, Denmark and Finland as well as the three autonomous areas, the Faroe Islands, Greenland and the Åland Islands.⁸¹ The Nordic cooperation extends to various areas such as research, culture, passport control, welfare and labour market in the purpose of; “on the one hand, to make it attractive to live, work and do business in the Nordic Region, and on the other hand, to strengthen the Nordic countries internationally.”⁸² One of the core agreements within the Nordic cooperation is the Agreement Concerning a Common Nordic Labour Market, signed 1982 which states that no work permit shall be required between the Nordic

76 Grønningsæter, T., 2012, This is EFTA, Brussels.

77 The Schengen area covers the EU countries except the United Kingdom and Ireland and the EFTA-states, Regulation on the crossing of Borders No. 1212/2007.

78 Article 7, EEA agreement, Part I, Objectives and principles,.

79 Interview with Halldór Grönvold, assistant manager of the Icelandic Confederation of Labour, 21 March 2012.

80 Collective agreement between SA - Confederation of Icelandic Employers and SGS - the Federation of General and Special Workers in Iceland. Validation 22 June 2011 to 31 January 2014.

81 Nordic Co-operation, 2011, Nordic Council of Ministers, Copenhagen.

82 *Ibid.*

countries.⁸³ In addition, nationals of one country shall not be placed in a worse position than a country's own nationals with respect to remuneration and other conditions of work.⁸⁴ This principle is active as well in the Nordic convention on social assistance and social service: "...nationals of another Nordic country who are lawfully sojourning in or who are legal residents of the former country shall be placed on an equal footing with that country's own nationals."⁸⁵

83 Article 1, Agreement concerning a common Nordic labour market, Signed at Copenhagen on 6 March 1982. Came into force on 1 August 1983.

84 *Ibid.*, Article 2.

85 Article 4, Nordic Convention on Social Assistance and Social Services, done on 14 June 1994.

4. Fundamental right protection

Before the International Labour Conference (ILC) in 2010, ILO stressed the importance of not excluding domestic workers from international labour standards, notably those embodying the fundamental principles; freedom of association, equality and non discrimination, forced labour and child labour.⁸⁶ Iceland ensures those fundamental rights through the European Convention on Human Rights. The country has been submitted to the ECHR since 1953 when the convention entered into force⁸⁷ and fully implemented it into Icelandic laws in 1994.⁸⁸ Using ILO's identification for fundamental rights for domestic workers the light will be shed on how those fundamental rights are adopted from ECHR and what Icelandic legislation is relevant in protecting those rights and possible effects on domestic workers. As ILO's concern about child labour in domestic work is mainly tied to developing countries,⁸⁹ the child labour factor is excluded in this chapter. The issue of teenage labour participation which is so common in Iceland is addressed continuously in the next chapter as it is somewhat special for Icelandic conditions. The right to fair remuneration is included as a fundamental principle in this chapter as it ensures "an existence worthy of human dignity" as stated in the UN Universal Declaration of Human Rights.⁹⁰

4.1 *Forced labour*

According to article 4 in the European Convention on Human Rights, slavery and forced labour is prohibited. The convention does not exclude informal laborers and in 2005 the European Court of Human Rights ruled on the bases of this article in a case of an informal domestic servant. A Togolese girl was held in servitude in France, working 15 hours a day, with no days off, cleaning and caring for children. She had not access to her passport and was an illegal immigrant. The Court reiterated that article 4 enshrines one of the fundamental values of democratic societies and it provides positive obligations on member states to put in place adequate criminal law to prevent slavery and forced labour and effectively punish the perpetrators. The court found that the criminal law legislation in force at the material time did not offer effective protection and the state of France failed to meet their positive obligations according to article 4 of the ECHR.⁹¹

The prohibition against forced labour and imprisonment is stated in the Constitution of the Republic

86 ILO, 2012, International Labour Conference, 99th Session, Report IV(1), Decent work for domestic workers, p. 16.

87 European Convention on Human Rights.

88 Bill on the ECHR Document No. 105, Legislative Session No. 117 and Act No. 62/1994 European Convention on Human Right.

89 ILO, 2012, International Labour Conference, 99th Session, Report IV(1), Decent work for domestic workers, p. 10.

90 Article 23.3, United Nations Universal Declaration of Human Rights.

91 European Court of Human Rights, Application No. 73316/01, Siliadin v. France.

of Iceland⁹² and the Icelandic state meets the obligations of ECHR in chapter XXIV of the Penal Code: Offences against Personal Freedom. The Penal Code was reviewed in 2010 for the purpose of ratifying international agreements on trafficking.⁹³ The definition on trafficking presented in the United Nations convention against Transnational Organized Crime, often named the Palermo Agreement,⁹⁴ was implemented into Icelandic laws. The definition according to article 3.a. of the agreement is as follows: *"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*" The penalty for trafficking in Iceland is up to 12 years imprisonment.⁹⁵

According to this definition, slavery and forced labour falls under the statute for trafficking. The Palermo agreement assumes transportation of victims across borders by organized criminal groups⁹⁶ but the Council of Europe Convention on Action against Trafficking in Human Beings from 2005 applies "to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organized crime."⁹⁷ Iceland adopted the European Council approach providing protection against all forms of slavery or forced labour under the hat of trafficking. The conditions for the definition of trafficking is threefold; that there is the *act* of recruitment, transportation or receipt of persons, the *means* of fraud, deception or the abuse of power or of a position of vulnerability and thirdly a *purpose of exploitation*, for example for servitude or forced labour. All these conditions have to be met in order for a case to fall under the definition of trafficking except in cases where children are the victims.

What falls under "abuse of power or of a position of vulnerability" is yet to be determined by Icelandic courts. Can the position of vulnerability for example be of economic nature or lack of

92 Articles 67 and 68 of the Constitution of the Republic of Iceland No. 33/1944. Iceland is now in the process of reviewing the constitution, the Constitutional Council has handed over to Alþingi a bill for a new constitution but at present time it is not clear how the process develops. In the bill for a new Constitution the articles prohibiting forced labour and imprisonment are the same as before. (Articles 27 and 29 of A Proposal for a new Constitution for the Republic of Iceland, Drafted by Stjórnlagaráð, a Constitutional Council, appointed by an Alþingi resolution on 24 March 2011). The freedom of association is protected as before.

93 Bill amending the Penal Code, Document No. 513, Legislative Session No. 138.

94 United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000.

95 Article 227.a. of the Penal Code No. 19/1940.

96 Article 4, United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000.

97 Article 2, Council of Europe Convention on Action against Trafficking in Human Beings CETS No. 197.

social security? What about the position of immigrants with poor contact network and limited language skills? Domestic workers that are recruited by exploiting their vulnerability for the purpose of servitude are protected by the article against trafficking.⁹⁸ The international obligations of ensuring protection against slavery and forced labour are met with chapter XXIV, *Offences against Personal Freedom* in the Penal Code which include the article on trafficking.

Two cases have been presented before the Supreme Court of Iceland involving trafficking after the legislation was amended but both cases dealt with the imprisonment of transported victims to Iceland for the purpose of sexual abuse.⁹⁹ In fact, no case involving slavery and forced labour for the purpose of domestic work has been prosecuted before the Icelandic courts.

4.2. Freedom of association

The negative right of association is undisputed in Iceland after the Icelandic taxi driver Sigurður A. Sigurjónsson was acknowledged this right by the European Court of Human rights on the ground of article 11 in ECHR.¹⁰⁰ The court found that there were restrictions in the Icelandic laws against freedom of associations as taxi driver licenses were conditioned to a membership in a union. Following the ruling of the court, the Icelandic constitution was changed and according to its 74th article, both the negative and positive freedom of association is affirmed.¹⁰¹ The freedom to form and join unions is confirmed in the Act on Trade Unions and Industrial Disputes, article 1 states that “People are entitled to found trade unions and federations of trade unions for the purpose of working jointly for the interests of the working class and wage earners in general.”¹⁰² These Trade unions shall again be open to all those belonging to the trade concerned.¹⁰³ As introduced before, the trade union density in Iceland is the highest among the Nordic countries, trade unions are well established and organized and the development the past years have been a merge of smaller organizations into bigger.

One of the greater concerns regarding domestic workers is the isolation towards others in similar situations and lack of opportunities to organize. The right to found trade unions is well protected and informal domestic workers have legal means to organize or apply to an existing union. It is however unlikely than an existing union would receive informal workers as one of the main duties

98 Article 227.a. of the Penal Code No. 19/1940.

99 The Supreme Court of Iceland, Cases No. 224/2010 and 105/2010.

100 European Court of Human Rights, Application No. 16130/90 Sigurður A. Sigurjónsson v. Iceland.

101 The Constitution of the Republic of Iceland No. 33/1944.

102 Act on Trade Unions and Industrial Disputes No. 80/1938.

103 *Ibid.*, article 2.

of unions according to article 5.4. of the Act on Trade Unions and Industrial Disputes is to ensure that their members respect existing collective agreements as they are bound by them through the membership according to article 3. A collective agreement is an agreement between employer's unions and employee's union and to reach an agreement, the partners have to recognize each other as counterparts. Actors on the informal labour market would hardly be accepted as part of a collective agreement. The possible access of informal domestic workers to existing unions or the possibility to organize into a new union therefore stays hypothetical

4.3. Remuneration

The right to a fair remuneration is protected in article 4 of the European Social Charter as contracting parties recognize worker's right to remuneration such as will give them and their families a decent standard of living It also recognizes the right to an increased rate of remuneration for overtime work, the right of men and women workers to equal pay for work of equal value and to a reasonable period of notice for termination of employment.¹⁰⁴ According to the European Social Charter, which was implemented into Icelandic legislation in 1976, the exercise of these rights can be achieved through collective agreements, by statutory wage-fixing machinery or by other means appropriate to national conditions.

Iceland follows the Nordic model of setting minimum wages and other working terms through collective agreements rather than through legislation. However, those terms agreed upon in collective agreements are consequently by law: "[C]onsidered minimum terms, independent of sex, nationality or term of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement."¹⁰⁵ As a result, union membership is not a requirement for enjoying the terms agreed upon in collective agreements and employers are obliged to follow the terms as well regardless of their membership in employer's unions. Through the Act on Working Terms and Pension Rights Insurance, collective agreements automatically have *erga omnes* effect in Iceland.

Formal domestic workers are covered by collective agreements as the basic agreements have an extended coverage of all workers within the borders of Iceland. In the basic agreement between the Federation of General and Special Workers in Iceland (SGS) and the Confederation of Icelandic Employers (SA) the minimum wages are agreed upon and include specified vocations as well as

104 Article 4, The European Social Charter as implemented in Icelandic laws Act No. 3/1976.

105 Article 1, Act on Working Terms and Pension Rights Insurance No. 55/1980.

“any other work uncounted for elsewhere in the agreement.”¹⁰⁶ The international obligations regarding the right of fair remuneration is therefore met for domestic workers in Iceland through collective agreements and laws.

Informal workers have a fundamental right to fair remuneration as well although these rights are hard to claim. A verbal contract or even a written one could be recognized before court even if it was made in the informal sphere of domestic work on the grounds of the fundamental right of fair remuneration. As an example of increasing recognition of these rights, the European Union has issued the Employers Sanctions Directive where “Member States shall ensure that the employer shall be liable to pay [...] any outstanding remuneration to the illegally employed third-country national.”¹⁰⁷ This directive is an attempt to level the disadvantaged position in which illegal migrants find themselves in, amongst them domestic workers.

4.4. Equality and non-discrimination

In article 65 of the Constitution of the Republic of Iceland, the equality of everyone before the law is stated and the right to enjoy human rights irrespective of sex, religion, opinion, national origin, race, color, property, birth or other status. The equal right of men and women is especially emphasized.¹⁰⁸ In addition to the fundamental equality statement of the Constitution, Iceland has a law on gender equality but no special legislation on equality for other groups such as the disabled, foreigners or the elderly.¹⁰⁹

The Icelandic laws on gender equality were reviewed in 2008 and one of the primer aims was to ensure gender mainstreaming in the labour market as a measure to ensure equality between the sexes.¹¹⁰ Employers have rich obligations to ensure gender equality regarding wages, accessibility to positions and to enable reconciliation of work and family life. Companies and institutions with more than 25 employees shall set themselves a gender equality program or mainstream gender

106 Article 1.1.1. Collective agreement between SA - Confederation of Icelandic Employers and SGS - the Federation of General and Special Workers in Iceland, Validation 22 June 2011 to 31 January 2014.

107 Article 6.a. European Parliament and Council Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

108 Article 65, Constitution of the Republic of Iceland No. 33/1944. The bill for a new Constitution which is now up for debate states that: We are all equal under the law and shall enjoy our human rights without discrimination, such as due to gender, age, genetic character, place of residence, economic status, disability, sexual orientation, race, color, opinions, political affiliation, religion, language, origin, ancestry and position in other respects. Men and women shall enjoy equal rights in every respect (article 6 of the proposal).

109 There is an ongoing process of writing new laws about non-discrimination for other groups, based on the gender equality act.

110 Bill to amend the Act on Equal Status and Equal Rights of Women and Men, Document No. 149, Legislative Session No. 135, year 2007.

equality perspectives into their personnel policy and particular emphasis shall be placed on achieving equal representation of women and men in managerial and influential positions.¹¹¹ Two of the most important novelties of the laws were that the Center for Gender Equality¹¹² now has the power to fine companies and institutions if they do not provide proper information on the status of equality or if they fail to enforce the rulings of the Gender Equality Complaints Committee.¹¹³ No company or institution has yet been fined but the near threat of this clause has proven to be useful according to the lawyer of the Center for Gender Equality.¹¹⁴ The second topic is the unconditional employee right to disclose their wage terms.¹¹⁵

Regarding gender based- and sexual harassment, the employers shall take special measures to protect employees in the workplace. If a superior is charged with alleged gender based or sexual harassment, he or she shall be non-competent to take decisions regarding the working conditions of the plaintiff during the examination of the case.¹¹⁶

The labour market part of the equality act assumes a formal employment relationship and the protection against discrimination is a responsibility of the employer. A general ban on gender discrimination is however also to be found in the act, whether it is a direct discrimination or indirect.¹¹⁷

Through the revision of the gender equality legislation in 2008, EU legislation prohibiting sex discrimination was adapted into Icelandic laws as they have been incorporated into the EEA Agreement. However, due to lack of legal basis in the agreement, directives prohibiting discrimination on other grounds than sex have not been incorporated and are not formally binding on Iceland.¹¹⁸ This applies to directive 2000/78/EC on establishing a general framework for equal treatment in employment and occupation as well as directive 2000/43/EC on the principle of equal

111 Chapter 3, Act on Equal Status and Equal Rights of Women and Men No. 10/2008.

112 An official institution that handles administration in the sphere covered by the act on Equal Status and Equal Rights of Women and Men.

113 The task of the Gender Equality Complaints Committee is to examine cases and to deliver a ruling in writing on whether provisions of the Act have been violated. The Committee's rulings may not be referred to a higher authority. The Minister of Social Affairs and Social Security appoints three members of the committee, they shall all be qualified lawyers, and at least one of them shall have expert knowledge of gender equality issues, Article 5, Act on Equal Status and Equal Rights of Women and Men No. 10/2008.

114 Mail from Ingibjörg Elfasdóttir, lawyer at the Center for Gender Equality, received 19 March 2012.

115 Article 19, Act on Equal Status and Equal Rights of Women and Men No. 10/2008.

116 *Ibid.*, Article 22.

117 *Ibid.*, Article 24.

118 Guðmundsdóttir, D., 2009, Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Legal Report: Iceland, Institute of Human Rights, University of Iceland.

treatment between persons irrespective of racial or ethnic origin. Regardless, an initiative has been taken to adapt these directives into Icelandic legislation but the process is still ongoing and the bill has not been submitted before the parliament.

The discrimination legislation is focused on the labour market and official employment relationships. Furthermore, the obligations are directed to large companies and their structure. Domestic workers are thus protected through the general ban on discrimination, whether they are formal or informal domestic workers.

5. Legal protection in the formal and informal market of domestic work in Iceland

To analyze the legal status of domestic workers in Iceland it is necessary to give a picture of the general labour standards, the main drafts of rights and obligations in the official labour market and exceptions provided in the case of domestic work. This is done for the purpose of comparison with workers acting in the informal market of domestic work and their situation in relations to minimum labour standards. The Servants Act from 1928 is presented as it is the only act that includes specially domestic workers and the only affective collective agreement concerning domestic work is reviewed. The special situation of au pairs as domestic workers is relevant as well, as they act in a grey area of formal/informal domestic work but are excluded from minimum standards according to labour legislation.

5.1. General minimum labour standards in Iceland for formal domestic workers

The Constitution of Iceland states that everyone is free to pursue the occupation of his/her choosing and protects the right of people to negotiate terms of employment. Other labour-related matters shall be regulated by laws.¹¹⁹ The legislation offers minimum standards but partners are free to negotiate better benefits in collective agreements and contracts of employment. The same minimum standards apply for the public labour market as well as employers of the government regarding most rights except when it comes to termination of job contract. Then governmental employers have the right to a written reprimand in some cases and an opportunity to present his/her side of the issue and make amends if needed.

Working age limits are regulated in the Act on Working Environment, Health and Safety in Workplaces from 1980. The act was updated in 1997 according to European Council Directive on the protection of young people at work¹²⁰ and the ILO convention on minimum age.¹²¹ The aim of the amendment in 1997 according to the proposal was to implement the international agreements into Icelandic laws whilst protecting the possibility for Icelandic youth to participate in the labour market as before. The clear will of protecting the culture of youth labour in Iceland is obvious and

119 Article 75 of the Constitution of the Republic of Iceland No. 33/1944. In the bill for a new Constitution the freedom of enterprise is protected and stated that; “Adequate work conditions shall be stipulated by law, such as periods of rest, vacation and hours of leisure. All shall be accorded the right to fair pay and other work-related rights.” (art. 25 of A Proposal for a new Constitution for the Republic of Iceland, Drafted by Stjórnlagaráð, a Constitutional Council, appointed by an Althingi resolution on March 24th 2011). The freedom of association is protected as before.

120 European Council Directive 94/33/EC on the protection of young people at work.

121 ILO C138 and Bill amending Act on Working Environment, Health and Safety in Workplaces, Document No. 1325, Legislative Session No. 121, year 1996.

no objections compromising this attitude are to be found in the process of the amendment.¹²² The compromise between the Icelandic culture and the international obligations was that children (under the age of 15) may not be engaged in employment except light employment in short periods such as light gardening or service jobs. Teenagers employment (age 15 to 18) shall be restricted to low risk employment and stronger conditions regarding for example rest time.¹²³ The chapter regarding work by children and teenagers in the relevant act does not “...apply to occasional work or short-term work involving home help in private homes or work in family enterprises that is not considered damaging or dangerous to young people.”¹²⁴ Formal domestic work is therefore not included in legislation aimed at protecting young people at work. The purpose of this exception is not clearly explained in the proposition but the article is an exact translation of the European Council Directive on the protection of young people at work.¹²⁵

Although the main rule in the Icelandic labour market is a 40 hour working week, preferably 8 hours a day, monday through friday, domestic workers are an example of exception to this rule due to the nature of the work. They are defined as a group of workers holding positions in which surveillance of working hours is difficult, being available and at disposal to the home in irregular hours. Therefore domestic workers are not included in the Act on 40 Hour Workweek unless they are hired under the terms of a collective agreement. The laws are semi discretionary which means they can be derogated from by collective agreements but not by personal contract between the employer and individual employee.¹²⁶

No workplace, employer or employee is excluded from the Act on Working Environment, Health and Safety in Workplaces and it is of no importance whether employers work alone or have other people in their service.¹²⁷ According to the act, a workplace signifies the environment, indoors or outdoors, where an employee spends most of his/her time in connection with his/her employment.¹²⁸ Domestic workers are therefore not excluded from the protection the act provides and employers have an obligation to ensure the environment is safe and healthy. This obligation falls on the household in case of a live-in domestic worker or live-out domestic worker employed full time by one employer. In the case of an employer at one firm, visiting several working places, the obligation

122 Bill amending Act on Working Environment, Health and Safety in Workplaces, Document No. 1325, Legislative Session No. 121, year 1996.

123 Articles 60-63, Act on Working Environment, Health and Safety in Workplaces No. 46/1980.

124 *Ibid.*, Article 59.

125 Article 2.2.a and 2.2.b. of the European Council Directive on the protection of young people at work No. 94/33/EC.

126 Act on 40 Hour Workweek No. 88/1971.

127 Articles 12 and 90, Act on Working Environment, Health and Safety in Workplaces No. 46/1980.

128 *Ibid.*, Article 41.

to secure the working environment would fall on the firm where the worker has the employment contract. Health and safety security and the inspections they require raises questions of the right to privacy and the sanctity of the home. Has the Administration of Occupational Safety and Health in Iceland, which is the institution responsible for workplace inspections, the right to enter private homes to enquire about working conditions of domestic workers? The immunity of homes is protected in the constitution and search “of a person's premises or possessions may only be conducted in accordance with a judicial decision or a statutory law provision.”¹²⁹ The possibility to execute safety inspection contradicts the article on freedom from interference which risks the right of an employee to have a safe working environment.

No court cases are found before the Supreme Court that can shed a light on the extent of the sanctity of Icelandic homes but the discussion came up in the parliament in the legislative process regarding domestic violence. The right to impose restraining order and remove an abuser from his/her own home was not considered a violation of the immunity article as the right of others to protection was considered more important in proportion.¹³⁰ The condition for such intervention is that there is a suspicion of criminal conduct which is hardly applicable to inspecting working environment although it can be relevant in cases of forced labour within households.

Other minimum labour standards are no different whether the worker acts in the official, public labour market or works within the homes of others. The one month notice of termination is the same¹³¹, as is the minimum right to two days paid leave for each working month.¹³² The obligation to pay into a pension fund and the right to receive refund from the age of 65–70 at amounts according to their input over the years of their working lives is the same for all workers.¹³³

5.2. The Servants Act and Collective agreement for domestic work

The only legislation that focuses entirely on paid domestic work in Iceland is the Servants Act from

¹²⁹ Article 71 of the Constitution of the Republic of Iceland No. 33/1940.

¹³⁰ Bill on Restraining Order and Deportation from Homes, Document No. 1225 Legislative Session No. 139, year 2010.

¹³¹ When period of employment has reached three years, labourers are entitled to two months notice and three months notice when having worked for the same employer for five years or more. Article 1, Act No. 19/1979, Respecting Labourers' Right to Advance Notice of Termination of Employment and to Wages on Account of Absence through Illness and Accidents.

¹³² Articles 3 and 4, Holiday Allowance Act. No. 30/1987.

¹³³ Every actor on the labour market is obliged to pay into a pension fund of their own choosing. The payment shall be at least equal to 12% of the salary but how the sum is divided between employer and employee is decided upon in collective agreements or employment contracts. In current collective agreements, the 12% payment to pension funds are divided between the employee who pays 4% of his salary and the employer who pays additional 8% of the employee's salary into the chosen fund. Article 3, Act on Pension Rights Insurance and the Operation of Pension Funds No. 129/1997.

1928 which regulates domestic employment in a long gone society symptomizing farmers and their hired help. Even though the laws can be considered to be out of date they cover the main aspects of domestic employment relations. As recent as in 2007, in a series of cases involving the same employer, the Servants act was referred to before the Supreme Court of Iceland. The plaintiff referred to article 25 of the Servants Act among other and claimed that the employees had caused him damage by terminating the employment relationship without notice or acceptable grounds.¹³⁴ The Court did not take the act into account in the ruling and no cases have been ruled upon on the grounds of the Servants act in present times.

The Servant Act presumes that the official dates¹³⁵ of change of domestic employment are respected and does not cover other forms of domestic services than full time employment for up to one year.¹³⁶ Within the employment period the servants are required to execute the tasks they are hired to do as well as other household chores that are worthy of their situation when necessary.¹³⁷ In return, the servant receives wage as custom in the area¹³⁸ as well as adequate food, clean sheets every month and a separate bed in a warm room.¹³⁹ Working hours are not regulated in the Servants Act, nor the minimum/maximum age of employers or vacation. If a servant gets sick or has an accident, the master has obligations to care for the servant and move him/her to hospital if necessary. If the servant falls mentally ill the master can demand the assistance of the local authorities.¹⁴⁰ If a servants falls sick or has an accident through a fault of his own, the responsibility and cost falls entirely on the servant himself.¹⁴¹ If the master is responsible however, he/she is obliged to pay compensation as well as other costs, otherwise the costs of medication and medical assistance falls on the servant.¹⁴² The servant receives full wage for the first fortnight of his/her illness but if he/she can not work after a month of illness, the employment contract can be terminated with a month notice.¹⁴³

The servant can terminate the contract immediately if he/she can prove that the master has violated his/her obligations through for example abuse, seduction to promiscuity or evil acts or lack of

134 The Supreme Court of Iceland, Cases 334-340/2007.

135 The official dates of employment change for servants are 14th or 3rd of May in some areas and 1st of October or the first day of winter in other areas according to article 3 of the Servants Act. At these dates servants are free to change employer and make new employment contracts.

136 Article 3, Servants Act No. 22/1928.

137 *Ibid.*, Article 18.

138 *Ibid.*, Article 8.

139 *Ibid.*, Article 7.

140 *Ibid.*, Article 9.

141 *Ibid.*, Article 10.

142 *Ibid.*, Articles 11 and 14.

143 *Ibid.*, Articles 13 and 15.

protection against promiscuity or evil acts of others. A reason for termination of contract can also be un-sufficient food, poor conditions regarding housing, if the master hurts the servant's reputation by for example wrongly accusing him/her of theft, refusing to pay wages or subjecting the servant unnecessary to risk of life and health.¹⁴⁴

The master can terminate the contract immediately if the servant has committed a heinous crime, is violent against the master or others ranked above the servant, is disobedient, seduces children in the household to do evil acts, is repeatedly drunk, distractingly promiscuous, walks around with sexually transmitted diseases, damages properties, abuses animals or seriously disregards his/her work.¹⁴⁵

With more than 80 years and great societal changes behind it, the Servants act covers many of the issues of vulnerability and the special situation of domestic workers in the private sphere as discussed in chapter 1. The act is for example clear regarding the master's duties to protect servants against abuse and provides a minimum standard for housing, privacy and working conditions even if those standards are far from our present western standards.

The closest thing to a collective agreement that specially covers domestic workers in Iceland is an agreement between the Federation of General and Special Workers in Iceland and The Farmers Association of Iceland covering hired help in agriculture including matrons and cooks working on farms. In agreed wage table these jobs are ranked in wage bracket no. 10 with device managers.¹⁴⁶ For comparison, employers with special skills in construction, the fish industry and service are ranked in a lower wage bracket in the general collective agreement.¹⁴⁷ It is therefore safe to argue that according to wage ranking, these jobs are considered specialized manual labour. The collective agreement includes traditional clauses regarding holiday bonuses, education, working hours and leaves but special clauses regulate accommodation, privacy and wage deduction for food and accommodation for the employer's children.

Employers shall live in a private room which is spacious, warm, with good air conditioning and lockable. Employers shall have access to a locker for personal things, bath and toilet for personal hygiene and the housing shall be accepted by authorities as residential accommodation. Deduction

¹⁴⁴ *Ibid.*, Article 24.

¹⁴⁵ *Ibid.*, Article 27.

¹⁴⁶ Collective agreement between the Federation of General and Special Workers in Iceland and The Farmers Association of Iceland in affect from 22 June 2011 to 31 January 2014.

¹⁴⁷ *Ibid.*

on wages can be made according to tables in the collective agreement in revenue for housing and food for the employer and the employer's children under the age of 12.¹⁴⁸

5.3. Au pair – cultural exchange or domestic work?

The European Council, as well as the International Labour Organization has stressed its concern regarding the abuse of au pairs and the development of using them as cheap domestic labour.¹⁴⁹ Although the purpose of au pair is to improve linguistics and gaining cultural experience in exchange for easy work, the development in Sweden and other western countries has been an increase in au pairs for the single purpose of domestic work. Those who welcome au pairs into their households are often families in need of domestic workers and many of those seeking au pair positions do so as a first step in migrating to countries with better quality of life.¹⁵⁰ The division between cultural exchange and domestic work becomes diffused in praxis and actors find themselves in a grey area of the labour market although the laws provide a clear distinction.

Au pairs are by Icelandic as well as international definition migrants for a short period of time, max 1 year.¹⁵¹ According to the Directorate of Immigration in Iceland, 16 residence permits were granted in 2010 for au pairs coming from countries outside of the EEA area, 26 such permits were granted in 2009 and 69 permits in 2008.¹⁵² The decrease in number of permits between 2008 and 2009 are in line with the reduction of immigrant workers as a whole as a consequence of the financial crisis and advanced unemployment. Au pairs from outside the EEA area are predominantly women from low income countries as the Philippines, Thailand, Ethiopia and Uganda.¹⁵³

According to au pair agencies in Iceland women are more popular as au pairs than men and it is hard to find families that are willing to accept a male au pair. There are only two agencies that mediate a few dozen au pairs every year from both inside and outside the EEA area to Icelandic families. They consider it a cultural program but not work.¹⁵⁴ In addition to these two agencies there are many websites that connect families and possible au pairs. There are no statistics available for

148 *Ibid.*, Article 9.

149 ILO, 2010, International Labour Conference, 99th session, Report IV(1), Decent work for domestic workers, p. 34.

150 Platzer, E., 2002, Kulturellt utbyte eller billig arbetskraft? - au pair i Sverige. Socialogisk forskning nr. 3-4, p. 32-57.

151 Article 12.d., Act on Foreigners No. 96/2002.

152 Annual report of the Directorate of Immigration in Iceland, 2010.

153 In 2008, 6 men and 63 women gained au pair residence permit in Iceland, 16 came from Philippines, 9 from Ethiopia and 6 from Thailand, fewer from other countries. In 2009, 4 men and 22 women gained au pair permit, thereof 5 from the Philippines. In 2010, 1 man and 15 women gained AU-pari permits thereof 4 from Uganda. Statistics from an e-mail from the Directorate of immigration in Iceland received 22 February 2012.

154 Interview with Hulda Stefánsdóttir at Námsferðir and Svanborg Óskarsdóttir at Nínukot, both taken 27 February 2012.

the total number of au pair contracts in Icelandic homes.¹⁵⁵

Temporary residence permits in connection with au pair engagements are regulated in the Act on Foreigners¹⁵⁶ and has been so since the year 2008 when the chapter on au pair was moved from the act on Foreign Nationals Right to Work.¹⁵⁷ The change is symbolic as its object was to emphasize that au pair agreements shall not be regarded as work agreements but rather as cultural exchange programs. Therefore au pairs are obliged to apply for a residence permit but not a work permit according to the legislation change in 2008.¹⁵⁸ The laws are inspired by the European Agreement on Au Pair Placement.¹⁵⁹

In Article 12d of the Act on Foreigners it is stated that au pairs shall not be younger than 18 years and not older than 25 years. The minimum age requirements are consistent with other age limitations such as autonomy and the right to vote but the logic of maximum age limit is harder to understand and raises questions about possible age discrimination in the future. Icelandic legislation provides no protection against age discrimination for now but the proposition for amending the Constitution as well as forthcoming discrimination legislation honors age as a factor in non-discrimination.¹⁶⁰

According to the Act on Foreigners, au pairs shall be provided with food and accommodation without charge and have a separate room for his/her own use. The contract shall not be for more than one year and the host family shall guarantee payment of the returning journey and a sufficient time for the au pair to pursue studies and other interests.¹⁶¹ The Directorate of Immigration determines the minimum amount of pocket money for au pairs and the Minister of the Interior is obliged to issue more detailed rules regarding residence, including conditions and terms to be met by the foreign national and the family involved.¹⁶² These rules are yet to be issued.

According to international debates and research there is a reason to look further into this grey area

155 Email from the Registers Iceland received 1 March 2012 and phonecall with Karl Sigurðsson at the Directorate of Labour in Iceland 15 March 2012.

156 Article 12.d., Act on Foreigners No. 96/2002.

157 Act on Foreign Nationals' Right to Work No. 97/2002.

158 Bill amending Act on Foreigners, Document No. 572, Legislative Session No. 135, year 2007.

159 Chapter 2. European Agreement on Au Pair Placement, CETS No. 068 and Bill amending Act on Foreigners, Document No. 572, Legislative Session No. 135, year 2007.

160 Proposal for a new Constitution for the Republic of Iceland, drafted by Stjórlagaráð the Constitutional Council and interview with Halldór Grönvold, assistant manager of the Icelandic Confederation of Labour, 21 March 2012.

161 Article 12.d. Act on Foreigners No. 96/2002.

162 *Ibid.*

of domestic work to determine if the same development is taking place in Iceland as in other western countries. If there are in fact domestic workers in Iceland that enter the country on au pair permits these workers act outside the legal frame of the Icelandic labour market. They do not gain pension rights or sickness benefits, nor are they entitled to maternity leave. In case of inability to work the resident family guarantees funding for the trip home,¹⁶³ suggesting termination of the contract in such cases. In an attempt to prevent the abuse of au pair permits as a first step in migrating to Iceland, the permit expires as soon as the au pair contract does and the person in question is not allowed a new resident permit for two years after.¹⁶⁴ These rules do not however prevent families from receiving different au pairs year after year and the supervision is limited to the agencies that mediate contacts between families and au pairs. These contacts can also be established through informal ways which weakens the complaint and supervision mechanism.

5.4. The situation of informal domestic workers in relations to formal domestic workers

An informal market is by definition illegal as formal workers are obliged to pay income tax on “any pay for services or activity rendered in Iceland.”¹⁶⁵ In addition, employers are obliged to pay insurance levy, a percent of the revenue, which funds the payments of disability pensions, parental leave and social security.¹⁶⁶ Pension funds are funded by employers and workers and establish a progressive right through the working life to retirement pension. A person who performs work outside this legal frame lacks the right that taxes and other obligations provide. This person is however protected by fundamental rights provided by international standards in connection to the labour market as well as domestic legislation providing social security and protection against abuse.

The different legal status of formal workers versus informal workers becomes clear when working life deviates from the norm. This happens for example in case of sickness or injury or in connection with maternity where the rights of the worker are directly connected to previous input through taxes and union fees. The workplace being the home of the employer makes domestic workers vulnerable for unsafe working environment where labour market standards are hard to impose on private homes and inspection is problematic. The special workplace and the isolation of domestic workers subject them to the danger of abuse and discrimination in relations to their employer. These aspects of vulnerability along with the special issues of migrant workers is a repeated theme and cause for special concern in publications of the ILO and in sociological researches on the situations of

¹⁶³ *Ibid.*, Article 12.d.f.

¹⁶⁴ *Ibid.*, Article 12.d.

¹⁶⁵ Article 3.3., Income Tax Act No. 90/2003.

¹⁶⁶ Article 3, Act on Insurance Levy No. 113/1990.

domestic workers.¹⁶⁷ The following comparison between the position of formal and informal domestic workers in Iceland takes aim of these identified areas of vulnerability.

5.4.1. Health and safety at work

Employers are responsible for the health and safety of their employee according to the Act on Working Environment, Health and Safety in Workplaces but informal domestic work does not fall under these laws as the act covers “organized actions or operations.”¹⁶⁸ The organized action (firm or company) shall be registered at the Administration of Occupational Safety and Health in Iceland which is the actor responsible for inspecting and supervising the execution of the act. Hence no inspection or oversight is provided by authorities for informal work as it is by nature an action not registered. The question of whether an employee’s right to safe working environment and inspection contradicts the employers right to privacy is therefore not an issue in the case of informal domestic work. Protection regarding work processes, machinery and equipment, dangerous substances and other labour market safety issues is not available for informal domestic workers. However, the Penal Code provides a minimum protection against physical, sexual and emotional violence as well as a general ban on endangering the life and health of others for the purpose of making profit or by reckless manner.¹⁶⁹ Consequently, in situations of informal work, the issue of information and vulnerability is a factor in the possible obligations of the employer regarding working environment. Does the employee have information about the risk he/she is subjected to, for instance in handling dangerous chemicals. Is the employer aware of the danger he/she subjects the employee to, but chooses to ignore the danger for the purpose of making profit or by reckless manner? If the domestic worker has sufficient information about the danger, is he/she in a position to choose not to expose him/herself to danger by handling dangerous chemicals or submit to other health-endangering situations?

The authorities provide guidelines as to what shall be considered dangerous work environment through regulations and instructions with legal reference to the Act on Working Environment, Health and Safety in Workplaces. The ban on endangering the health of others in a situation of informal employment would possibly take aim of these guidelines in such case and thus could the act indirect provide legal ground for the protection of informal domestic workers through the Penal Code.

167 Gavanas, A., 2010, Who cleans the welfare state? Migration, informalization, social exclusion and domestic services in Stockholm, Institute for Futures Studies Research Report 2010/3, Stockholm and ILO, 2012, International Labour Conference, 99th Session, Report IV(1), Decent work for domestic workers.

168 Article 90, Act on Working Environment, Health and Safety in Workplaces No. 46/1980.

169 Article 220.3. of the Penal Code, Act No. 19/1940.

5.4.2. Injury and sickness

In case of illness, an employee with a formal employment contract has a minimum right of 2 days wage per month and in case of accidents employees have a right to full pay for one month at least. If an employee is excused from work on account of accident at work, on direct route to or from work or due to occupational diseases caused by it, he/she shall receive payment of wages for daytime work for up to three months in accordance with the tariff under which the party concerned received wages.¹⁷⁰ When this minimum full wage period is over the social security system takes over and in case of so stated in collective agreement, the sickness benefit funds of the unions.¹⁷¹

In the annual income tax return, tax payers are able to ask for accident insurance when performing domestic tasks in exchange for a modest return. In doing so, the state guarantees refund on medical aid relating to the accident, sickness allowance, disability benefits and death compensation.¹⁷² This domestic injury insurance covers accidents when executing traditional domestic tasks such as cooking and cleaning, taking care of the sick, elderly or children, general maintenance indoors and outdoors as well as general gardening.¹⁷³ This accident insurance is available for “those who do housework” according to article 30 of the Social Security Act without the condition that the housework shall be executed within the insured own home. This condition is however to be found in article 3 of the regulation on insurance for domestic work, published by the Ministry of Welfare.¹⁷⁴ A person performing domestic work in other people’s home without being defined as an employee, would therefore not be insured by this legislation. However, if there is a situation of live-in domestic work where the domestic worker is registered in the respective home, this accident insurance would be effective.

A more likely situation is that the informal domestic worker does not live in the home where he/she works and has only the minimum injury and sickness protection provided for instance in the Health Service Act. Every person registered in Iceland for at least six months has access to the health care system subsidized by common funds regardless of his/hers employment situation.¹⁷⁵ This includes access to hospitals, healthcare centers and nursing homes. The Icelandic health care system does allow fee collection from patient’s, and thus the cost of healthcare can be substantial in case of

170 Act on Respecting Laborers’ Right to Advance Notice of Termination of Employment and to Wages on Account of Absence through Illness and Accidents No. 19/1979.

171 Act on Health Insurance No. 112/2008.

172 Articles 30 and 31, Social Security Act No. 100/2007.

173 Article 3, Regulation on Insurance for Injury related to Domestic Work No. 280.

174 *Ibid.*

175 Act on Health Service No. 40/2007 (with amendments according to Act No. 160/2007, Act No. 12/2008 and Act No. 112/2008).

injury or sickness. In the formal labour market, the sickness funds of the trade unions compensate for these costs according to their own frame of references but an informal domestic worker has limited access to unions¹⁷⁶ and hence limited means to compensations.

In a case of compromised working capacity every person has the right to disability pension, provided the person has lived in Iceland for six months.¹⁷⁷ The position of a person participating in the formal labour market versus a person standing outside of it is much stronger regarding rights to pensions in case of injury and sickness. The difference is determined by access to trade unions and the social security net they provide through their sickness funds. In addition to the disability pension provided by the state, the sickness funds provide sickness allowance according to prior payment into the fund. This allowance can be up to 100% of the workers former wages depending on rights earned through time.¹⁷⁸

Even in informal working conditions the employer can be responsible for injuries according to general rules of liability. In a Supreme Court case from 2009 the court came to the conclusion that a farmer was liable toward an employee that came to harm caused by a cow on the farm. The cow had just given birth and the farmer knew of the danger in handling cows in that condition but nevertheless asked the inexperienced employee, a fourteen year old girl, to attend to the cow. The employer was found liable for the disability of the employee because of the failure to inform her about the dangerous situation she was exposed to. The nature of the employment relationship does not seem to have been a factor in the ruling or whether the employee had a formal status or not.¹⁷⁹ Due to the young age of the employee and the culture of informal work of youngsters in Icelandic farms it is quite uncertain that this was a formal employment relationship. The liability of the employer was based on insufficient delivery of information and the fact that the girl was of young age and inexperienced but not the employment relationship.

5.4.3. Maternity

In the year 2000, new laws on parental leave were passed in Iceland, giving both parents equal rights to parental leave. Three months are secured to each parent after a baby is born and the parents have the right to dispose another three months at their convenience.¹⁸⁰ Parents who are active in the labour market are paid 80% of their average salaries during the leave up to a certain amount and

¹⁷⁶ See chapter 4.2.

¹⁷⁷ Article 18, Act on Social Insurance No. 100/2007.

¹⁷⁸ Regulation for the Sickness fund of Efling – Trade Union.

¹⁷⁹ The Supreme Court of Iceland Case No. 689/2008.

¹⁸⁰ Article 8, Act on Maternity/Paternity Leave and Parental leave No. 95/2000.

75% of their average salaries after they exceeded that amount.¹⁸¹ The aim of this law is to ensure equality both in parenting and in the labour market and encourage especially father's to greater participation in care taking of their children.¹⁸² The legislation was progressive and effective making fathers participation in caring for their young children much more common than before and the fertility rate to go up.¹⁸³

The access to appropriate services in connection with pregnancy, confinement and the post-natal period is guaranteed through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by law in Iceland in 1985.¹⁸⁴ The right to maternal care is independent of the employee's status on the labour market and health care in connection with pregnancy, birth and infants is free of charge for mothers registered in Iceland. The difference between a participant in the formal labour market and an informal worker is the rights earned to remuneration during maternal leave. To have access to payment from the public maternity/paternity leave fund, a person has to be participating in the formal labour market or at least in search of employment. The payments from the fund are based on wages and calculated by prior insurance levy paid in connection to the employee to the tax authorities. The employers of informal domestic workers do not by definition pay the insurance levy and earn therefore no progressive rights to maternity/paternity payments forms.¹⁸⁵

Parents who stand outside the formal labour market do have a right to parental leave as well and each parent receives a grant for three months and additional three months at free disposal, in total nine months. The conditions are that the parents have been registered in Iceland 12 months prior to the childbirth.¹⁸⁶ The grant is low and does not cover the support of one individual let alone a child as well.

The protection of pregnant and breastfeeding women against health risks is found in labour law regulations, both the Act of Working Environment, Health and Safety in Workplaces and regulations

181 In the original laws from 2000, the rule was 80% the average salaries regardless of income. Following the financial crisis in 2008 some changes have been made on the parental pay and limitations regarding the maximum amount of parental grant. These changes are supposed to be temporary in the situation of financial crisis. Bill to amend the act on Maternity/Paternity Leave and Parental leave, Document No. 315, Legislative Session No. 138, Year 2009-2010.

182 Bill to amend the act on Maternity/Paternity Leave and Parental leave, Document No. 1065, Legislative Session No. 125, Year 1999-2000.

183 Gislason, I. V., 2007, Parental Leave in Iceland Bringing the Fathers in – Developments in the Wake of New Legislation in 2000, Centre of Gender Equality and Ministry of Social Affairs, Akureyri.

184 Convention on Elimination of All Forms of Discrimination against Women Act No. 5/1985.

185 Article 8 of the Act on Maternity/Paternity Leave and Parental Leave No. 95/2000.

186 *Ibid.*, article 18.

in connection with the act. Those regulations assume an assessment of the working environment in each case after the employer gets information about an employee's pregnancy. Pregnancy and breastfeeding is considered a natural part of life and the relevant legislation secures the right to health care and leave from work. Women not participating in the formal market are not entitled to any further rights other than general health care access provided for through other legislation.

5.4.4. Abuse and Discrimination

The International Labour Organization has stressed concerns of the lack of legal protection for domestic workers against physical and sexual abuse and calls upon member states to take measures to ensure effective protection.¹⁸⁷ The only paragraph of law that especially covers abuse against domestic workers is article 24 of the Servants Act from 1928¹⁸⁸ that states that employment can be terminated on grounds of abuse. The Penal Code provides protection against bodily assault in articles 217, 218 and 219 with penalty according to the seriousness of the assault, from six months imprisonment up to 16 years imprisonment in which penalties are harsher in assault that lead to serious physical harm or even death.

The act of rape by force, threat or other compulsion is punishable with 16 years of imprisonment according to article 194 of the Penal Code. Of special interest is article 198 which states that anyone having carnal intercourse or other sexual intimacy with a person by gravely abusing his/her position as the latter is dependent upon him/her financially, in his/her employment or as his/her client in confidential relationship, shall be subject to imprisonment for up to 3 years or, if the person is younger than 18 years, for up to 6 years.¹⁸⁹ This article is thus very relevant to sexual abuse against domestic workers whether they act in the formal or informal sphere. There is financial dependence in informal domestic work even if an employment relationship is not established and thus is article 198 of the Penal Code applicable.

Only one criminal case which was prosecuted on the grounds of Article 198 has come before the Supreme Court in Iceland, in a case of sexual exploitation on behalf of a manager against his clients in a treatment facility. The incidents that the prosecution claimed were a violation of article 198 were conducted after the supposed victims were in treatment with the defendant. The court did not acquitt the manager of those charges as the situation of dependence was not undisputed and the

¹⁸⁷ Article 5 C189.

¹⁸⁸ Servants Act No. 22/1928.

¹⁸⁹ Penal Code No. 19/1940.

formal confidential relationship had ended at the point of the incidents.¹⁹⁰

The non-discrimination legislation in regard to gender has a reference in the situation of informal domestic workers. Employers and trade unions have an obligation to work actively to bring women and men on an equal footing on the labour market¹⁹¹ which raises questions of their obligations towards a group of unprotected women-dominated informal class of domestic workers. As described in chapter 4.4., the aim of the Act on Equal Status and Equal Rights of Women and Men is to ensure gender mainstreaming in the labour market. That means that in any decision and policy making regarding the labour market the implications for women and men shall be assessed. The lack of interest and attention on behalf of the unions and the state to the situation of informal domestic workers, dominantly women, violates the spirit of the act but can hardly be seen as violation against an individual or a ground for discrimination charges.

The gender equality act provides the right to equality in relations to wages, recruitment and education and protection against gender-based harassment and sexual harassment. These rights and obligations are however related to decisions on behalf of the employer towards employees and assume a formal employment contract.¹⁹²

5.4.5. Migration

Domestic work has become a migration issue in Europe. One of the reasons the ILO gives for the increase in domestic work is the globalization of work force where workers from disadvantaged countries and areas seek better conditions through employment in homes of more advantaged areas.¹⁹³ Migrants are also an identified group in the most vulnerable situation in Anna Gavanas's study on domestic workers in Stockholm, Sweden. They often lack fluency in the Swedish language, social network and documented migration status and are locked in a situation of being informal domestic workers without minimum labour rights or possibilities to break out of the situation.¹⁹⁴ Due to Iceland's special geographic location, being an island in the North Atlantic, the migrant situation is somewhat different from other Nordic countries. The possibilities for undocumented migration to enter the country are limited and so are the means of dwelling in the country with expired visa.

190 The Supreme Court of Iceland Case No. 334/2008.

191 Article 18, Act on Equal Status and Equal Rights of Women and Men No. 10/2008.

192 *Ibid.*

193 ILO, 2010, International Labour Conference, 99th session, Report IV(1), Decent work for domestic workers.

194 Gavanas, A., 2010, Who cleans the welfare state? Migration, informalization, social exclusion and domestic services in Stockholm, Institute for Futures Studies Research Report 2010/3, Stockholm, p. 85.

The situation of migrants in Iceland is very depending on their citizenship and international agreements. Citizens of the Nordic countries do not have to apply for permit to work or reside in the country and according to agreements within the Nordic Cooperation they enjoy full rights within the welfare system.¹⁹⁵ The EEA-agreement and the Convention establishing EFTA provides the citizens of EU-countries as well as Lichtenstein, Switzerland and Norway with a special permit to live or work in Iceland for up to three months from the date of his/her arrival, or up to six months if he/she is looking for employment.¹⁹⁶ For migrants outside of these privileged areas the rule applies that no work permit may be granted without a residence permit and foreigners may not enter Iceland before the application for such permit has been accepted.¹⁹⁷ The general rules for granting work permits for foreigners outside of the scope of the EEA-agreement are that employees cannot be found within the area, the local trade unions in the relevant branch has made comments on the application,¹⁹⁸ an employment contract is signed, the employee is insured and the employer guarantees to pay the cost of sending the employee back to his home at the end of the employment.¹⁹⁹ From these general rules there are exceptions if a job requires special skills or if shortage of labour is documented (which has been the case in Iceland the past 10 years before the financial crisis in 2008). Artists and academics are exempted from these general rules as well but no exceptions are relevant to domestic workers specially.²⁰⁰ In times of unemployment it is unlikely that an exception due to shortage of labour is provided but employees in domestic work could gain work permit due to family reunion according to article 12 in the Foreign Nationals' Right to Work Act. Family reunion is the main reason for accepting resident permits at the Directorate of Immigration which again is the condition for work permit.²⁰¹

The ILO's concern regarding possible expansion of migrant domestic workers without resident permits is scarcely applicable to Iceland as the borders are well protected by the North Atlantic sea. Those who seek asylum or refugee status are evaluated on the grounds of the Dublin II²⁰²

195 Article 7.a., Act On Foreigners No. 96 /2002 and Agreement concerning a Common Nordic labour market. Signed at Copenhagen on 6 March 1982. Came into force on 1 August 1983.

196 Article 35, Act On Foreigners No. 96 /2002.

197 Article 10, Act On Foreigners No. 96/2002 and article 6 of the Foreign Nationals' Right to Work Act No. 97/2002.

198 What these comments shall contain is not regulated but a tacit understanding is that the act of making a comment is a positive statement towards the application.

199 Article 7, Foreign Nationals' Right to Work Act No. 97/2002.

200 *Ibid.*, Articles 8-10.

201 54% of all resident permits granted in Iceland in 2010 were due to family reunion according to the Annual report of the Directorate of Immigration.

202 Europe Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

regulation agreed upon by the member states of Schengen. All applications for asylum lodged in Iceland are therefore first examined with a view to determine if another Schengen member state is obligated to examine the application. In such cases the asylum seeker is redirected to the first Schengen country he/she entered. Due to the geographic location of Iceland and limited means of transportation to and from the island this is often the case and the asylum seekers in Iceland are relatively few. In 2010, the Directorate of Immigration received 34 applications for asylum, 9 of them fell under the criteria of Dublin II regulation and 25 of them were processed further.²⁰³ The group that has neither work permit nor resident permit in Iceland is therefore very limited in number.

Although migrants probably participate to some extent in both the formal and informal market of domestic work in Iceland, they are not to the same degree subject to the vulnerability that is described by ILO and the Swedish research of Gavanas. In order to stay in Iceland, immigrants have to have resident permit which provides them with minimum social security. The most likely way that a person gets resident permit is through family reunion and with family comes the social network that Gavanas describes is absent for many domestic workers in Sweden. Icelandic domestic workers of foreign origin do enjoy minimum legal protection but there is still a reason for giving this group special attention as in other countries. The possible lack of language skills and knowledge about legal rights places domestic workers in an exposed and vulnerable situation in the employment relationship.

²⁰³ Directorate of Immigration, 2010, Annual report.

6. From informal to formal

The first step of turning the informal labour market for domestic work into a formal market is executing a research on the extent of its existence but at this point we merely have indications of an informal domestic labour market in Iceland. The necessary change in legislation can be adopted from other Nordic countries and their experience of stimulating a formal domestic work market can be used for a successful outcome. In Sweden as well as in the other Nordic countries there was an act similar to the Servants Act in Iceland but it was gradually modernized to meet modern labour standards.²⁰⁴ Although that policy work has still not taken place in Iceland, there are some models that could be used as a support in such process depending on the conclusion of the necessary political debate prior to amendment in legislation. The collective agreement for workers in farms provides possible standards for live-in domestic workers regarding housing, wages and privacy. Similarly the ILO convention on domestic work provides guidelines for acceptable minimum terms as well as raises the specific concerns connected to domestic work. The convention particularly emphasizes the necessity of collaboration between actors on the labour market in developing better conditions for domestic workers. That is in line with the culture of the Icelandic labour market but different actors can have different interests regarding formalization of domestic work.

6.1. The interests of making domestic work formal

The societal interest in modifying an informal market to formal is great. The social security net that the state provides is financed through taxes and insurance levy from the formal labour market. Actors on the informal market do enjoy minimum social security without paying their fair share even though the rights are not as extensive as the rights of workers in the formal market. Furthermore, the possibility to be registered as unemployed or students and at the same time act on the informal market would be limited in a formal market. The division of domestic duties is very gendered and paid domestic work can be used as a tool in the strive for gender equality. To include paid domestic work in policy making regarding equality requires that the work is formal and can be affected by legislation and administrative decisions. The motivation for the state to encourage formalization of the domestic labour market is great but there are many ways in which that can be done.

The employment relationship between a household and a domestic worker is most often an informal non-administrative relationship between people making each other a favor, one by cleaning and the other by paying. A formal relationship requires more time and effort and most often more

²⁰⁴ Calleman, C., 2007, *Ett Riktiget Arbete?* Danmark, Chapter 5.

expenditures for the employer. He/she has to pay employers fee into a pension fund, insurance levy to the tax authorities, possible complementary contribution to the employee's union membership fee as well as employer's insurance. In addition to that, the active employer's obligation regarding non-discrimination and health and safety at work is to be considered. An administrated employer has the legal obligation to communicate with tax authorities and other institutions and calculate wages. The time it takes to administrate a formal employment can easily exceed the time saved by having another person clean the house twice a month. This is only the practical aspect but the moral aspects varies between cultures and personalities. A more likely scenario is that a household which hires a formal domestic worker does so through a company which is the administrator. The administrative fee is then paid to a third party.

The employee is at first gaze only to benefit from being a formal worker instead of informal but the situation can be more complicated. The advantage of being a formal worker is of course the legal entitlements it provides regarding insurance, pensions, safe work environment, minimum labour standards and access to unions to name a few. In reality however a domestic worker acting on the informal market can be a student, registered as unemployed or disabled or receiving social security support. If a domestic worker is a student, the student loans that are subsidized by the state are contingent on possible incomes in the sense that the higher income the student earns, the smaller amount he/she is entitled to from the Student Loan Fund. The same goes for disability pensions and social support from the municipalities, they gradually reduce with higher income. Needless to say, people are not entitled to unemployment benefits if they are working. Students and people with disabilities do therefore gain by working outside the formal market and have a short time interest in keeping the work informal.

The limited short time interest of employers and employees to turn informal work into formal is a contributor to status quo and one of the reasons why Sweden chose the way of tax deduction for domestic work, in order to introduce an incentive for groups that did not before consider participating in the formal market because of lack of interest.

6.2. Tax deduction for domestic work, the Swedish model

In her book, *Ett riktigt arbete?*²⁰⁵, Catharina Calleman provides in insight into the discussion and research leading up to the tax deduction for domestic work called the RUT-deduction, implemented into Swedish laws in 2007. She claims that the matter first became relevant in the 90's with increasing demand for domestic workers following an European trend caused by decreasing welfare

²⁰⁵ Translation: A real work?.

services, increasing demands for performance in the labour market and financial ability to pay for domestic work.²⁰⁶ In the nineties the discussion focused on ethical, social and political issues such as demand about individuals independence in their personal needs, the possible abuse of underprivileged women as cheap labour and a backlash to a society divided by classes.²⁰⁷ At the same time the debate took off, a number of companies providing domestic help were established and created a demand for political action to reduce black labour within the industry of domestic work.²⁰⁸ At the beginning of the 90's almost 25% of households showed interest in hiring domestic help on a regular basis provided it was tax deductible.²⁰⁹

In 2006 the Swedish Tax Agency investigated the magnitude of black labour in domestic work and found that 16 percent of persons in the age of 18-74 had bought domestic services without taxation the year before. This amounted up to about 0,5 percent of working hours in Sweden.²¹⁰ It was clear that an industry had rapidly developed outside the conventional labour market. The aim of the RUT-deduction as introduced in the bill was fourfold; to change black labour in to white labour, to create possibilities for women and men to increase labour market participation, making more room for less educated people on the labour market and to enable women and men to combine family and work on equal terms.²¹¹ The RUT-deduction legislation has raised political discussions about possible effects and the parties at the left of the political spectrum²¹² have been skeptical. Their argument has been that the tax deduction would undermine the welfare system through more privatization of care taking and suggested increasing the budget of the official social care system instead. Furthermore, the left wing claimed that the RUT-deduction would create a new labour market for underpaid women and the ones that would gain from the legislation were well off households that could pay their way to equality instead of both partners taking responsibility within the home.²¹³

In praxis, the RUT-deduction gives a 50% refund on services such as cleaning, sewing, cooking, gardening, child care and other care giving within or in connection with the home. The requirement is that the hired help or the company is registered at the tax authorities, the worker is older than 18 years and the amount does not exceed 50 000 SEK a year for each household.²¹⁴

206 Calleman, C., 2007, *Ett Riktigt Arbete?*, Denmark, p. 11 and 29.

207 *Ibid.*, p. 30.

208 *Ibid.*, p. 55.

209 SOU (Official Government Reports) 1994:43, *Uppskattad sysselsättning – om skatternas betydelse för den privata tjänstesektorn*, p. 59.

210 The Swedish Tax Agency, Report 2006:4, *Svartköp och svartjobb i Sverige*, p. 441 and 460.

211 Proposition 2006/07:94, *Tax Relief for Household Services etc.*, p. 1.

212 The Left Party, the Swedish Social Democratic Party and the Swedish Green Party.

213 Tax committee report No. 2006/07:SkU15.

214 *Supra* note 208.

The Swedish Tax Agency estimates a 10% decrease in domestic black labour as a result of the RUT-deduction²¹⁵ but the most radical change is among those who did the chores themselves before but decided to hire help after the legislation.²¹⁶ The reimbursement has gradually risen the past years from 120 million SEK in 2007 to 1.371 million SEK in 2010.²¹⁷ Two third of the companies especially providing domestic services in Sweden started up after the legislation.²¹⁸ In this statistical sense the legislation is a success, reducing black labour and stimulating growth in a specific market.

Gavanas' conclusion after a research among domestic workers is that the RUT-deduction has dual consequences to processes of social inclusion and exclusion. Those who act on the formal labour market have gained improved conditions and increasing social inclusion but those acting in the informal market report further exclusion and weaker position than before. The cleaning job has not improved in status with the new regulations and is still a gendered, low status, vulnerable and low pay job.²¹⁹ Migrant workers have a tendency to become locked in cleaning jobs with few means of developing language skills or creating contacts to brake out of their situation, whether they are formal or informal workers.

Statistics Sweden (SCB) report that 64% of the reimbursement goes to the quarter of households with the highest income while only 7% of the reimbursement goes to the quarter of households with the lowest income. The most frequent users are couples with children and single women over the age of 65.²²⁰

The Swedish government has not yet published an evaluation report on the RUT-deduction but it is safe to say that there has been progress in changing informal labour in to formal labour through the legislation. It can also be argued that it enables certain groups of women and men to participate in the labour market and stimulates equality in households with relatively good income. As for the aim of creating a room for less educated people in the labour market it certainly has but whether or not it is a successful development to further establish a low pay, low status, gendered cleaning class is still up for discussion.

215 The Swedish Tax Agency, 2011, Report 2011:1, Om RUT och ROT och VITT och SVART, p. 11.

216 65% of the chores that RUT-deduction covered in 2010 were unpaid domestic work before 2007. The Swedish Tax Agency, 2011, Om RUT och ROT och VITT och SVART, Rapport 2011:1, p. 8.

217 *Ibid.*, p. 8.

218 *Ibid.*, p. 9.

219 Gavanas, A., 2010, Who cleans the welfare state? Migration, informalization, social exclusion and domestic services in Stockholm, Institute for Futures Studies Research Report 2010/3, Stockholm.

220 Statistics Sweden, 2011, Valfärd Nr. 1:2011, p. 3-5.

6.3. Tax deduction in Iceland

Following the financial crisis that hit Iceland in 2008 a series of state interventions in the labour market were introduced for the purpose of creating jobs and keeping the machinery of the economy running. One of these incentives was a reimbursement for expenses related to building, repair and maintenance. Individuals could get up to 50% reimbursed when hiring contractors or employees in property development.²²¹ The model is the same as in Sweden, called the ROT-deduction, but the difference is that in Sweden this reimbursement covers domestic work as well (RUT-deduction). It is interesting and a testimony of how short along the discussion about domestic work is in Iceland that no suggestions of expanded reimbursement are to be found in the documents prior to the legislation. The idea of reimbursing for domestic work as done in Sweden simply never came up for discussion.

The reimbursement for property development was a temporary project that expired in 2011 but the model and experience of the project remains.

²²¹ Bill amending Income Tax Act, Document No. 893, Legislative Session No. 138, year 2009-2010.

7. Discussion

7.1. Exceptions in labour legislation regarding domestic workers

Formal domestic workers are, as other workers, protected through minimum labour standard legislation in Iceland. The tracks of domestic work in labour legislation are few but can be found in the Servants Act from 1928 and through a few exceptions in other legislation. Special exception is for example provided for youngsters to execute occasional work or short-term domestic work in the Act on Working Environment, Health and Safety in Workplaces.²²² As presented before the legislator had difficulties implementing the European Council Directive on the protection of young people at work²²³ due to the will to protect this youth-work culture. The exception for domestic work does not however seem to be inspired by that thinking but is a direct translation of article 2.2.a. of the directive allowing Member States to make such exceptions. The aim of this article in the directive is to enable young people to participate in family undertakings (article 2.2.b) and accept that it is often impossible to draw boundaries between contribution to family life and activities that could be characterized as employment within the home.²²⁴ Notable are the requirements for this exception, that domestic work shall be short term or occasional but there is no condition regarding the employer being a member of the employee's family or the home being the employee's family home. As a result, domestic workers are exempt from the Act on Working Environment, Health and Safety in Workplaces if they are under the age of 18 and work occasionally or in short terms. They experience poorer legal protection than people over the age of 18 executing occasional or short term domestic work when it comes to health and safety in the working environment. This problem is not addressed in the preliminary work to the implementation of the Directive which leads to the conclusion that the Icelandic culture of youngsters work was not taken into account. Icelandic children and teenagers work sporadically and short term taking care of babies, gardening and doing light maintenance as well as farm work in the summer time to give some examples. The work of children and teenagers is widespread and even formalized through the working schools of the municipalities and seminars by the Red Cross expressly training youngsters for sporadic and short term domestic work.

For formal domestic workers over the age of 18 the Act on Working Environment, Health and Safety in Workplaces does apply but the exception lies in the inspection of the possible workplace

222 Act on Working Environment, Health and Safety in Workplaces No. 46/1980.

223 European Council Directive on the protection of young people at work No. 94/33/EC.

224 European Commission, 2010, Commission Staff Working Document on the application of Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work. Brussels.

where the sanctity clause of the Constitution is not in agreement with the act. This problem has been addressed in South Africa which is a country that has included domestic workers under labour law as early as 1993 and 5% of the workforce is domestic workers. Their conclusion is that inspectors do not have permission to enter private homes but for effective inspection the permission of the employer is sought beforehand.²²⁵ This could be a solution for Iceland if a formal market for domestic work develops and has relevance today towards those working as social assistants for the elderly and the sick within private homes.

Another labour law act in Iceland which particularly excludes domestic workers is the Act on a 40 Hour Workweek. In the explanatory comments with the bill from 1971 the exception for seamen, farmworkers and domestic workers is explained by the nature of the work, seamanship and agricultural work is subject to weather conditions and domestic work is hard to manage into forty hour work week.²²⁶ An interesting symbolic example is provided to argue for the exception of domestic work, namely women knitting at home and delivering work on product bases that is hard to monitor. This argument is rather thin as there are many other occupations that are hard to monitor, for example drivers, tradesmen and artificers. A more likely explanation for this exception is that domestic work has simply followed the legal frame of agricultural work in legislation about working hours. The heritage is the Servants Act which presumes agricultural society but includes in fact all domestic workers. Another possible explanation is that domestic work is not seen as real work as it is hard to distinguish between unpaid domestic work and paid domestic work. Is the knitting woman producing a product for a market or simply providing garment for the family? Whatever the reason is, the legislator viewed domestic work as an occupation soon to be history when the act was passed in 1971²²⁷ and was in that sense in line with the findings of the ILO in the Domestic work survey from 1970s.²²⁸ The concern that the ILO expresses today about the exclusion of domestic workers from labour legislation is relevant in Iceland as these examples of exceptions for domestic workers show.

7.2. The protection of informal domestic workers

By definition, informal workers are not protected by rights gained through a formal employment contract but they are protected through some parts of labour legislation as well as human rights

225 Sjöberg, E., 2011, Enforcement of laws regulating domestic work - A case study of South Africa, Master Thesis, Lund University, p. 33.

226 Bill on 40 hours workweek, document No. 103, Legislative Session No. 92, year 1971.

227 *Ibid.*

228 ILO, 1970, The Employment and Conditions of Domestic Workers in Private Households: an ILO Survey, International Labour Review, October 1970, p. 391-401.

conventions, the Penal Code, rules of liability and minimum social security, all of which have effect on their working conditions. Through international commitments, mainly the European Convention on Human Rights as well as the domestic legislation, workers have a right to be free from slavery and forced labour, they have the right to organize, to a fair remuneration and to be free from discrimination. These rights are not conditioned to a formal employment relationship even though they can be hard to exercise by informal workers. This particularly applies to the right to organize as the counterpart would hardly recognize informal workers as signatory and hence the main function of organizing, namely negotiating for better terms, would be mute. If a group of informal workers would publicly appear, the individuals in this group would certainly be charged for tax fraud. Informal domestic workers right to organize is therefore merely hypothetical but hardly likely in praxis. The fair remuneration falls under similar condition as it would be impossible as an informal worker to seek this right before courts without shedding the light on a violation of the Income Tax Act. To some extent, the fundamental right of being free from discrimination is of the same nature as the right to organize and to fair remuneration. The fundamental rights are protected but it is hard to seek ones right as an informal worker in discrimination issues as well as in access to work or remuneration. However, protection against harassment and gendered violence is regulated in the Penal Code and vulnerability towards for example an employer, formal or informal, is a factor in such situations. The accessibility to fundamental rights is as explained above, different between informal and formal workers.

Informal domestic workers do enjoy some social security but the difference between them and formal domestic workers lies in the rights to maternity/paternity pay, unemployment benefits, sickness allowance and pension funds, all of which are progressive rights earned through wage-related fees.

7.3. Vulnerable groups in the market of domestic work

In the process of transforming the market of domestic work from informal to formal there are groups which situation needs to be considered specially. These groups are teenagers, migrants, au pairs and possibly the group of self-employed domestic workers.

Teenagers and au pairs are in a similar legal position in the sense that their domestic work is excepted from labour legislation though on different grounds. Teenagers are excepted from legislation regarding health and safety at work on the ground and in the case that they are working sporadically and short term. The underlying justification is that they hold work within the family

even though that is not a requirement for the exception. Au pairs surely execute domestic work but do not fall under labour legislation on the grounds that the work is secondary to the main purpose of their position, namely the cultural exchange. In both these cases, there are objective reasons for exceptions from the labour legislation but in viewing the domestic labour market a proportionality assessment has to be conducted and reviewed regularly. If in fact au pair exchange programs are developing into low paid, unprotected domestic work employments,²²⁹ the legal protection of au pairs needs reviewing. There are indications that the au pair concept is changing in Europe, not only regarding domestic work tasks but the upper age limit as well. In Germany the Granny au pair concept is rooting²³⁰ and questions about possible age discrimination have been raised within the European Union.²³¹ Article 4.1. of the European Agreement on Au Pair Placement which provides upper age limits²³² can be in contradiction with article 12 of the Council Directive establishing a general framework for equal treatment in employment and occupation which prohibits age discrimination.²³³ This has not yet been tried before courts. Regardless, the possible expansion of au pair programs in the future makes the matter of legal protection for this group relevant.

The Swedish experience that recent research presents²³⁴ is alarming about the situation of migrants in domestic work and their vulnerability. The matter is however more bureaucratic than of legislative nature as migrants do enjoy the same legal protection as other domestic workers but the vulnerability consists in not knowing your rights and the danger of isolation. Registration providing overview is therefore of importance for outreach and delivery of information to this group.

A fourth group that is vulnerable in the market of domestic work consists of the self-employed. For an employee to enjoy minimum rights according to labour law an employment relationship is required that a self-employed contractor does not have. The self-employed is however obliged to pay into pension funds as well as the insurance levy but does not enjoy the rights that follow an employment relationship such as paid vacation and sickness leave nor terms of notice. Domestic work where the worker has many employers or buyers of the service is a typical situation where the

229 Platzer, E., 2002, Kulturellt utbyte eller billig arbetskraft? - au pair i Sverige. Socialogisk forskning nr. 3-4, p. 32-57.

230 Granny Au Pair website <<http://www.granny-aupair.com/>> Visited 15 May 2012.

231 European Union website for European Year of Active Ageing and Solitariness between Generations 2012 <<http://europa.eu/ey2012/ey2012main.jsp?catId=975&langId=en&mode=initDetail&initiativeId=65&initLangId=en>> Visited 15 May 2012.

232 European Agreement on Au Pair Placement, CETS No. 068.

233 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

234 Gavanas, A., 2010, Who cleans the welfare state? Migration, informalization, social exclusion and domestic services in Stockholm, Institute for Futures Studies Research Report 2010/3, Stockholm.

boarders between employment relationship and contracting are diffuse. In principle, if a worker only has one employer, there is an employment relationship with all the obligations the employer holds. A few cases have been brought before the Supreme Court where contractors claim the status of employee, in some cases for the purpose of getting priority claims in a bankrupt estate. Each case is evaluated separately and takes the nature of the relationship into account. Has the contractor worked for a single buyer, is the wage determined by the hours worked or the tasks executed, is the contractor managed by the buyer and does the buyer provide working facility?²³⁵ In a situation where a domestic worker is hired through a contracting firm to clean in many different homes the domestic worker could be considered a sub-contractor and the employer merely a mediator for tasks. In such situations, the workers employee status is not clear and thus the domestic workers rights are challenged. A likely situation is that the domestic worker is self-employed and thus undisputedly a contractor, hired of many to perform certain tasks such as cleaning homes. This group falls into the grey area of the labour market and needs special attention in a potential process of turning informal domestic work into formal.

7.4. The gender factor

The feminist movement in Iceland has been very active the past years but even within that movement the absence of discussion about domestic work is alarming. An example of that is the existence of the housewife holiday fund supported by the Housewife Holiday Act from 1972.²³⁶ Women who manage or have managed a home without revenue, have the right to apply for a holiday from the fund and each municipality is obliged to pay at least ISK 100 a year for each resident into that fund. The attitude of domestic tasks being women's responsibility is therefore still included in Icelandic legislation but the act has not been up for discussion within the feminist movement although there is increasing pressure from municipalities to repeal the act.²³⁷ An informal inquiry on a closed Icelandic feminist discussion board revealed that the informal domestic labour industry is flourishing amongst feminists, many had an experience of working domestically in younger years and later buying domestic help sporadically. This is seen as a natural development and the concerns raised were how to involve men in this cycle. The domestic work discussion is problematic from the feminist point of view as the act of hiring domestic help can be seen as a shortcut for men around equality. Instead of taking an active part and responsibility within the home, they buy themselves free from the negative burdens of equality by hiring domestic help. The

²³⁵ The Supreme Court of Iceland, cases No. 286/1998 and No. 58/2002.

²³⁶ Housewife Holiday Act No. 53/1972.

²³⁷ In January 2012, the town council of Hafnarfjörður, the third biggest municipality in Iceland, agreed that the Housewife holiday act should be repealed. Protocol from the town council meeting in 12 January 2012.

other side of the coin is that in other countries where there is a functional formal domestic work market, the work is executed by low wage migrant women doing heavy work, often employed by companies owned by men which collect the profit. For those who show interest in gender equality issues this is not an acceptable development, to simply move the gendered power structure from informal to formal and in doing so giving validation to a gendered labour market which subordinates women.

Regardless of the perspective on domestic labour market, gender is a dominant factor and needs to be considered in possible state involvement in stimulating the market to move from informal to formal.

7.5. From Laissez-faire to Alva Myrdal

The present situation in Iceland regarding domestic work can be described as *Laissez-faire* environment where the state disregards the strong indications of an informal domestic market. In addition, there has not been a development in legislation about domestic work since the Servants Act from 1928, the tax authorities do not pay attention to this informal market nor do labour market inspection organs. There is no discussion about state involvement or encouragement and there seems to be a consensus about this situation. Even though there is no research in this area, it cannot be excluded that the same development is going on in Iceland as in other developed countries, in fact it can be considered rather likely. The issues of concern that the ILO expresses regarding the situation of domestic workers should be considered relevant to Iceland as well and indicators of possible development can be found in Swedish reports in the background work to the RUT-deduction legislation.

The RUT-deduction legislation is successful in turning an expanding informal market to a formal one and increasing the demand for domestic work. When workers enter the formal labour market they get increased rights and protection which is a reason in itself for implementing a tax-deduction system. The concerns that were raised prior to the legislation and have followed the discussion ever since are for example linked to the class and gender factor as well as the balance of power in an employment relationship. Concerns have been raised that the legislation contributes to a restoration of a master/servant relationship. The contribution to equality through formalization of the domestic work labour market is unburdening of unpaid domestic chores that are to a greater extent executed by women. This however is connected to the class of the households as the middle class is more likely to use the tax deduction and low paid working class similarly unlikely to. A class of low paid

female domestic workers has expanded for the benefit of the middle and high class households. The purpose of the legislation was amongst other, to promote gender equality but its success can be disputed.

The Nordic societies spend substantial amount of money on promoting equality and making it possible for both parents to participate in the labour market. Kindergartens and other care taking facilities are expensive but the outcome is considered worth striving for; increased equality and economic independence with the quality of life it brings. Through such measures the state provides tools for greater equality on the labour market and within households. The degree of state participation is changeable and the ideas of Myrdal from seventy years ago provide tools for the state to further encourage equality by involving domestic work such as cooking and cleaning into the policy making regarding equality. Furthermore, the ideas assume unburdening domestic tasks of homes regardless of their economic status and for the benefit of the low paid working class. A class of professionals within domestic work would develop with the recognition and authorization comparable to other working classes such as playschool teachers and practical nurses. These ideas are very far from present situation but were considered a realistic part in forming the Nordic welfare model of equality between sexes and classes. In that context the extended role of municipalities in domestic work for the disabled and the elderly is a possible passage to increasing public participation with respect to equality. The access to the service as well as the collected fee is subject to the situation of each user which reduces the economical inequality in buying domestic help.

One of the dominant factors in promoting equality on the labour market is to find a balance between home and work. In finding that balance it is vital to look at all work executed within the home, burdening women more than men and preventing them from full participation in the labour market. While care taking have developed into professions through the past decades, other domestic chores such as cooking and cleaning still remain relatively untouched within the domestic sphere. The laissez-faire attitude towards domestic work has led to an informal unregulated, possibly expanding market. The current situation should be an encouragement to revisit past ideas.

8. Conclusion

The Icelandic legislation on domestic workers originates from 1928 and has not been changed in content since then. The laws are a product of a master/servant perspective in a low industrial agricultural society. Today, domestic workers in farms are included in a collective agreement for farmworkers which is the only trace of collective labour contract specially including domestic workers.

Formal domestic workers are protected through general collective agreements and several minimum standard labour laws with two exceptions. Domestic workers are specifically exempt from the Act on 40 Hours Workweek from 1970 when the assumption was made that the profession of domestic workers would soon be in the past. The nature of the work was believed to be ill fit for working hour restrictions. The second exception is to be found in the Act on Working Environment, Health and Safety in Workplaces for the sporadic and short term work of teenagers. The exception in the act is a direct translation of an article in the European Council Directive on the Protection of Young People at Work. The aim of this article is to enable teenagers to participate in family undertakings but the widespread culture of young people's work in Iceland was not taken into account in the implementation of this particular article.

Informal domestic workers do enjoy some protection through international obligations and domestic legislation on fundamental rights regarding freedom from slavery and forced labour, non-discrimination, right to fair remuneration and freedom of association. Some of these rights however are hard to claim in praxis as informal work contradicts the Income Tax Act and claiming these rights would shed a light on illegal activities.

The market for formal domestic work in Iceland is limited but there are indications about a thriving market of informal domestic work. The experience from Sweden prior to the tax deduction legislation (RUT-deduction) provides suspicion of an extensive black market of domestic work in Iceland. No research or estimations have however been conducted nor have the tax authorities paid special attention to domestic work.

The Swedish experience in stimulating the informal market to develop into a formal market can provide useful tools for Iceland in a similar process but there are some factors and groups that have to be taken into account. The gender factor is relevant due to women being overrepresented as

domestic workers and the formalization could expand yet another profession for low paid women. On the other hand, the possibility to pay for domestic work can have the effect that women participate in greater scale on the official labour market. Unpaid domestic work is still the responsibility of women more than men. The groups of au pairs, teenagers, migrants and self-employed are vulnerable in the domestic work market due to insufficient legal protection or lack of information and needs special attention in a possible amendment of legislation and policy-change on domestic work in Iceland.

Mary Macarthur, the British feminist and founder of the National Federation of Women Workers said in 1909 *“Man has never objected to women working. She has borne her share of the world’s burden since history began. It is her wage-earning which distresses the masculine mind.”*²³⁸ This eco of the past comes into mind in studying the legal status of domestic workers today. The lack of attention to paid domestic work and the exceptions provided in Icelandic labour legislation confirms that domestic work is not regarded as real work. Parallel to increased participation of women in the official labour market there is a search for the balance between home and work and part of the solution is outsourcing domestic work. This work is at the threshold of the formal labour market without permission to enter. It finds itself in the heritage of women’s unpaid domestic work which has never been recognized as real work. This attitude and lack of attention results in a group of workers with limited legal protection and this group is probably expanding. It is overdue that the Icelandic administration recognizes this group and takes accurate measures by research followed by amendments in labour legislation according to international resolutions.

238 Land, H., 1980, Family Wage, Feminist Review No. 6, p. 55–77.

Bibliography

Books and articles

Backman, A., Eydal, G., 1978, Vinnuréttur, Reykjavík.

Calleman, C., 2007, Ett Riktiget Arbete? Danmark.

Gavanas, A., 2010, Who cleans the welfare state? Migration, informalization, social exclusion and domestic services in Stockholm, Institute for Futures Studies Research Report 2010/3, Stockholm.

Gislason, I. V., 2007, Parental Leave in Iceland Bringing the Fathers in – Developments in the Wake of New Legislation in 2000, Centre of Gender Equality and Ministry of Social Affairs, Akureyri.

Gomien, D., 2000, Short guide to the European Convention on Human Rights, 3rd edition, Council of Europe Publishing, Strasbourg.

Grønningsæter, T., 2012, This is EFTA, Brussels.

Guðmundsdóttir, D., 2009, Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Legal Report: Iceland, Institute of Human Rights, University of Iceland.

Hirdman, Y., 2007, Det tänkande hjärtat - boken om Alva Myrdal, Stockholm.

ILO, 1970, The Employment and Conditions of Domestic Workers in Private Households: an ILO Survey, International Labour Review, October 1970, p. 391-401.

Land, H., 1980, Family Wage, Feminist Review No. 6, p. 55–77.

Myrdal, A., 1944, Folk och Familj, Stockholm.

Nickless J., 2002, European Code of social security short guide, Council of Europe publishing, Strasbourg.

Ólafsson, H. Í., Þorgeirsdóttir, B., Gislason, G., 2006, Vinna framhaldsskólanema með námi, unpublished.

Platzer, E., 2002, Kulturellt utbyte eller billig arbetskraft? - au pair i Sverige. Sociallogisk forskning nr. 3-4, p. 32-57.

Sjöberg, E., 2011, Enforcement of laws regulating domestic work - A case study of South Africa, Master Thesis, Lund University.

Statistics Iceland, 2011, Vinnumarkaður 2011, Reykjavík.

Stefánsson, K. & Þórsdóttir, Þ. K., 2012, Vinna og heimili fyrir og eftir bankahrún, p. 34-35, unpublished.

Iceland

A Proposal for a new Constitution for the Republic of Iceland, Drafted by Stjórnlagaráð, a Constitutional Council, appointed by an Althingi resolution 24 March 2011.

Bill on the ECHR Document No. 105, Legislative Session No. 117, Year 1993.

Bill amending Act on Working Environment, Health and Safety in Workplaces, Document No. 1325, Legislative Session No. 121, Year 1996.

Bill amending the act on Maternity/Paternity Leave and Parental leave, Document No. 1065, Legislative Session No. 125, Year 1999-2000.

Bill amending the Act on Equal Status and Equal Rights of Women and Men, Document No. 149, Legislative Session No. 135, Year 2007.

Bill amending Act on Foreigners, Document No. 572, Legislative Session No. 135, year 2007.

Agreement to apply for EU membership 16 July 2009, Document No. 283, Legislative Session No. 137, Year 2008.

Bill amending the Penal Code, Document No. 513, Legislative Session No. 138, Year 2009-2010.

Bill amending the act on Maternity/Paternity Leave and Parental leave, Document No. 315, Legislative Session No. 138, Year 2009-2010.

Bill amending Income Tax Act, Document No. 893, Legislative Session No. 138, year 2009-2010.

Bill on restraining order an deportation from homes, Document No. 1225, Legislative Session No. 139, year 2009-2010.

Regulation on insurance for injury related to domestic work No. 280.

Regulation about the work of children and teenagers No. 426/1999.

Regulation on the crossing of borders No. 1212/2007.

Collective agreement between the Federation of General and Special Workers in Iceland and The Farmers Association of Iceland, Validation 22 June 2011 to 31 January 2014.

Collective agreement between the Confederation of Icelandic Employers and the Federation of General and Special Workers in Iceland, Validation 22 June 2011 to 31 January 2014.

Collective agreement between The Association of Local Authorities in Iceland and the Federation of General and Special Workers in Iceland, Validation 22 June 2011 to 31 January 2014.

Regulation for the Sickness fund of Efling – Trade Union.

Annual report of the Directorate of Immigration in Iceland, 2010.

Protocol from the town council of Hafnarfjörður, meeting in 12 January 2012.

Sweden

Proposition 2006/07:94, Tax Relief for Household Services etc.

SOU (Official Government Reports) No. 1994:43, Uppskattad sysselsättning – om skatternas betydelse för den privata tjänstesektorn.

The Swedish Tax Agency, Report No. 2006:4, Svartköp och svartjobb i Sverige.

The Swedish Tax committee report No. 2006/07:SkU15.

The Swedish Tax Agency, Report No. 2011:1, Om RUT och ROT och VITT och SVART.

Statistics Sweden, 2011, Välfärd Report No. 1:2011.

Nordic Cooperation

Agreement concerning a common Nordic labour market, Signed at Copenhagen on 6 March 1982. Came into force on 1 August 1983.

Nordic Convention on Social Assistance and Social Services, done on 14 June 1994.

Nordic Co-operation, 2011, Nordic Council of Ministers, Copenhagen.

European Cooperation

European Convention on Human Rights as amended by Protocols Nos. 11 and 14, European Treaty Series – No. 5.

The European Social Charter, Strasbourg, 3 May 1996.

Statute of the Council of Europe CETS No. 001.

European Agreement on Au Pair Placement CETS No. 068.

European Code of Social security (Revised) CETS No. 139.

Council of Europe Convention on Action against Trafficking in Human Beings CETS No. 197.

EEA agreement, Part I, Objectives and principles.

Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

European Parliament and Council Directive 2008/104/EC of 19 November 2008 on temporary agency work.

European Parliament and Council Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Europe Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

European Commission, 2010, Commission Staff Working Document on the application of Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work. Brussels.

European Union Agency for Fundamental Rights (FRA), 2011, Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States, Publications Office of the European Union, Luxembourg.

Status Report for European Agreement on Au Pair Placement CETS No. 068
<<http://conventions.coe.int/Treaty/Commun/ChercheSig.aspNT=068&CM=8&DF=13/02/2012&CL=ENG>> visited 13 February 2012.

Status Report for European Code of Social Security (Revised) CETS No. 139,
<<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=139&CM=8&DF=13/02/2012&CL=ENG>>, visited 13 February 2012.

United Nations and International Labour Organization

United Nations Universal Declaration of Human Rights.

United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000.

ILO, C029 Forced Labour Convention, year 1930.

ILO, C081 Labour Inspection Convention, year 1947.

ILO, C087 Freedom of Association and Protection of the Right to Organise Convention, year 1948.

ILO, C098 Right to Organise and Collective Bargaining Convention, year 1949.

ILO, C100 Equal Remuneration Convention, year 1951.

ILO, C105 Abolition of Forced Labour Convention, year 1957.

ILO, C111 Discrimination (Employment and Occupation) Convention, year 1958.

ILO, C122 Employment Policy Convention, year 1964.

ILO, C129 Labour Inspection (Agriculture) Convention, year 1969.

ILO, C138 Minimum Age Convention, year 1973.

ILO, C144 Tripartite Consultation (International Labour Standards) Convention, year 1976.

ILO, C182 Worst Forms of Child Labour Convention, year 1999.

ILO, C189 Domestic Workers Convention, year 2011.

ILO, R201, Recommendation concerning decent work for domestic workers, year 2011.

ILO, 2003, Conditions of Work and Employment Series No. 7 Domestic work, conditions of work and employment: A legal perspective.

ILO, 2010, International Labour Conference, 99th session, Report IV(1), Decent work for domestic workers.

ILO, 2011, Resolutions adopted by the International Labour Conference at its 100th Session, Resolution concerning efforts to make decent work a reality for domestic workers worldwide, Geneva. <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_162049.pdf> visited 3 March 2012.

ILO Press release 16th of June 2011 <www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm> visited 3 March 2012.

Court cases

The Supreme Court of Iceland, case No. 286/1998.

The Supreme Court of Iceland, case No. 58/2002.

The Supreme Court of Iceland, cases No. 334-340/2007.

The Supreme Court of Iceland case No. 334/2008.

The Supreme Court of Iceland case No. 689/2008.

The Supreme Court of Iceland, case No. 105/2010.

The Supreme Court of Iceland, case No. 224/2010.

European Court of Human Rights, Application No. 16130/90 Sigurður A. Sigurjónsson v. Iceland.

European Court of Human Rights, Application No. 73316/01, Siliadin v. France.

Databases and other internet sources

The website of Reykjavik Workingschools, Saga Vinnuskóla Reykjavíkur:

<<http://www.vinnuskoli.is/?s=6&siduID=79&men=7>>, visited 3 March 2012.

The website of the Icelandic Red Cross http://www.redcross.is/page/rki_frettir&detail=1027012 visited 3 March 2012.

The official website of Statistics Iceland <www.hagstofa.is> visited 20 April 2012.

Icelandic Internet social forum of Bland <www.bland.is> visited 10 March 2012.

The official website of the Ministry for Foreign Affairs in Iceland,

<<http://www.utanrikisraduneyti.is/verkefni/althjoda-og-oryggissvid/island-og-sameinuduthjodirnar/island-un/>> visited 5 February 2012.

Official website of the Council of Europe, Country profile for Iceland.

<<http://www.coe.int/lportal/en/web/coe-portal/country/iceland>> visited 3 March 2012.

European Union website for European Year of Active Ageing and Solitariness between Generations 2012 <<http://europa.eu/ey2012/ey2012main.jsp?catId=975&langId=en&mode=initDetail&initiativeId=65&initLangId=en>> Visited 15 May 2012.

United Nations Treaty Collection, <<http://treaties.un.org/>> visited 5 February 2012.

ILO website, About the ILO <<http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>> visited 5 February 2012.

ILO website, Iceland country profile <http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ISL> visited 16 April 2012.

ILOLEX Status Report for Implementation of C189 <<http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C189>> visited 3 March 2012.

OECD statistics database, Employment rate of women - % of female population (15-64)

<http://www.oecd-ilibrary.org/employment/employment-rate-of-women_20752342-table5> visited 10 March 2012.

OECD statistics database, Trade Union Density <http://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN> visited 10 March 2012.

OECD statistics database, Total Fertility Rate

<http://www.oecd.org/document/0,3746,en_2649_201185_46462759_1_1_1_1,00.html> visited 10 March 2012.

OECD statistics database, Labour Force Participation <http://stats.oecd.org/Index.aspx?DatasetCode=LFS_SEXAGE_I_R> visited 10 March 2012.

OECD statistics database, LFS by sex and age – indicators <http://stats.oecd.org/Index.aspx?DatasetCode=LFS_D> visited 11 March 2012.

International Social Survey Programme 2002 <<http://zacat.gesis.org/webview/index.jsp?object=http://zacat.gesis.org/obj/fStudy/ZA3880%20>> visited 11 March 2012.

Granny Au Pair website <<http://www.granny-aupair.com/>> Visited 15 May 2012.

Interviews and emails

Interview with Gylfi Kristinsson, chairman of the National Tripartite Committee, 7 February 2012.

Interview with Halldór Grönvold, assistant manager of the Icelandic Confederation of Labour, 21 March 2012.

Interview with Hulda Stefánsdóttir at Námsferðir and Svanborg Óskarsdóttir at Nínukot, 27 February 2012.

Interview with Karl Sigurðsson at the Directorate of Labour in Iceland, 15 March 2012.

Email from Creditinfo, 22 February 2012.

Email from the Directorate of Immigration in Iceland, 22 February 2012.

Email from Ingibjörg Elíasdóttir, lawyer at the Center for Gender Equality, 19 March 2012.

Email from the Inland Revenue of Iceland, 15 March 2012.

Email from the Registers Iceland, 1 March 2012