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Welcome to Sweden

Is the Swedish labour law sufficient to succeed with labour market integration?

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Abstract

There are over 65 million people all over the world, fleeing from war and other conflicts. Sweden has become one of the largest residence in Europe for refugees and only in 2015, 163 000 asylum seekers made their way into Sweden. The refugees and asylum seekers in Sweden are struggling to find work and it has been estimated to take approximately 7-10 years to establish themselves on the labour market. This thesis will study how the existing labour law affect refugees and asylum seekers entrance on the labour market. The refugees and asylum seekers legal right to work has been studied in relation to opportunities of actually finding work. International legal framework as well as the Swedish labour regulations has been studied to understand if the Swedish labour law comply with the international legal framework for labour market integration. A long side with Sweden, Germany has been facing similar challenges in order to succeed with labour market integration for refugees and asylum seekers. These countries labour legislation and integration efforts has been compared with each other to answer how their labour legislation differ from each other. The thesis has also been studying if a differentiated legislation can create an issue of discrimination on ethnical grounds.

Keywords: labour law, labour market integration, employment protection, refugees, asylum seekers, right to work, Sweden, Germany.

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Abbreviations

AD	The Swedish Labour Court
AGG	The General Equal Treatment Act, Germany
ArbGG	Labour Court Act, Germany
BA	The Federal Employment Agency, Germany
BAMF	The Federal Office for Migration and Refugees, Germany
BeschV	The Employment Ordinance, Germany
CEAS	Common European Asylum System
DiskL	Discrimination Act, Sweden
DO	Equality ombudsman, Sweden
ECHR	The European Conventions of Human Rights
EU	European Union
EU charter	The Charter of Fundamental Rights of the European Union
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IntV	Integration Course Ordinance, Germany
ILO	International Labour Organization
KSchG	Wrongful Dismissal Protection Act, Germany
LAS	Employment Protection Act, Sweden
LO	Swedish Workers Trade Union Confederation
MBL	Co-Determination in the Workplace Act, Sweden
OECD	The Organisation for Economic Co-operation and Development
Prop.	Proposition
RSD	Recognized as refugees through individual refugee status determinations
SACO	Swedish Academics Trade Union Confederation
SAF	The Former Employer's Organization, Sweden
SFI	Swedish for Immigrants
SFS	Swedish Code of Statutes
TCO	Swedish Officials Trade Union Confederation
TFEU	The Treaty on the functioning of the EU
TzBf	The Part-Time and Fixed-Term Employment Act, Germany
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. Introduction

“We are facing the biggest refugee and displacement crisis of our time. Above all, this is not just a crisis of numbers; it is also a crisis of solidarity.” Ban Ki Moon, United Nations Secretary General.¹

1. Background

During the last decade, the world has been marked by the biggest refugee crisis in modern time. More than 65 million people have been fleeing from war, persecution and other conflicts.² In 2015, Germany was the largest recipient of individual applications for asylum in the world, with 441 900 claims, followed by the United States with 172 700, and on third place, Sweden with 156 400 applications. By the end of 2015, 11.7 million Syrians were displaced by their homes, seeking protection abroad, which represent the largest group of refugees. Other large population forced to leave their countries were Afghans, Colombians, Congolese, Iraqis and Somalis. The refugee crisis has increased dramatically during the last decades from 37 million in 1996, to 65 million people in 2015, which is the highest number since the aftermath of World War II. In 2015, over 1 million refugees, displaced persons and migrants made their way into Europe.³

With 17% of the population born abroad, Sweden is one of the largest residence for immigrant population in Europe. By immigrants, estimated 50% came as refugees. Sweden had the largest inflow of asylum seekers in relation to the country's population during 2015. Not only in Sweden, but in all the countries of the Organisation for Economic Co-operation and Development (OCED), migrants are facing great challenges to find their place in the labour market. In 2015, 163 000 asylum seekers arrived to Sweden, the largest inflow per-capita in all OCED countries.⁴

Before the massive refugee crisis in 2015, Swedish National Audit Office conducted an investigation if the State's efforts were effective enough to remove barriers and create the conditions for a rapid and effective integration. The report showed that during the period 2011-2014, it took 7-10 years for refugees to establish themselves on the labour market. The Government's efforts have not been effective enough according to the rapport.⁵

¹ Secretary General, *Refugee Crisis about Solidarity, Not Just Numbers, Secretary-General Says at Event on Global Displacement Challenge*, 2016.

² UNHCR, *Global trends 2015 forced displacement*, p. 5.

³ *Ibid.*, p. 6.

⁴ OCED, *Working Together: Skills and Labour Market Integration of Immigrants and their Children in Sweden*. p. 13.

⁵ Riksrevisionen, *Nyanländas etablering*, 2015, p. 9.

The immigration affects labour market in several aspects and foreign born are now representing an increasing proportion of the unemployed. The financial crisis which hit Sweden in 2008 created a situation of large unemployment for the inborn population. Recently the curve has turned around for the inborn but for foreign born unemployment is increasing. The large number of newly arrived refugees influences the labour market statistics first when they have received a residence permit. Unemployment is expected to rise in 2017 to over 7% as it takes long time for the new arrivals to find employment in Sweden. The National Mediation Office mentions in its annual report that, within a few decades, the number of young and elderly in Sweden will rise significantly more than people in working age and the burden of supply will therefor increase. A successful labour market integration of people in working fit age will be able to reduce the pressure on the welfare system.⁶

There is an ongoing debate in Sweden about how to improve the integration process and the political views diverge. In the budget proposition for 2017 the Government presents several measures in shape of trainee-jobs and education.⁷ The opposition on contrary are proposing to establish introduction employments with lower payroll taxes for employers and collective agreement for immigrants. There is a big discussion in the Swedish media about a reformed and reduced version of the Employment Protection Act (LAS). Several parties, organizations and unions are indicating that the legislation prevent integration for immigrants on the labour market.⁸

Germany and Sweden are facing similar challenges with several immigrants with low educational levels who need to find a way in to the labour market. In Sweden, there is a discussion of a two-tier labour market where low-skilled immigrants have difficulties in gaining access to, and the debate about minimum wages or low-skilled jobs is an ongoing subject. In Germany the labour market is stronger after more than a decade of reforms such as flexible jobs and lower employment costs, mini jobs, changes in unemployment insurance and, since 2015, a statutory minimum wage.⁹ In both countries it is current with a differentiated regulation for national citizens and refugees, which raises the question whether separated systems can form the basis for ethnical discrimination or if this is compatible with the principle of proportionality. With the principle of proportionality means that there always should be a reasonable

⁶ Medlingsinstitutet, *Medlingsinstitutet årsrapport*, 2016, p. 26.

⁷ Budget proposition 2017.

⁸ Centerpartiet, *Jobb och företag*; Svenska dagbladet; *Det behövs fler undantag från LAS*, 2015-06-29.

⁹ Arbetmarknadsnytt, *Så kan tyska reformer sänka trösklar i Sverige*, 2016-05-17.

relationship of proportionality between aim and measure. The effects of an action should not be as interventional that it appears to be disproportionate to the aim and it should be legitimate.¹⁰

Labour market integration is a sizeable field that is not only applicable for refugees and asylum seekers. Another large group concerned the integration is labour migrants who are coming to Sweden with the purpose of applying for jobs, both on permanent or temporary basis. The temporary labour migrants are mainly coming from Central or Eastern European Union (EU) countries or from third countries.¹¹ A fourth group that has been given a lot of attention in Sweden the recent weeks, as a consequence of the terror attack in Sweden in April 2017, has been the undocumented workers.¹² The undocumented workers have an exposed position on the labour market and the international regulatory framework has been considered to be unsatisfactory for this group.¹³

1.2 Purpose and research questions

This thesis aims to study if Swedish labour law is consistent with the international and European laws in order to create a well-functioning labour market integration for *refugees* and *asylum seekers*. The study will investigate if the existing labour law is an obstacle for the integration process of these categories, and in that case, if there is a need to make any changes. As a consequence of this perspective, labour migrants and undocumented workers will not be taken in consideration.

Germany faces similar challenges as Sweden and it will therefore be relevant to compare these national labour laws and integration efforts to each other. Another aspect will be to study whether a differentiated legislation for new arrivals can serve as basis for ethnic discrimination, or if it is an eligible labour market policy measure. In order to meet these purposes, the thesis will answer the following research questions:

1. How does Swedish labour law comply with the international and European legal framework for labour market integration of refugees and asylum seekers?
2. In which ways do the Swedish and German labour legislation differ in relation to labour market integration for refugees and asylum seekers?

¹⁰ Kent Källström & Jonas Malmberg, *Anställningsförhållandet*, 2013, p. 70.

¹¹ Patricia M Daenzer & Paul Van Aerschot, *The integration and protection of immigrants*, 2014, Chapter. 7.

¹² CNN, *Stockholm attack: Uzbek man held on suspicion of terrorism*, 2017-04-08.

¹³ Andreas Inghammar, *The Employment Contract Revisited. Undocumented Migrant Workers and the Intersection between International Standards, Immigration Policy and Employment Law*, 2010.

1.3 Method and material

In order to answer the research questions above, the legal dogmatic method will be used to determine the applicable law, *de lege lata*. The legal dogmatic method include studying sources of law such as; statutory regulation, preparatory work, doctrine and literature.¹⁴ The starting point in the legal dogmatic method is that legal regulation has the highest value, followed by the preparatory work and doctrine. Because of the Swedish membership in the European Union (EU) the EU legislation is also an important part of the legal order.¹⁵ The issue of refugees is also a vital area in the United Nations (UN) and international regulations will therefore constitute an essential source of law. Labour law and migration law are two separate legal areas, therefore cases from courts, relevant for this topic of labour market integration are very limited and will not be used to interpret the legislation.

The second chapter of the thesis will study the international framework regulating labour market integration. The *UN charter* from 1945 and the *Refugee Convention* from 1951 will provide the basis of international legislation. The issue of labour market integration is also a question of human rights, in which UNHCR has a vital role. The right to work will be an essential topic as well as fair working conditions. These rights are considered to be human rights according to the *Universal Declaration of Human Rights* (UDHR). The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) have put the norms from the UDHR into binding obligations for the member states of the UN and will therefore be relevant for this thesis. Two terms that will also be important to study is the difference between *lawfully in* and *lawfully staying* in the country and which rights are following these different conditions, according to the Refugee Convention.

Rights at work have been regulated by the International Labour Organization (ILO). The eight fundamental conventions of ILO will be studied as well as *ILO convention no. 143*, of national equality policies as and *convention no. 111 about discrimination*. Further, the International framework for this subject will include the legislations from the European Union (EU) and the EU Charter of Fundamental Rights will be an important piece of legislation. The Common European Asylum System (CEAS) concludes some of the most central legislations for refugees and asylum seekers in Europe. The system includes the following instruments, the *Dublin Regulation*, the *Recast Asylum Procedures Directive*, the *Recast Reception Conditions*

¹⁴ Bert Lehrberg, *Praktisk juridisk metod*, 2010, p. 26-27.

¹⁵ Claes Sandgren, *Rättsvetenskap för uppsatsförfattare: ämne, material, metod och argumentation*, 2015, p. 66.

Directive, the *EURODAC rules on fingerprinting* and the *Qualification Directive 2013/32/EU*. The CEAS will be used to set out common basic principles for integration, although labour market integration is mainly regulated in national law. The *Treaty on the Functioning of the EU* (TFEU) and *Directive 2000/43/EC* will be studied to set up the framework for ethnical discrimination in the European Union.

The first question will be answered by studying the Swedish labour law in relation to the previous mentioned international framework. The Swedish laws and integration program will be presented in the third chapter. It will also be necessary to study the national laws of asylum in order to understand how the international legal framework has been implemented. The right to work and working conditions will be a major subject in this chapter as well. The *Employment Protection Act (1982:80)* will constitute a basis for the Swedish regulatory framework where employment will be highlighted. Furthermore, trade unions constitute an important part in Swedish labour market and a section will therefore be devoted to the collective agreement governing the labour market. The integration program will be described and also the various forms of employments that are available through the Employment service. The political, trade Union and employers' proposals will be discussed as suggestions for future developments. The *Discrimination Act (2008:567)* in relation to the labour market integration issue of refugees and asylum seekers will be presented by study previous research on the subject. The question of integration on labour market are both jurisprudential and sociological. Therefore, a socio-legal perspective will be used in the analysis to study the law's effects on society and to answer if the Swedish labour law prevents integration on the labour market.¹⁶

The second research question will be answered by using the legal dogmatic method when studying the German law in the fourth chapter. The *Hartz Reform* will be presented to understand why the German labour market has grown strong during the last decades. Legal regulation for labour market, the employment protection, and the discrimination legislation will be studied as well as the different measures that has been made to improve the labour market integration of refugees and asylum seekers. The Swedish and German legislation will then be compared with each other by using a comparative method. The purpose of using a comparative method is to determine differences and similarities in the legal systems.¹⁷

The Swedish and German legal systems differ as, in some categorization, they belong to different legal families. Moreover, the Government is having a more prominence role in the German legislation. There are several important pieces of legal framework for integration of

¹⁶ Håkan Hydén, *Rättsociologi som rättsvetenskap*, 2002, p. 15.

¹⁷ Michael Bogdan, *Komparativ rättskunskap*, 2003, p. 76-77.

immigrants in German labour market that will be studied. Except from the international law, the European law and the German statutory law, the most crucial legislation in this area is the *Basic law*, the *Asylum act*, the *Residence act*, the *Asylum Seekers Benefits Act* and the *Immigration Act*. Other important principles are regulated in specific ordinances such as the *Employment Ordinance* (BeschV) and the *Integration Course Ordinance* (IntV). Germany did implement a new legislation in 2016, the *Integration Act*, that has made major changes in the integration system. This piece of legal framework will therefor be of special interest to study. Further Germanys measures to promote integration of refugees and asylum seekers have been found in literature, reports and other studies. Similar to previous chapters, the right to work and the conditions at work will be crucial in this chapter as well.

The labour law in Germany is built up on the following legislation, the *Civil Code*, the *Protection Against Dismissal Act*, the *Minimum Wage Act*, the *Part-Time and Limited Term Employment Act*, the *Federal Vacation Entitlement Act*, the *Working Time Act* and the *Discrimination Act*. This thesis will compare the different ways to enter employment and the employment protection in both countries for refugees and asylum seekers. Another subject to compare will be the differences in dismissals due to redundancy. There will also be a comparison of the discrimination issue against refugees and asylum seekers in both countries. The discrimination aspect will be studying both by law and previous studies by using the legal dogmatic method combined with the socio-legal perspective. If the labour law is an obstacle or not could also be answered by using an economic analyse measuring the unemployment rate in relation to different aspects. Instead, this thesis will study the legal norms to answer if the labour law is sufficient to succeed with labour market integration.

The analysis is built up on the research questions and follows the dogmatic method answering if the implementations of the International law and the EU law has been sufficient. The first part of the analysis will be based on the legal positivistic approach on which the law is based on the written source, which in this case has been presented in the second chapter of the international framework. This approach makes a difference on how something is, and how it should be. Law and morality are separated and therefore it will not be analysed as whether implementation has become morally correct because the starting point is if the implementation has been correctly made.¹⁸

The second part of the analysis will be discussed by comparing the legal framework with each other to find similarities as well as differences in the legislation.¹⁹ How something should

¹⁸ Penner et al., *McCoubrey & White's textbook on Jurisprudence*, 2012, p. 36.

¹⁹ Bogdan, *Komparativ rättskunskap*, 2003, p. 76-77.

be, falls within the framework of natural law, which has had a renaissance in the judiciary during the last decades, will be discussed in the final part of the analysis.²⁰ There are a number of differences between these two approaches. Legal positivists contend that there is no connection between law and morality which the natural lawyer's rejects. The legal positivists tend to be descriptive and analytic while the natural lawyers are more concerned about evaluating society as a consequence of the law.²¹ The legal framework for labour market integration will therefore be put into perspective of natural law to answer which negative effects could arise from a differentiated legislation for immigrants and for the inborn population in Sweden.

²⁰ Raymond Wacks, *Understanding Jurisprudence*, 2015, p. 13.

²¹ Wacks, *Understanding Jurisprudence*, 2015, p. 40.

2. International framework

“It is time for political leaders to come together, forget their differences and put an end to this senseless violence. Only then will we have the political solution that we all need, the refugees more than anyone else.” António Guterres, United Nations High Commissioner for Refugees, 2014.²²

2.1. Refugee or migrant

Two terms that are often being mixed are *refugee* and *migrant*. A refugee is a person who is outside their own country for reasons of persecution, conflict, violence or other circumstances that require international protection.²³ The refugee definition from the 1951 Convention is:

A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it [...].²⁴

There is no formal legal definition of the term migrant. According to UNHCR a migrant is someone who may leave his or her country for reasons that are not related to any persecution, such as studies or employment.²⁵ Refugees differ in several ways from other migrant groups such as EU migrants, labour migrants or family migrants. Refugees tend to have different terms of demographics and skills as a result of fleeing from their home countries. They are also facing barriers that other migrants do not. For example, many refugees arrive to Europe with a weak link to their host country and they gained their previous work experience and education qualifications from a very different labour market.²⁶ From a legal perspective, it is also important to make a difference between a refugee and an asylum seeker. Asylum seekers are individuals who have applied for asylum according to the 1951 Refugee Convention and whose claim for refugee status has not yet been assessed.²⁷

²² UN, Statements messages, SG/SM/17670-REF/1228, 15 2016-04-15.

²³ UNHCR, Definitions, 2017-02-27.

²⁴ UN 1951 Refugee Convention, Article 1.a.

²⁵ UN 1951 Refugee Convention.

²⁶ European Parliament, *Labour market integration of refugees: Strategies and good practice*. p.20.

²⁷ *Ibid.* p. 20.

2.2. The United Nations

The United Nations (UN) is an international organization founded in 1945. As of 2017, the UN has 197 Member States and is actively working on issues confronting humanity such as peace, security, climate changes and human rights.²⁸ Article 55 in the UN Charter from 1945, is legally binding for member states, and it clarifies the Nations obligation to work towards higher standards of living and full employment.²⁹ There is no definition in the UN Charter on the concept of full employment, but it appears in *the Universal Declaration of Human Rights* (UDHR) from 1948. Article 14 in the UDHR gives the right for a person to seek asylum in another country after fleeing from persecution.³⁰ Article 23 claims the right to work;

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right on equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

The UDHR is not a treaty and is therefore not legally binding for the member states, but together with the UN Charter it is considered to have a legal status. Everyone's freedom, rights and equal value is enshrined in Article 1 of the UDHR. Article 2 establishes that all people have the right to the same freedom without discrimination on the basis of race, skin colour, language, religion or ethnic origin. Furthermore, Article 7, states that everyone has the right to protection against all forms of discrimination and the right to equal protection of the law.³¹ Even though the UDHR is not legally binding for the member states, some parts of the statement are seen as customary international law, including Art. 2.³² Equal work for equal pay is protected in Article 23, stating that everyone without discrimination has the right to equal pay for equal work. Other instruments addressing discrimination were issued by the UN in 1966; the UN Convention of Elimination of All Forms of Racial Discrimination, the UN Universal Covenant on Civil and

²⁸ UN, *About the UN – Overview*, downloaded 2017-05-14.

²⁹ The UN Charter.

³⁰ The Universal Declaration of Human Rights.

³¹ Ibid.

³² Susanne Fransson & Eberhard Stüber, *Diskrimineringslagen – En kommentar*, 2015, p. 18.

Political Rights and the UN Covenant in Economic (ICCPR), Social and Cultural Rights (ICESCR).³³

In 1966 the norms in the UDHR were put into binding obligations in the ICCPR and in the ICESCR. Article 6 in the ICESCR stipulates the right to decent work for every person and secures rights to favourable and healthy work conditions and fair wages. Article 6 applies to all individuals within the states territory, including non-nationals, asylum seekers and refugees, regardless of legal status.³⁴ The right to work has been described as essential in enabling refugees and asylum seekers the opportunity improve both work and language skills in their new countries. By working, they can also become financially independent and participate in the community.³⁵

The UNHCR is the UN's refugee agency, a global organization that is dedicated to saving lives, protecting human rights and building a better future for refugees.³⁶ The *1951 Refugee Convention*, with its additional protocol 1967, is the key legal document for the UNHCR, and it has been ratified by 145 states. The convention defines who is and is not a refugee as described in Chapter 2.1. It also recognizes the right to seek asylum and the participating nations' obligation to grant asylum.³⁷ Countries that ratified the convention are obligated to protect refugees in their territory. The contracting states are not allowed to discriminate against refugees according to Article 3. The refugees should be treated at least as nationals in relation to elementary education, as stipulated in Article 22, and labour legislation, as stipulated Article 24. Refugees should also be treated at least as well as other non-nationals in relation to working conditions, for example, associating in unions, wage-earning employment, self-employment and education higher than elementary school, as stipulated in Article 17.³⁸ If a work permit is required for a foreign national in order to work, this should also be required for refugees.³⁹

The right to work is not a guarantee of an employment; rather it is a way into the labour market. The two terms that are mentioned in the Refugee Convention for granting access to work are *lawfully in* and *lawfully staying* in a country. The right to self-employment follows by being lawfully in the country of asylum, as stated in Art. 18. Wage-earning employment on the other hand, is attached to the concept of lawfully staying in the country, as stated in Art. 17.

³³ Laura Carlson, Örjan Edström, & Birgitta Nyström, *Globalisation, fragmentation, labour and employment law: a Swedish perspective*, 2016, p. 141.

³⁴ Saurabh Bhattacharjee, *Situating the right to work in international human rights law: An agenda for the protection of refugees and asylum-seekers*, 2013, p. 51-52.

³⁵ Edwards, *Human Rights, Refugees, and The Right 'To Enjoy' Asylum*, 2005, p. 320.

³⁶ UNHCR, *About us*, downloaded 2017-05-14.

³⁷ The 1951 Refugee Convention.

³⁸ The 1951 Refugee Convention.

³⁹ P. Weis, *Travaux Préparatoires and Commentary to Article 17 of the UN Refugee Convention*.

The Michigan guidelines, one of the premiere international legal journals in the world, has defined who is lawfully in and who is lawfully staying in the country.⁴⁰ Lawfully in, are those:

- Asylum seekers and refugees who have been admitted to the territory of a Member State for a fixed period of time;
- Asylum seekers who have lodged their asylum claim with the host country; and
- Asylum seekers in a state that fails to determine or comply with a refugee status determination (RSD) system or where the procedure is unduly prolonged.⁴¹

Lawfully staying in the country are those who are:

- Recognized as refugees through individual refugee status determinations (RSD) or as prima facie refugees whether by the state or by UNHCR;
- Asylum seekers in a state that fails to determine or comply with an RSD system or where the procedure is unduly prolonged; and
- Refugees waiting for resettlement in another state.⁴²

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) is applicable mainly on migrants. However, it could also apply to refugees according to Article 2, where the definition of a migrant is a person who is engaged in a remunerated activity in a country where they are not a national. Article 3 in the convention also provides that exception from the exclusion of refugees can be made if the national legislation claims that it should. Sweden has along with other EU member states chosen not to ratify the convention.

The UN General Assembly hosted a meeting on the 19th of September 2016, to address the large movements of refugees and migrants, with the hope of bringing countries together. The meeting resulted in *The New York Declaration for refugees and migrants* where 193 member states signed up for a future plan to address large movements. The declaration includes committing to protecting the human rights of all refugees and migrants. It also includes an agreement for those countries that received and are now hosting large number of refugees and migrants to receive economic support. The declaration contains a strongly condemned against xenophobia and sets up goals to strengthen the positive contributions made by migrants. For those who are in need of resettlement there will be expanded opportunities to relocate to other countries by labour mobility or education schemes. The plan is to adapt a global compact for

⁴⁰ James C Hathaway, *The Michigan Guidelines on the Right to Work*, 2010.

⁴¹ Ibid.

⁴² Ibid.

safe, orderly and regular migration in 2018. By developing guidelines for the treatment of migrant in difficult situations there can be a more equal sharing of the burden and responsibility of hosting and supporting the world's refugees.⁴³

Rights at the work are protected particularly by the eight fundamental International Labour Organisation (ILO) conventions: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); and Discrimination (Employment and Occupation) Convention, 1958 (No. 111). There are four principal values in these conventions which are important for working conditions: freedom of association and collective bargaining, elimination of forced or compulsory labour, abolition of child labour; and elimination of discrimination. These rights are applied to all categories of workers including refugees and asylum seekers. ILO Convention No. 143 states that the Member States are obligated to adapt national equality policies, including policies on vocational training, employment and terms of employment. Restrictions on the free choice for employment can be made during the first two years, but after that it is considered a limitation against the equality treatment for foreign and national workers.⁴⁴

The ILO Convention No. 111 gives in the first paragraph of Article 1, a definition of discrimination which includes distinction on the basis of, among other things, race, colour or national origin. Article 2 requests that member states undertake the formation of a national policy promoting equality in the workplace, with the aim to eradicating all forms of discrimination. It is also worth mentioning the provision in Article 1, 2 p., which makes it clear that a distinction is made on the basis of the nature of the work and its requirements on personal qualifications, should not be regarded as discrimination. The background paper for ILO guiding principles highlights that the labour law and refugee legislation is outdated in some countries and are not compatible with the current complex labour market situation. Very few countries that have taken labour legislative actions to improve the access to the labour market for refugees.⁴⁵ A gap exists between labour law and migration law even though the areas interact with one another. Labour lawyers in Europe have tended not to integrate migration law into the national labour law. For example, immigration affects the labour market by labour supply,

⁴³ UN General Assembly, *The New York Declaration for refugees and migrants*, 2016-09-13.

⁴⁴ ILO, *The access of refugees and other forcibly displaced persons to the labour market*, 2016, p. 12

⁴⁵ ILO, *The access of refugees and other forcibly displaced persons to the labour market*, 2016, p. 15

which in many countries has led to deflated salaries, different working conditions for immigrants and a labour market segmentation.⁴⁶

2.3. European Union

The European Union (EU) experienced the greatest refugee crisis since the Second World War and more than 1 million refugees have arrived to Europe during the last decade. The European Conventions of Human Rights (ECHR), was adopted after World War II. Article 14 states that;

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The main goal of the EU legislation on refugee reception is motivated by the obligation to guarantee asylum-seekers and refugees fundamental rights as established in the EU Charter of Fundamental Rights.⁴⁷ The revised charter from 1999 includes the original 19 guarantees but also 12 new rights. Article 1 in the Charter are protecting the right to work and article to the right to just working conditions. The Charter also includes rights to organise (art. 5), to vocational training (art. 10) and the right of migrant works and their families to protection and assistance (art. 19). According to Birgitta Nyström, professor in Law at Lund University, the rights guaranteed in the European Social Charter place the Charter at the forefront of the instruments which protects labour and social rights in international law.⁴⁸ The EU charter also includes protection against discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of national minority's, property, birth, disability, age or sexual orientation. The EU charter is legally binding for all member states since 2009.⁴⁹

Since the beginning of 2000 the EU Commission has proposed several instruments to build a Common European Asylum System (CEAS). CEAS are supposed to remove differences in the treatment of asylum seekers in the EU. The system is based on minimum standards but Member States are allowed to implement better conditions if wanted. There are five pieces of legalisation in the CEAS enacted by the Parliament and Council.⁵⁰ The revised *Asylum*

⁴⁶ Costello & Freedland, *Migrants at work*, 2014, p. 3-5.

⁴⁷ The European Conventions of Human Rights (ECHR).

⁴⁸ Carlson et al., *Globalisation, fragmentation, labour and employment law: a swedish perspective*, 2016, p. 75.

⁴⁹ Carlson et al., *Globalisation, fragmentation, labour and employment law: a swedish perspective*, 2016, p. 149.

⁵⁰ Poptcheva, *EU legal framework on asylum and irregular immigration 'on arrival'*, 2015.

Procedures Directive 2013/32/EU aims to quicker the asylum decisions and to give asylum seekers with special needs greater protection.⁵¹ The recast *Reception Conditions Directive 2013/33/EU*, ensures that there is a humane reception conditions for asylum seekers.⁵² According to Article 15, Member States shall ensure that asylum seekers have access to the labour market no later than nine months after they apply for international protection:

1. Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.
2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market.

Furthermore, the *Qualification Directive 2011/95/EU* forms a base for granting protection and article 26 gives access to employment after getting protection. The directive became applicable in July 2015 and it sets out minimum standards for the reception of asylum seekers for areas such as employment and health care.⁵³ The first step for a refugee seeking protections is usually to receive a temporary residence. The Qualification Directive states that the residence permit for refugees that are granted asylum will be valid for at least three years. In most countries, there are similar requirements to receive a permanent residence such as language skills and knowledge about the new country. According to art. 34, Member states are obligated to integrate the immigrants in the society by arranging integration programs. The integration programs should as far as possible be designed in a way which takes account of the individual specific needs, including where relevant teaching and provision of information on rights and obligations associated with their protection status is included, recital 47.

The *Dublin Regulation*, enhances protection of asylum seekers during the process of establishing the State responsible for examining the application. The Dublin rules establish that the first Member State an asylum-seeker entered is responsible for examining their application.⁵⁴ There has been an overload in some countries and Asylum seekers therefore have

⁵¹ Asylum Procedures Directive, 2013/32/EU.

⁵² Reception Conditions Directive, 2013/33/EU.

⁵³ Qualification Directive, 2011/95/EU.

⁵⁴ The Dublin Regulation, Regulation (EU) No 604/2013.

moved on to other countries with better conditions for housing, work and social welfare.⁵⁵ Finally, there is *the EURODAC* rules on fingerprinting in the EU database.⁵⁶ Even though there are common basic principles of integration for immigrants there are no specific or practical legislation for how to deal with labour market integration. The issue of integration therefor is the Member States responsibility.⁵⁷

The treaty on the functioning of the European Union, referred to as TFEU belongs to the primary EU law and is directly applicable to its member countries. Article 10 lays down that the Member countries of the Union shall combat all forms of discrimination, including grounds of race, ethnic origin or religion. Article 45, TFEU defines the free movement of workers within the Union. The free movement of workers will lead to a prohibition of discrimination regarding employment and working conditions. The European Convention entered into force in Sweden in 1953 and is Swedish law since 1995. The Convention establishes the prohibition of discrimination, by article 14, which establishes non-discrimination on grounds of race, colour, language, religion, national origin or national minority.

Further, the Council of the European Union adopted, Directive 2000/43/EC, of implementing the principle of equal treatment between persons irrespective of racial or ethnic origin with the aim to combat discrimination and to promote equal treatment in the member states. Article 1 of the directive provides that there must be direct or indirect discrimination on grounds of racial or ethnic origin. Article 2 describes the direct discrimination when an action results in a person with particular ethnic origin are treated worse than any other in a comparable situation. Indirect discrimination exists when a neutral criterion disadvantages people with particular ethnic origin, if not a reasonable criterion and its purpose can be justified. The directive is applicable in working life according to article 3; in employment and on conditions.

The European Commission has taken action to tackle the refugee situation in Europe with the *European Agenda for migration*, adopted in May 2015. The agenda is built upon four pillars; to reduce the irregular migration, saving lives by securing the external borders, strengthen the common asylum policy and to develop a policy for legal migration with focus to attract workers that the EU economy needs. The integration policies are given a limited area in the agenda. The agenda sets out that Member States can be given financial support and they are also supported by policy recommendations on social inclusion and labour market participation.⁵⁸

⁵⁵ See J.-P. Brekke, G. Brochmann, *Stuck in transit: secondary migration of asylum seekers in Europe, national differences, and the Dublin Regulation*, in *Journal of Refugee Studies* 2015, 28(2), pp. 145-162.

⁵⁶ The EURODAC rules, Regulation (EU) No 603/2013.

⁵⁷ European Parliament, *Labour market integration of refugees: Strategies and good practice*, 2016, p.20.

⁵⁸ European Commission, *A European agenda for migration*, Brussels, 2015-05-13.

2.5. The Swedish commitments

The Swedish government signed the Refugee Convention in 28 July 1951, ratified it in 26 October 1954 and it entered into force on 24 January 1955. The UN charter from 1945 is also legally binding in Sweden. The ICESCR was signed on the 29 September 1967 and was ratified on 6 December 1971. The eight fundamental ILO conventions, have a special status among the conventions as they relate to human rights. Therefore, they are considered to be applicable to all humans in all countries, regardless of whether their Governments have ratified them or not. They constitute the minimum standards for working conditions around the world.

According to the Michigan Guidelines, states have obligations to respect, protect and fulfil the right for refugees to work according to the Refugee Convention, the ICESCR and other human rights instruments. In order to make the right to work meaningful the states should provide a secure legal status to protect refugees. States should also review their laws to ensure that they do not discriminate and are limiting work opportunities for refugees. The obligation to protect refugees at work includes against violence, indirect and direct discrimination and equal rights for men and women. States are also obligated to fulfil the right for refugees to work by including measures such as language and skills training, loan for business, support for employment, validation of foreign degrees or diplomas.⁵⁹

The EU charter were signed in 1961 and ratified in 1962, 62 of the 72 paragraphs. In 1998 Sweden ratified the Revised Charter, accepting 83 of 98 paragraphs. Sweden has not accepted paragraphs on subjects such as reasonable working time (art. 2:1), rights at night work (art. 2:7), fair pay for young workers (art. 7:5) among others. These provisions have been difficult for Sweden to ratify in legislation because they are regulated by the labour market parties. Almost all of the rights that has not been ratified are regulated in collective agreements and the Swedish collective agreements includes almost 90 % of the Swedish labour market.⁶⁰

The Universal Declaration of Human Rights has been adopted by Sweden among the other UN instruments addressing discrimination. Sweden ratified the ECHR in 1952 and it became Swedish law in 1998. Sweden has also adopted the ILO convention No, 111 against discrimination.⁶¹

⁵⁹ Hathaway, *The Michigan Guidelines on the Right to Work*, 2010.

⁶⁰ Carlson et al., *Globalisation, fragmentation, labour and employment law: a Swedish perspective*, 2016, p. 81.

⁶¹ Carlson et al., *Globalisation, fragmentation, labour and employment law: a Swedish perspective*, 2016, p. 143.

3. The Swedish way

*"As leaders of EU Member States we have to show the public that our cooperation is sufficiently robust to cope with the common challenges we are facing in the way that they expect of us. We must tackle unemployment, especially youth unemployment, and create more jobs and fair conditions in the European labour market." Prime Minister, Stefan Löfven, 2016.*⁶²

3.1. Historical flashback

Sweden has a long history of welcoming refugees and has been a preferred destination for refugees because of the generous and open welfare system.⁶³ During the Middle Age, Germans came to Sweden from the Hanseatic League. Finnish and Romani people came in early 1500s and Walloons and Savonian people came in the 1600s for work. Jews were given permission to settle in Sweden in the 1700s and during the same time French artist, philosophers and intellectuals also arrived. In the 1800s Italians stucco workers and Scottish people settled in Sweden. Even though there has always been immigration to Sweden, the nation was exposed to the great emigration during the mid-1800s until the 1930 when 1.3 million Swedes were forced to leave their homes because of poverty, religious persecution, lack of political freedom and some, for a sense of adventure.⁶⁴

After the second World War, the emigration period turned back to a period of immigration and refugee policies began to emerge. Mainly it was refugees from Germany, the Nordic countries and the Baltic countries who came over the course of World War II and even though many of them returned to their home countries after the war, some of them stayed. After the war, a labour immigration took place and people arrived from Scandinavia, Italy, Greece, Yugoslavia and from Turkey.⁶⁵ The Government expected that immigrants who came to Sweden, would return to their own countries after their employment contracts expired and it was therefore decided that it was no need to create a specific immigration policy.⁶⁶ During times when the majority of the immigration was composed of labour migrants, the employment were higher among foreign-born than among the inborn population. This applied to both men and women.⁶⁷

⁶² Prime Minister to meet with Federal Chancellor Angela Merkel, 2016

⁶³ Cochrane et al., *Comparing Welfare States*, 2001, p. 211.

⁶⁴ Migrationsverket, *History*, downloaded 2017-05-14.

⁶⁵ Migrationsverket, *History*, downloaded 2017-05-14.

⁶⁶ Lena Södergran, *Svensk invandrarpolitik och integrationspolitik*, 2000, p. 1.

⁶⁷ Julia Boguslaw, *Svensk invandringspolitik under 500 år. 1512–2012*, 2012.

In 1968 the Swedish Parliament decided that immigrants should live at same standard as the inborn population. Therefor it would no longer be different regulations depending on ethnic background in Sweden. The goal of equality would mainly be fulfilled by the general welfare policies. The only exceptions for immigrants would be the opportunity to learn the Swedish language and also receive information about the Swedish society.⁶⁸ A more regulated labour immigration was introduced and a permit would only be granted if Sweden was in need of foreign labour force. If the unemployment rate was high in Sweden, no residence permit was given. Consequently, a labour market assessment was not done for those who came as refugees.⁶⁹

New guidelines for Swedish immigration policy were added in 1975 and the points were equality, freedom of choice and interoperability. The new approach contributed to the cultural and linguistic backgrounds both acknowledged and promoted diversity.⁷⁰ In 1986, a proposal was added to elect an Ombudsman for ethnic discrimination. During the same period changed reception for immigrants were added. The Swedish Immigration Board, as well as the municipalities took over responsibilities previously lain in the labour market.⁷¹ During the mid 80s the asylum seekers mainly came from Iran, Iraq, Lebanon, Syria, Turkey and from Eritrea. At the end of the decade asylum seekers also came from Somalia and from Kosovo.⁷²

In the 90s there was the breakdown of former Yugoslavia and the division of the land lead to war, terror and ethnic cleansing. Again, for the first time since World War II Europeans were forced to flee in large scales. Over 100 000 people from former Yugoslavia found their new homes in Sweden.⁷³ In 1997 a new proposition was added about integration for immigrants to reduce inequalities in society. Also, a more restrictive regulation was made for family reunification.⁷⁴

In July 1992, Sweden introduced the right for asylum seekers to work without a work permit during the time when their applications were traded, when the processing time was estimated to exceed four months. The law was motivated by the Government that it was a duty for every person to capable of answer for their and their family's livelihood. The employment in these cases were regulated in the ordinary labour law.⁷⁵ A year later, the Government discussed the

⁶⁸ Regeringens proposition 1997/98:16, p. 15.

⁶⁹ Migrationsverket, *History*, downloaded 2017-05-14.

⁷⁰ Regeringens proposition 1997/98:16, p. 15.

⁷¹ *Ibid.* p. 16.

⁷² Migrationsverket, *History*, downloaded 2017-05-14.

⁷³ *Ibid.*

⁷⁴ Regeringens proposition 1997/98:16

⁷⁵ Regeringens proposition 1993/94:94, p. 19

possibility for the asylum seekers to *find* an employment which was expected to be very challenging. The trade unions proposed to give the Asylum seekers right to apply for a job immediately when arriving to Sweden but the Government decided to keep the old legislation.⁷⁶ The Schengen area were introduced in 1985 by the Schengen agreement which opened up borders among those countries that signed the treaty. During the spring in 2001, Sweden became a part of the Schengen cooperation which then opened border to other Schengen countries and their citizens. Many people arrived to Sweden for work during that time.⁷⁷

In 2008 the government noted that processing time for asylum had increased abruptly since 1992. Immigration statistics from 2007, showed that only 611 of the 13 258 persons who had the right to work without a work permit reported to that they worked. The Government after all, considered that a contributing factor to the increase in asylum influx over the past decade could be that spread knowledge about the possibility to work in Sweden during the asylum process.⁷⁸ Another issue that became common was the lack of identity documents and in the year 1999 had 65 percent of the asylum seekers in age 16 to 64 lacked passports or other identity documents, in the year 2007, 94 percent. The lack of identity documents did lead to even more extended processing times. The Government considered that asylum seekers, who lacked identity papers and not appeared to clarify their own identity, would not have the right to work. The right to work during the process was restricted and the number of asylum seekers that received the right to work reduced from 17,000 in 2008 to less than 4,000 in 2010.⁷⁹

In August 2010, the requirement of the four-month processing time expanded the ability of asylum seekers to work without a work permit, SFS 2010:607. To be able to work during the process, the applicant must be granted an exemption from work permit (AT-UND) and the person must also present valid identification documents and prove their identity. The number of asylum seekers that had the right to work increased requirement for secure long processing time when removed, from 3 760 in 2010 to 25 348 in 2014.⁸⁰ The Swedish Migration Board granted more than 25 000 asylum seekers temporary work permit or exemption from the obligation to have a work permit (AT-UND). But those who found work during the same period were no more than 447 people, that is about 1 of 60.⁸¹

⁷⁶ Catarina Calleman & Petra Hertzfeld Olsson, *Arbetskraft från hela världen - Hur blev det med 2008 års reform*, 2015.

⁷⁷ Migrationsverket, *History*, downloaded 2017-05-14.

⁷⁸ Regeringens proposition. 2007/08:147, s. 45

⁷⁹ Calleman & Hertzfeld Olsson, *Arbetskraft från hela världen - Hur blev det med 2008 års reform*, 2015.

⁸⁰ Calleman & Hertzfeld Olsson, *Arbetskraft från hela världen - Hur blev det med 2008 års reform*, 2015.

⁸¹ Arbetet, *Mycket få asylsökande har jobb trots tillstånd*, 2015-06-05.

3.2 The Swedish labour law

The Swedish model is characterized by the fact that for a long time, the labour market parties influenced the labour market through negotiations and collective agreements without interference from the legislature or the Government. In 1906, LO and SAF agreed to give the employers the right to manage and distribute work, while the employers' party admitted the worker's right to organize in trade unions. This principle is still central for how the Swedish labour market parties act. Until the 1970s, the model worked well but during the 70 's different labour laws were developed. Trade connectivity has been exceptionally high in comparison with international dimensions, even though this rate has fallen slightly in recent decades.⁸²

3.2.1. Employment protection

According to the Employment Protection Act (LAS) from 1982 there are two legal forms of employment in Sweden. The main rule is that employment shall apply until further notice, 4 § LAS. There are some agreements on temporary employment that can be made for *general employment, temporary replacement, seasonal work* or for worker *that reached the age of 67 years*, 5 § LAS. In accordance with paragraph 6, agreement can also enter on a probationary period, if the probationary period is less than six months. Temporary employments can be made in other cases than those presenting in the 5 and 6 §§ by collective agreements or in other regulations.⁸³

There is some exception from the Employment Protection Act that are not included in the legislation according to 1 § LAS;

1. Workers with managerial or comparable position,
2. Workers belonging to the employer's family,
3. Workers who are employed for work in the employer's household,
4. Workers who are employed with an employment support or in developing employment,
5. Workers employed in secondary apprenticeship employment.

Workers employed with employment support is the fourth category of exceptions circuit. Common to these employments is that they are exempt from LAS, to promote employment services labour market programs aimed to strengthen certain groups to get or keep a job on the open labour market, 1 § *Regulation (2015:503) of special Employment Support*. Employment

⁸² Tore Sigeman, *Arbetsrätten – en översikt*, 2010, p. 16-23.

⁸³ Sigeman, *Arbetsrätten – en översikt*, 2010, p. 196.

contracts with special employment support includes; extra service for those who have participated in the work and development guarantee for 450 days, and for some newly arrived immigrants; trainee jobs in the welfare sector for some young people, the long-term unemployed people and recent immigrants; trainee job in a shortage occupation area for young people, long-term unemployed and immigrants. The last form of special recruitment is the entry-level job for immigrants, 25 § *Regulation (2015:503) of special Employment Support*. The effects of being excepted from LAS means that the employer can rescue the employee when dismissals due to redundancy. However, the employee is not covered by the benefits that employment protection includes.⁸⁴

There are two ways for an employee to unwillingly lose their employment. The first way is when a temporary employment reaches its final date and the second one is by notice of termination.⁸⁵ The Employment Protection Act is based on two categories of termination, for personal reasons or dismissals due to redundancy. The Swedish employment protection is recognized as strong by international standards with regard to dismissal for personal reasons but are considered weak in connection due to redundancy.⁸⁶ A dismissal must have objective grounds according to the 7 § LAS. Dismissals for personal reasons are specific and relatively large requirement to be regarded as correct. These requirements have been specified in the legal preparatory work and in the law, 7 § LAS. Loss of employment have also been discussed in cases from court. Dismissals due to redundancy means that there is a lack of work and the employer decides that redundancy is current. This means that the Employment Act does not interfere with the ability to make resignations in such situations, it only regulates which workers that can be dismissed.

Swedish labour law contains the rules to reorder after dismissals due to redundancy. The rules are that preference should be given to the employee who has the longest period of employment. If two employment have the same length, preference shall be given to the elderly person in front of younger people, 22 § LAS. The rules are dispositive and could be circumvented by collective agreements. To receive the right to reinstatement, the employee must be terminated because of lack of work and have been employed by the employer for at least 12 months during the last three years, 25 § LAS. Further, an employee is entitled to reinstatement if:

⁸⁴ Sigeman, *Arbetsrätten – en översikt*, 2010, p. 195.

⁸⁵ Calleman & Hertzfeld Olsson, *Arbetskraft från hela världen - Hur blev det med 2008 års reform*, 2015, p. 12.

⁸⁶ Källström & Malmberg, *Anställningsförhållandet*, 2013, p. 129.

- a recruitment is made within nine months from the worker's termination
- the new employment terms of the same unit and are in the previous agreement area
- the employee has reported claims for reinstatement
- the employee has sufficient qualifications for the work it concerns
- the employee accepts the first reasonable offer that the employer gives

Before the order establishes, an employer who has more than ten employees are able to exempt two workers, if the employer's assessment is of particular importance for its future operations, 22 § 2 p. LAS.

The main goal for the employment protection legislation, which came into force in 1974, was stated in the explanatory memorandum to be giving all groups of worker's employment protection, especially for the most vulnerable groups in the labour market. The oldest workers were considered to be the most affected with structural changes. They had been shown to constitute a growing proportion of the unemployed and their periods of unemployment had become longer.⁸⁷ Unemployment among immigrants was not discussed during that time because then immigrants often were recruited directly from their home countries to work in Sweden. The immigrants labour market problems rather concerned poor working environments or double shifts than unemployment.⁸⁸

Costs for recruitment, training as well as costs for transfer and termination increased when the employment protection legislation was introduced in the mid-1970s. Jan Ekberg, professor in national economy, argues that a consequence of this has been that employers tend to undertake recruitment efforts more carefully to find the right person to the right place and then the training costs expected to be lower. These costs could be a problem for those who are far from the labour market, for example immigrants or younger job seekers. The question of immigrant's possibility's in the Swedish labour market is not just to find a way in, but also to keep their employments in situations of downsizing, redeployment or reorganization.⁸⁹

⁸⁷ Prop. 1973:129 p. 109, p. 145.

⁸⁸ Wadensjö, *1990-talets ekonomiska utveckling och arbetsmarknaden*, SOU 1999:69.

⁸⁹ Jan Ekberg, *Försvårar arbetsrätten för invandrare på arbetsmarknaden*, 2006, p. 144-146.

3.2.2 *Collective agreement*

Labour law has existed as a legal area in Sweden for over a hundred years and the collective agreement has taken a specific position on the labour market. It was in 1906 that the first agreement concluded between employers and workers in the *December compromise*. At that time the employer acknowledged that workers would be given the right to organize themselves. In return, the trade unions recognized the employer's power to freely manage and distribute work which takes its expression in the *Management principle*.⁹⁰

The collective labour law has evolved similar to the rest of the societies development. During the second half of the 1800, trade unions started to organize themselves in order to achieve better working conditions. The Workers organization (LO) was formed in 1898 and the employers' organization, SAF were added 1902.⁹¹ This organization laid the foundation for the *Swedish model*, which means that the Swedish labour law is regulated both by legislation and by the labour market parties themselves. This self-regulation is expressed in the collective agreements, which is one of the main regulatory instruments.⁹² The legislator sets up the framework by legislation and the labour market parties are for example dealing with wage-building, working hours and vacations. The labour legislation in Sweden are often semi-mandatory which means that rules can be deviated in collective agreements but not in employment contracts. Collective agreements are results of negotiations and collective bargaining between the labour market parties. There are no obligations for any part to conclude collective agreements even though the labour law is promoting it.⁹³ There are several forms of collective agreements in the labour market. The most common is collective agreements regulating salaries and general conditions. The agreements are usually valid among one up to three years. There is also a number of other collective agreements that are concluded for long periods of time and that do not regulate salaries or other working terms and conditions but, for example, involving forms of insurance contracts or development agreement.⁹⁴

Collective agreements are defined in 23 § Co-Determination in the Workplace Act (MBL), as an agreement concerning the terms of employment and the relationship between employers and employees. The collective agreement binds the employees and employers who are members of the contracting organizations, 26 § MBL. Employers also have a duty to apply the collective

⁹⁰ Mikael Hansson, *Kollektivavtalsrätten – En rättsvetenskaplig berättelse*, 2010, p. 35.

⁹¹ Ibid. 37.

⁹² Susanne Fransson & Eberhard Stüber, *Samverkan och lönekartläggning – en rättsutveckling*, 2004, p.154.

⁹³ Carlson et al., *Globalisation, fragmentation, labour and employment law: a Swedish perspective*, 2016, p. 54-55.

⁹⁴ Källström & Malmberg, *Anställningsförhållandet*, 2013, p.166-167.

agreement to the unorganized workers. The collective agreements legal effect causes a peace obligation between the parts, that industrial action may not be taken during the time when the agreement is applicable.⁹⁵ The collective agreements are not only conducting wages and employment conditions, agreements often contain detailed regulations on working hours, leave, notice periods and travel expenses.⁹⁶

In 2016 some labour market parties agreed to special collective agreements for refugees. Fastigo, the employer organization for property industry for example has agreed to a special collective agreement for the introduction of new arrivals in their labour market area. The agreement applies to municipally owned companies when the newly arrived workers hired for work that is not budgeted in the employer's regular activities. The aim is to give an introduction on the Swedish labor market according to the Act (2010: 197) on introduction activities for certain newly arrived immigrants. Introduction of employment for new arrivals is a special form of employment that could be made for up to six months. The position must contain at least 25% job introduction and training. This agreement makes companies contribute to integration by providing a first introduction on the Swedish labor market. The monthly salary of the employee induction is 75% of the minimum salary according to collective agreements or the minimum pay determined locally at the company.⁹⁷

Also, two of the biggest parties in the labor market in the field of industry, *Teknik* and *IF Metall*, has signed an agreement on introduction employment for newcomers with 75% of the minimum wage. The Swedish Engineering Industries and IF Metall is not the first at this, the Swedish Association of municipalities, *SKL*, has also signed similar agreements with their counterparts in LO, TCO and SACO. The employment is a temporary employment that will last for 12 months, with a possible extension for another 12 months. The salary is 14 248 SEK, which is 75% of the minimum wage of the agreements for IF Metall. Each employee is going to receive an education plan. If former employees have preferential rights to come back after dismissals due to redundancy, this does not prevent the employer to make introduction employments. The employment will be converted into a permanent employment, unless the employer are not announcing that the employment time will not be extended, one month before the annealing date. Introduction employments are forming their own selection category, which means that they can keep their jobs even during operating restrictions.⁹⁸

⁹⁵ Axel Adlercreutz & Bernhard Johann Mulder, *Svensk arbetsrätt*, 2013, p. 23.

⁹⁶ Källström & Malmberg, *Anställningsförhållandet*, 2013, p.166-167

⁹⁷ Fastigo, *Nytt kollektivavtal att anställa nyanlända*, 2016-06-16.

⁹⁸ Lag och Avtal, *Tunga parter tecknar migrationsavtal*, 2016-12-02.

3.2.3 *Discrimination on the basis of Ethnicity*

The basic protection against discrimination in Sweden is found in the *Constitution Act* (1974:152), referred as RF. In Chapter 1, Section 2 of the Constitution stipulates, that the public should prevent discrimination against people on the basis of gender, colour, national or ethnic origin, linguistic or religious affiliation.

The *Discrimination Act* came into force on January 1st, 2009 (2008:567) referred to DiskL, and replaced seven other anti-discrimination laws, including the Act (1999:130) on measures against discrimination in employment on the grounds of ethnicity, religion or other belief. In Committee directives to the DiskL, it was suggested that effective legislation is crucial in order to combat discrimination. The Committee felt that a unified anti-discrimination law would have greater effectiveness and impact. The anti-discrimination legislation consisting of seven laws for different areas of society which preceded the DiskL was criticized for being fragmented and chaotic.⁹⁹ When the law was updated, new provisions were added, and the areas of society, among others, working life, and training activities, which would be covered under the law were specified. The purpose of the Act is equal treatment and mitigation as well as non-discrimination; thus is human rights is in the focus.¹⁰⁰

In the DiskL, Chapter 6, Section 3, provides that the person who demands that she or he has been discriminated against should present good reasons for the claim. The defendant must prove then that the discrimination did not exist. The discrimination act involves the prohibits discrimination on various grounds, including ethnic origin, which means national or ethnic origin, colour or other similar relationship, according to DiskL, Chapter 1, 5 § 3 p.

According to Chapter 1, Section 4 of the 1 p. of DiskL, *direct discrimination* occurs in cases where a person is disadvantaged by being treated worse than any other person would have been treated in a comparable situation, where the disadvantage is associated with ethnicity. No changes have been made to the legal meaning of discrimination before the new law in 2008, since neither EU law, the government or any other authority required a redrafting of the concept. Direct discrimination is identified by three criteria; that someone is disadvantaged, that a comparison is performed and that a causal link between the discrimination and the discrimination expressed and if one of the discrimination grounds exists.¹⁰¹

The condition of disadvantaged essentially means that someone has suffered damage or to any kind of negative impact has occurred. There may be a loss, an inconvenience or a similar

⁹⁹ SOU 2006:22, *En sammanhållen diskrimineringslagstiftning*, p.213-214.

¹⁰⁰ Fransson & Stüber. *Diskrimineringslagen – En kommentar*, 2015, p. 39-51.

¹⁰¹ Prop. 2007/08:95, *Ett starkare skydd mot diskriminering*, p. 98-99.

position. The approach or purpose has no bearing on whether this condition is fulfilled or not; it is the outcome of the act that is crucial. The condition of comparable situation, examines if another person has been or would be treated differently in the comparable situation. The people being compared should thus be of different ethnicities if the discrimination has been based on ethnicity. The third element of direct discrimination is the connection between the discrimination and the basis for discrimination. The relationship can be strong or weak, but to discriminate against someone on the basis of discrimination is considered to be very strong¹⁰²

Indirect discrimination according to DiskL 1 Chap. 4 § 2 p, can occur in a situation where someone is disadvantaged by a specific provision, a requirement that would seem to be objective, but that may disadvantage a person with, for example, a specific ethnicity. Like direct discrimination, indirect discrimination has three prerequisites: particularly unfavourable, comparison and the balancing of interests. For the two first conditions, a connection with discrimination is required. In other words, there should be a disadvantage attached to the discrimination. The latter criterion, balancing, complements the provision because it is based on the legal facts and evidence to the contrary.¹⁰³

Except for direct and indirect discrimination, discrimination can also be valid due to *lack of availability*. This means that a person with a disability is disadvantaged because measures have not been taken to ensure that a person with disabilities is given a comparable situation to a person without disabilities, DiskL, Chap. 1, 4 § 3 p. Further discrimination can be shown by *harassment*, a violation of a person's dignity relating to any of the grounds of discrimination or by *sexual harassment*. Finally, the *instruction to discriminate* another is a prohibited under the discrimination Act, DiskL, Chap. 1, 4 § 6 p.

According to a study conducted by Magnus Carlsson and Dan-Olof Root, from The Institute for the Study of Labor (IZA) in 2006, there is strong evidence for ethnical discrimination taking place in the Swedish labour market. The study has been built on corresponding testing where written applications from two equality skilled individuals from two different ethnical groups applied for the same job vacancy. There are three potential outcomes in this situation; the employer invites both for interview, none of them, or one of them. The study has been based on 3228 made up resumes, half of them with Swedish names and the other half with Arabic names, both with the same level of skills. The resumes used to apply to 1614 different job vacancies. In 1087 cases, neither one was called for an interview, in the remaining 527 cases at least one of them was invited. In 240 cases the employer invited both of them and in 221 cases

¹⁰² Fransson & Stüber. *Diskrimineringslagen – En kommentar*, 2015, p. 63-72.

¹⁰³ Fransson & Stüber. *Diskrimineringslagen – En kommentar*, 2015, p. 73-74.

it was the individual with the Swedish name. In the remaining 66 cases it was the other ethnical group that was invited to an interview. The result showed a discrimination of 29,4% against the applicant with an Arabic-sounding name and that 9,6% of the companies discriminated.¹⁰⁴

Already in 2004, labour market segregation was discussed. Wage differences were seen as increasing dramatically and a gap was forming between domestic and foreign-born workers in the same occupations and possessing the same skills. The time immigrants spend in Sweden tend to reduce the gap between the groups. Results have also shown that immigrants are not a homogeneous group and that there is great difference between European and non-European immigrants. Immigrants from other European countries are closer to the wage rate in relation to the inborn population, while the gap between non-European immigrants is more extensive.¹⁰⁵

The discussion of discrimination against foreigners has been going on for a long time in Sweden. In 2016, the Swedish Democrats, submitted a proposal to the Parliament which will be discussed on the 20th of June 2017. The proposal suggests the opposite from earlier discussions and claims that it is the Swedish people that are being discriminated. The implementation of entry-level jobs for new arrivals, in which an employer receives 80% of the employee's salary paid for by the Employment Service for newcomers, as employment is directly discriminatory against the Swedes, as they become more expensive to employ in relation to the new arrivals. According to the Swedish Democrats, the new arrivals will contribute to a lesser extent to the community because their labor costs are subsidized.¹⁰⁶

According to Eva Schömer, professor of law at Lund University, the majority of complaints to the Equality ombudsman (DO), concern ethnic discrimination. Only one case has led to a conviction in the Labour Court in 2012. Even though legislation prohibiting discrimination has been adopted since the early 1990s, only one employer has been convicted in the Labour Court. In 2011, DO received 1 559 complaints relating to discrimination and 514 of these were based on the complainant's ethnicity. The figure refers to all areas of society even though most of the notifications, 507, were related to work. Ethnicity was the most common ground of discrimination that year and DO referred eight cases to the Labour Court, none of these related to ethnic discrimination.¹⁰⁷

¹⁰⁴ Magnus Carlsson & Dan-Olof Rooth, *Evidence of ethnic discrimination in the Swedish labor market using experimental data*, 2007.

¹⁰⁵ SOU 2004:21, *Egenförsörjning eller bidragsförsörjning? Invandrarna, arbetsmarknaden och välfärdsstaten*, p. 185.

¹⁰⁶ Motion 2016/17:2561

¹⁰⁷ Dagens Nyheter, *DO undviker systematiskt att utreda etnisk diskriminering*, 2013-05-25.

3.3. Labour market integration

In the 12th of November 2015 Sweden introduced temporary border controls. The aim was to reduce the number of asylum seekers. At the end of 2015, 162 877 people had applied for asylum in Sweden. Two weeks later the Government proposed several measures to decrease the number of asylum demands. Among other things, asylum rules would for three years be adapted to the minimum level in the EU. In previous legislation, all in need of protection, as a rule, would be given a permanent residence permit. Now, everyone who seek for asylum will be given a temporary residence permit. There are also even more reduced opportunities for family reunification.¹⁰⁸

Foreign born peoples position on the labour market has improved since the financial crisis in the 1990s, but still the difference between the inborn and foreign born population is large. During the period from 2011-2014 it took 7-10 years for a refugee to establish themselves in the labour market.¹⁰⁹ Refugees also tend to have temporary employment contracts in greater extent. In a study of the foreign-born labour market conditions showed that temporary employment was most common among those who spent a short time in Sweden. Of the group who had a job in 2009, it was an almost twice the proportion who had an employment that applied until further notice among those who lived in Sweden, compared to less than five years among all foreign born.¹¹⁰ Immigrants are also heavily overrepresented in the staffing business. In 2008, 20% of staffing corporate staff foreign born, compared with 12 per cent of staff in other forms of employment.¹¹¹ Another survey for the years 1995 – 2008, compared salaries of persons born in countries outside of western Europe with the wages of immigrants. It turned out that the newly arrived people, on average, had 16 to 19% less than the national population.¹¹²

There is much empirical research which has looked for reasons why foreign-born managed worse on the Swedish labour market in recent decades. Requirements for education has increased and the probability of getting a job and higher salary increases with level of education. Most of the immigrants in Sweden come from countries with lower levels of education, but a factor of education alone cannot explain the lower employment among foreign-born.¹¹³

¹⁰⁸ Migrationsverket, *History*, downloaded 2017-05-14.

¹⁰⁹ Riksrevisionen, *nyanländas etablering*, 2015.

¹¹⁰ SCB, *Integration – utrikes födda på arbetsmarknaden*, 2009, p. 67-70.

¹¹¹ Andersson & Wadensjö, *A Price for Flexibility? The Temp Agency Wage Gap in Sweden 1998–2008*, 2012, p. 29-30.

¹¹² Tove Eliasson, *Löneutveckling bland invandrade och infödda – betydelsen av arbetsplatser och yrken*, 2013, p. 6–8.

¹¹³ Finansdepartementet, *Utrikes födda på den svenska arbetsmarknaden I*, 2010, p. 281.

According to both international and Swedish research a good knowledge of the host countries language increases the chances to employment and better wages.¹¹⁴ Newly arrived to Sweden are facing similar difficulties that young people in search for their first job. Both groups lack the Swedish work experience and must convince potential employers about their ability. *Simple jobs* without requiring special training can be a way to enter the labour market of young people and foreign born with low education. However, there is only a few unskilled jobs in Sweden today.¹¹⁵ According to several studies, high starting salaries make it harder for people with a weak position on the labour market, such as young people and low-skilled foreign born. Even a strict employment protection can be a problem for the foreign-born people because it tends to make employers less willing to hire people whose skills they cannot assess. A strong employment protection does not have to reduce employment in its entirety but is considered to be disadvantageous, for example, young people and foreign-born persons.¹¹⁶

In the Government's Consultative Council from the 2nd of Mars 2017, on legislation for a new framework for newly arrived immigrants' establishment in working and social life, it is proposed that the same regulations apply to newcomers and other job seekers. The right to an establishment plan are proposed to be removed and replaced with instruction to an employment program. Also a proportionate action system for new arrivals corresponding to what applies to other job seekers as well as a move of the remuneration of establishment from the employment services to the insurance fund are proposed.¹¹⁷

On the 22nd of June 2016, the Government announced the Committee directive on State commitment for a well-functioning labour market and the employment service's mission (dir. 2016:56). The investigation has taken the name of Labour investigation (A 2016:03). At the Committee meeting on 16th of February 2017 the opposition came up with a proposal to that the Government as soon as possible, but latest by the 31st of March 2017, should give supplementary directive to produce proposals on how the elements of the employment service's mission, not involving the exercise of public authority may be placed on other participants in the labour market and on how the Government commitment in General should be organised. The Committee has pronounced that job matching in the future should be handled by other parts and that the public employment service is essentially responsible for the exercise of public authority, such as assigning to an application or grant a stake.¹¹⁸

¹¹⁴ Ibid. p. 287-291.

¹¹⁵ Szulkin et al. *På jakt efter framgångsrik arbetslivsintegrering*, 2013. p. 27.

¹¹⁶ Per Lundborg, *En ekonometrisk analys av minimilönernas effekter på flyktinginvandrares arbetslöshet*, 2012

¹¹⁷ Lagrådsremiss, *Ett nytt regelverk för nyanlända invandrares etablering i arbets- och samhällslivet*, p. 1.

¹¹⁸ Arbetsmarknadsutskottet, 2016/17:AU16

In the Swedish media, the labour market parties have different opinions on how to improve the integration. The liberal parties, Moderaterna, Centerpartiet, Liberalerna och Kristdemokraterna are suggesting changes in the labour law. For example, the political party *Kristdemokraterna* suggest that it needs to be less risky to hire and more flexible for companies that convert and retain key people in times of rapid social change. They also want the rules in LAS du to redundancy extended from 2 to 4 people – regardless of the number of employees in the company.¹¹⁹ On the other side, the opposition wants to establish *introduction employments* with lower payroll taxes for employers. Another liberal party are suggesting to reduce the salary for the immigrants on their first 5 years, to within 14 000 – 16 000 SEK combined with no payroll taxes. A third party are suggesting that unions and employers should agree on a new collective agreement that is directly targeted to immigrants.¹²⁰ In the budget proposition for 2017 the government is presenting a number of measures; *trainee-jobs in the public sector, earlier efforts for asylum seekers, develop different fast tracks, more effective new-starts-jobs, with collective agreement.*¹²¹

The trade unions organization laid the foundation for the Swedish model, which means that the labour law is regulated not only through legislation, but also by the labour market parties themselves. This self-regulation takes its expression in collective agreements which is one of the main regulatory instruments.¹²² The labour organizations therefor plays a important role in Swedish labour market. The inflow has led to questions of responsibility for employment more topical than ever. The trade unions are primarily arguing for that educations and skills upgrading are the best route into the labour market. From the employer's directions expressed in different contexts the need to remove barriers to the labour market by comparatively low starting salaries.¹²³

Teknikföretagarna is one of the largest employer organizations with 3 900 member companies that account for one-third of Sweden's exports. In 2015 they argued for a new and modern employment protection to make the integrations process for newly arrived more effective. Some of the negative effects of the existing legislation has been mentioned to be unforeseeable costs and fewer permanent jobs, weakened skills in enterprises, less diversity, reduced dynamism in companies and fewer new companies, slower adaptation and increased sickness absence. Regulatory frameworks such as LAS is also mentioned to have negative

¹¹⁹ Svenska dagbladet, *Det behövs fler undantag från LAS*, 2015-06-29.

¹²⁰ Arbetsvärlden, *Alliansparterierna förslag på nya anställningsformer*, 2016-02-19.

¹²¹ Budgetproposition.

¹²² Fransson & Stüber, *Samverkan och lönekartläggning – en rättsutveckling*, 2004, p.154.

¹²³ Medlingsinstitutet, *Medlingsinstitutet årsrapport*, 2016.

effects for individuals: the perceived security of employment decreases, propensity to change jobs reduces and it becomes more difficult to match the right skills with the right jobs. According to *Teknikföretagarna*, regulatory framework creates a system of insiders and outsiders. It increases unemployment and insecurity in the labour market, in particular those where opportunities to get into the Swedish society through work is most important. It is therefore necessary for new reforms of the Swedish employment protection to support those who most need to be able to get in and reduce social exclusion for people at risk of becoming marginalized.¹²⁴

3.3.1. The integration program

The Swedish Government is focusing on creating more jobs, to reduce disparities and increase cohesion in Sweden. To shorten the time for the arrival of newcomers to find their place in the labour market the Government reformed the legislation. The purpose of the integration program is that newly arrived quickly should establish themselves in the labour market. The integration program is structured in four steps, *work, education, housing and community*.¹²⁵ In 2016, 60 260 immigrants participated in the Integration program, and in 2017 approximately 79 300 and almost 75% of the immigrants in the program are under 40 years old.

At the end of 2010, the legislation for immigrants was reformed into the Establishment Act. The coordinating responsibility for the introduction of refugees and others in need of protection and their relatives went from the municipalities to the State. The State is now responsible for the supply of new arrivals during the introductory period. The purpose of the reform was to achieve a more effective way into the labour market for newly arrived immigrants, by putting work at the centre of efforts and by giving the Employment Service responsible for coordinating the efforts. Another change was to condition the new arrivals compensation with active participation in introduction activities. The purpose was further to reduce the lock-in effects that funding was more favourable than wages from work.¹²⁶

The Establishment Act contains provisions on responsibility and efforts designed to facilitate and accelerate the integration of new arrivals in working and social life. Efforts aimed for giving the new arrivals opportunities for self-sufficiency and strengthen their active participation in work and society. The target groups covered by the Act are refugees and others in need of protection, which have been granted a residence permit, that can form the basis of population.

¹²⁴ Teknikföretagen, *Sverige behöver ett modernt anställningsskydd*, 2015.

¹²⁵ Regeringen, *Etableringspaketet*, 2017-03-08:

¹²⁶ Prop. 2009/10:60.

Also, their families who apply for a residence permit within six years of the sponsor first receipt in a municipality are included. The target audience is limited to persons aged 20-64, but also new arrivals aged 18-19 years covered by the Act if they have no parents in Sweden.¹²⁷

The Establishment Act is supplemented by the Ordinance on compensation for certain newly arrived immigrants, the Ordinance of dialog for the establishment and introduction activities for certain newly arrived immigrants and the Ordinance on state compensation for the efforts of some foreigners. A newly arrived is entitled to receive an *Introduction plan* within one year after he or she were registered in a municipality. The Employment Service shall draw up the establishment plan. The purpose of the activities in the establishment plan shall be to facilitate and accelerate the new arrival's establishment. The design of the plan will take place in conjunction with the new arrival, and in collaboration with the municipalities, authorities, companies and organizations. The plan will be designed on basis of the new arrival's educational background, previous work experience and the need for training and other efforts.

The time for establishing the plan's implementation is to be determined with regard of the new arrival's need to quickly establish themselves in the labour market. It may be extended and revised by the Employment Service and as a rule of 24 months. The plan can be extended beyond 24 months because of part-time parental leave. The establishment plan is terminated when the time of the establishment plan has expired or then the new arrival has had a full-time employment for at least six months or when the new arrival begins a higher education in University. Newcomers who contributes to their establishment by participating in activities during the introduction period, have the right to state compensation establishment. In addition to the introduction benefit provided under certain conditions, housing allowance and supplementary introduction during the time when the new arrivals participating in activities during the plan.

The activities that are included in the plan is education in Swedish for immigrants (SFI) or equivalent education, social studies and activities to facilitate and accelerate the new arrival's establishment in working life. Examples of activities that can facilitate and speed up the new arrival's establishment, are entry-level jobs, validation and assessment of training and experience. Other activities can include professional training, probationary, participation in labour market programs such as employment training and employment. Although complementary primary and secondary education, pre-university studies and rehabilitation can be labour preparatory activities.¹²⁸

¹²⁷ Lagrådsremiss, *Ett nytt regelverk för nyanlända invandrares etablering i arbets- och samhällslivet*, p. 26.

¹²⁸ Lagrådsremiss, *Ett nytt regelverk för nyanlända invandrares etablering i arbets- och samhällslivet*, p. 27.

Labour market programs for other job seekers is regulated exclusively on an ordinance level. Target groups and content of the various efforts including regulated *Ordinance (2000:634) on labour market programs, regulation (2007:414) on the job and development guarantee* and *Ordinance (2007:813) on the job guarantee for young people*. Compensation for workers who participate in labour market programs under the *Regulation (1996:1100) on activity support*. The plan shall be prepared within 30 days from the time he or she registers as a jobseeker with the Employment Service. For other job seekers also apply to a scheme in which the employment service of the applicant to operations or programs. People involved in a labour market program has the right to activity support or development allowance.¹²⁹

The result of the Swedish integration program in January - September 2016, 90 days after the integration program ended, according to the Government, presented in the chart below with a comparison from 2015.¹³⁰

Status 2016	Women %	Men %	Total %
Employment	15 (13)	35 (34)	27 (25)
- without subsidizing	3 (3)	6 (5)	4 (4)
- with subsidizing	3 (3)	7 (6)	6 (5)
- new start jobs	9 (7)	23 (22)	17 (15)
Studies	7 (8)	5 (6)	6 (7)
Program with activity support	54 (54)	49 (47)	51 (50)
Unemployed	5 (6)	5 (6)	5 (6)
Others	19 (19)	6 (8)	11 (13)
Total	100	100	100

As presented in the chart 27% of the immigrants who participated in the integration program found work 90 days after the program has ended. Only 4% found work without any subsidizing and the number were higher among men than women. New-start-jobs raised from 15 to 17 % in 2016 and immigrants that continued to studies decreased from 7 to 6 percent. Totally 33% percent of the immigrants found work or studies after the integration program and the rest continued to unemployment or other job seeking activities.

¹²⁹ Lagrådsremiss, *Ett nytt regelverk för nyanlända invandrades etablering i arbets- och samhällslivet*, p. 29.

¹³⁰ Regeringskansliet, *Nya regler för nyanländas etablering*, 2017-03-06.

3.3.2. *Subsidized employment*

Subsidized employment is an employment where the employer reimbursed for all or part of the wage costs economically via grants or tax credits. The subsidized employment has grown significantly in the last 20 years and amounted in 2014 to average 137 000. There is in fact a lot of opportunities for employers to hire job seekers with different types of employment support in Sweden. Some of the most common subsidized employment are *employment support*, such as special recruitment support and entry-level-jobs.¹³¹ The idea of hiring subsidies is that they will facilitate the long-term unemployed transition to unsubsidised work. This transition takes longer for the long-term unemployed than those with shorter periods of unemployment and there can be several explanations, including they are perceived as more low productivity of employer. Employment support becomes a subsidy to compensate the risk of employer takes when hiring long-term unemployed. If reduction in productivity is temporary employment can be a support reasonable measure that can help the employee to subsidy period to acquire the skills that have been lost over the period of unemployment.¹³²

Another subsidized employment is new-start-jobs for individuals far from the labour market. The basic idea of the new start jobs is in line with that of recruitment incentives, but is aimed at a wider audience than just long-term unemployed. The support will encourage employers to hire people who have been out of work for longer and has difficulties in finding work. The support is linked to how long the person has been absent from work.

For persons with disabilities there are different employment such as wage subsidies, public sheltered work, development of employment and security of employment. These subsidized employment is based on the principle that the employer should compensated in an amount equal to the reduction of the working capacity of the individual. This assessment is always made in relation to the specific circumstances and conditions in the individual case. Occupation introductory employment is another form of wage subsidized employment. It is addressed to young people between 15- 24 years old. The support for vocational introduction job is to give young people under 25 the opportunity to learn a profession in the workplace while being offered a position with a salary.¹³³

The Employment Service's report on subsidized employment shows that various forms of subsidized employment generally works well when it comes to getting people back with long periods of unemployment into employment. Compared with other labour market measures have

¹³¹ Arbetsförmedlingen, *kartläggning av subventionerade anställningar*, 2016, p. 9.

¹³² Ibid., p. 13.

¹³³ Ibid., p. 13.

been subsidized employment overall has the greatest impact when it comes to improving the ability of a person to get a job. The survey does not indicate widespread over-exploitation of the subsidized employment. The majority of employers have or have had only occasional support employees. In some cases, (38%, 2014) the person received employment with the organizer or had other employment without continued support. However, there are examples of companies that have had many employees with support without hire someone and where it does not seem to have strengthened the individual on the prospects of getting other jobs. This would indicate that the supports are used in a manner not intended and in the case of enterprises operated for profit, it cannot rule that the consequences will lead to competitive advantages for these subsidized employment company. Although, it does not involve many companies, and even if it is not about cheating or any direct risk of irregularities in these cases, undermine the credibility of the subsidized employment in general.¹³⁴

The National Audit Office has audited the entry level jobs and new-start-jobs for new arrivals in 2013. Unemployed immigrants who have had a residence permit (or residence card) up to three years are eligible for both entry-level jobs and new start jobs for new arrivals. Immigrants and immigrant family from other EEA countries belong to such group not eligible.¹³⁵ To qualify to entry-level jobs, the new arrivals have to reach 20 years of age, be registered with the employment services and within the last 36 months, have been granted a residence permit or residence card. The employers, private or public, that hire someone who meets the criteria provided support with 80% of the wage costs, to a maximum of 800 SEK per day in twelve months. For an entry-level job, the employer can also get a tutorial contribution of 50 SEK per day during the first three months. The position should go to combine with the studies. Support should be provided to employers who can attest to the salary and other employment benefits provided pursuant to a collective agreement, or are equivalent to benefits in accordance with collective agreements in the industry.¹³⁶

New-start-jobs are a regular employment but with a wage subsidy that is paid to an employer who employs a person who is in need of protection, or immigrants, or a family member of an EEA national, and that within the last three years have been granted a residence permit or residence card. The employer receives a financial compensation for new start jobs that correspond to twice the payroll taxes and the payroll levy for the employees that the employer

¹³⁴ Ibid., p. 7.

¹³⁵ Regeringens skrivelse 2013/14:199.

¹³⁶ Riksrevisionens rapport, *Ett steg in och en ny start – hur fungerar subventionerade anställningar för nyanlända*, 2013, p. 40.

must pay. New arrivals are provided support for a period of three years from the date of the decision on a residence permit or residence card. For new-start-jobs, the employer shall give the employee wages pursuant to or equivalent to collective agreements in the industry. Unlike the entry-level jobs are not, however, require that the employment shall include benefits and insurance that are equivalent to collective agreements. Since new-start-jobs is regular employment, the employee is eligible for the State unemployment benefit and priority to the work of the employer under the Act of employment protection.¹³⁷ National audit overall assessment is that the entry-level jobs and new-starts-job for newly arrived virtually serves as the Government intended, but that there are opportunities for improvement. National audit analysis show that entry-level job increases the likelihood of a new-start-job, which in turn increases the probability of an ordinary work, i.e. to a chain of actions with entry-level jobs, followed by leads to the newly arrived in term nears the regular labour market.¹³⁸

¹³⁷ Ibid., p. 44.

¹³⁸ Regeringens skrivelse 2013/14:199, p. 4.

4. The German way

I want to state explicitly that the European Union also has a responsibility – to take in refugees, to address the reasons why people flee, and to help people in need properly. We in Germany have taken on this responsibility along with a few European Member States. Unfortunately, we do not have a joint position on this issue within the European Union Angela Merkel, 18th of February.¹³⁹

4.1. Historical flashback - The Hartz reform

Large scale of asylum applications and immigration is not a new phenomenon for Germany. Labour recruitment from Italy emerged already during the 50s as well as from many other European countries in the 60s when the economic situation turned around after World War II. Most of the immigrants at that time were low-skilled and in 1973 there were 4 million unskilled labour migrants in Germany. The OPEC oil embargo during that year were followed by a recession forced Germany to limit the policy for guest workers. Still, the immigration of the guest worker's families continued and constituted for almost 50-70% of the total immigration between 1975-1981. The following years were harder for the guest workers and the unemployment rate among them increased.¹⁴⁰

In the early 1990s many immigrants arrived from the eastern part of Germany after the fall of the Iron Curtain. During that same time refugees arrived from former Yugoslavia, only in 1992, 440 000 made their way in to Germany. The recognition rates were low during that time and most of the immigrants only received a *toleration* which meant that they were not gaining access to labour market during their first years in Germany. Also the economic conditions for refugees were poor and integrations policies were not yet developed.¹⁴¹ In 1998 the asylum law was amended and immigration during that year fell below 100 000 applications. In 1991 Germany conducted a special program for Jewish immigrants whom were given extensive support for integration. During the same time, many ethnic Germans from the former Soviet Union returned to Germany. Since the abounded recruitment policy in 1973 the labour immigration has been restricted to highly skilled worked or for example professional athletes, models or artists.¹⁴²

¹³⁹ Government, *Prime Minister to meet with Federal Chancellor Angela Merkel*, 2016.

¹⁴⁰ Irena Kogan, *New Immigrants — Old Disadvantage Patterns? Labour Market Integration of Recent Immigrants into Germany*, 2011, p. 2.

¹⁴¹ OECD, *Labour market integration of refugees in Germany*, 2017, p. 17-18.

¹⁴² Kogan, *New Immigrants — Old Disadvantage Patterns? Labour Market Integration of Recent Immigrants into Germany*, 2011, p. 4-5.

The Federal Employment Agency in Germany was troubled at the end of the 90s, the labour-market policy was scattered with poor results. The results were not followed up, while resources were consumed in various inefficient programs. The efforts to find work opportunities were weak while compensation systems were generous. Hundreds of thousands of people were put in early retirements each year. The companies had to bear the financing in form of increased employer contributions. The tax burden increased, especially taxes targeted at businesses. The Federal Republic experienced a gradual downward spiral for the German economy.¹⁴³

The entry wages were allowed to increase at the expense of a big exclusion of people with low level of education. At a time when integration of the east part of the country was the most challenging, Germany did not accelerate job creation in the intensive domestic industries. Several researchers pointed out early, even in the late 1980s, the importance of reduced cost admission thresholds in particular in sectors such as the restaurant sector, different care sectors and in the retail trade. Major differences between Germany and the other OECD countries for low-skilled employment rate could be attributed to wages in these industries.¹⁴⁴

As a response to the labour market situation, the Chancellor Gerhard Schröder launched the Hartz reform. Under the leadership of the head of human resources Peter Hartz – linked to the ruling social democratic party – set up a Commission with representatives from business, trade, politics and research. On 16th of August 2002, he presented his 355-page report *Moderne Dienstleistungen am Arbeitsmarkt*.¹⁴⁵ The purpose was to improve the integration of the unemployed into the labour market quick, effective and sustainable. The idea was to reorganize the unemployment insurance and assistance as well as making the placement of job seekers more flexible, accountable and effective.¹⁴⁶

Today, the German labour market is well functioning and the rate of unemployment in December 2016 was 3,9 %, the lowest number since 1991.¹⁴⁷ This is the effect on the job market after the reform period 2002-2005, through the financial crisis and until today. The number of employed persons has increased by three million between 2006 and 2013. Particularly significant effects on employment rate, which increased almost 10 % after Gerhard Schroeder's era to today.¹⁴⁸

¹⁴³ Zimmermann, *Is Germany the North Star of Labour market policy?*, 2013. p. 2.

¹⁴⁴ Möller, *Did the German Model Survive the labour market reforms*, 2015, p. 156.

¹⁴⁵ Ydstedt, *10 år med Hartz-reformerna*, 2012, p. 3.

¹⁴⁶ Eberhard Eichenhofer, *A European work-first welfare state*, 2008, p. 134.

¹⁴⁷ OECD, *Labour market integration of refugees in Germany*, 2017, p. 31.

¹⁴⁸ Svenskt Näringsliv, *Så vann Tyskland EM-guldet i jobbskapande – Lärdomar för Sverige*, 2016, p. 7.

4.1.1. Hartz I - Flexibility

The regulatory framework for temporary agency work were changed to increase the flexibility of the German labour market. Before the Hartz reforms, the staffing industry were heavily regulated. The period of employment was not allowed to be linked to customer engagement. An employment agency was not allowed to rehire staff. This changed in 2003 when the restrictions were replaced with the principle of equal conditions for the employees of the staffing firm and the client companies, with some exception. Today, the German staffing industry stand for approximately 2.5% of the employed compared with the Swedish, 1,5%.¹⁴⁹

The number of temporary employees increased in 2010 from approximately 4% to almost 8%. Since then, the level is relatively constant in terms of the proportion of total employment, compared with about 15% in Sweden the past fifteen years. 71% of all Germans of working age has not experienced a time-limited job options during a period of five years.¹⁵⁰

During the reform period, 2004, changes in employment protection were introduced. German labour law has remained relatively strict regarding termination situations, but important changes to the regulatory framework were held still. Workers under the Employment Protection Act are valid for all businesses with more than 10 employees. A substantial change took place on 1 January 2004 when the limit of a business-unit was raised from 5 employees to 10 employees. The extended exemption for companies has led to less risk for enterprises especially in the growth phase of hiring. Employers also have the opportunity to hire short-term contract today, compared with before the reforms. This common measure of employment protection force reveals a certain weakening of employment protection in Germany after the reform period. Mainly related to the fixed-term employees and part-time employees ' labour protection.¹⁵¹

Despite changes in employment protection the basic labour law in Germany remains strongly regulated. The rules are based on comprehensive legislation on collective agreements, Works Council, which consists of employees in a workplace that is elected every fourth year, and empowerment and employment protection. The case law is the basis for the development of the regulatory framework and how it is applied. It follows that the German labour courts – with party representation – has considerable power.¹⁵²

¹⁴⁹ Eichhorst & Tobsch, *Not so standard anymore? Employment duality in Germany*, 2014, p. 90.

¹⁵⁰ *Ibid.*, p. 85.

¹⁵¹ Jansen & Kuhnert, *Labour Market Reform in Germany: Fact or Fiction?*, 2004, p. 4.

¹⁵² Lindberg et al. *Svenska konfliktregler i ett internationellt perspektiv*, 2015, p. 85–90.

Unions are losing ground and the rate is declining and amounts at present to about 18 percent. The trade union representation also decreases as the work councils are decreasing in importance significance, in what used to be called West Germany covered today only 46 percent, although the works councils still have an important significance for large firms (88 per cent coverage rate in companies over 500 employees). Collective agreements coverage is at the same time, over 60 per cent. Employers' coverage is stronger with around 60 per cent.¹⁵³

The negotiations take place at regional and sectorial level, but this has changed gradually. An increasing trend for example in small-and medium-sized is that enterprises seeking closer agreement with local unions. By opening clauses at a local level between the company and the Works Council, increases the possibility to derogate from the collective agreements. This has lead to greater flexibility for employers and employees.¹⁵⁴

The question of working time was significant in the reform. Zimmerman points out that the new more flexible rules allowed for better conditions for employers to plan for staffing. Reforms included changing the overtime rules and rules for short-term employment by agreement between the parties and the Government.¹⁵⁵

As a result of Agenda 2010, the German labour market is also a significant increase in wage dispersion. Germany belong to the group of countries in Europe with the greatest difference wage differences and the low-wage sector has increased. The lowest wages today correspond to the national minimum wage is approximately 14 000 SEK per month for a full-time worker. This compares with Sweden's equivalent of 20 000 SEK per month minimum wage.¹⁵⁶

4.1.2. Hartz II Minijobs

The second law for a more modern service on the labour market came into force in 2003.¹⁵⁷ The purpose was to make small jobs with low income more attractive by lowering overhead for taxes and other social contributions to 25%. To decrease the number of illegal jobs in households a deduction of taxes for housekeepers' wages was made. Another major change was that unemployed persons could receive subsidies when starting their own businesses.¹⁵⁸ The minijobs have been an ongoing discussion in Germany but also in Sweden. The employment is often associated with the development of a more distinctive, low-wage sector. The number of

¹⁵³ Möller, *Did the German Model Survive the labour market reforms*, 2015, p. 161

¹⁵⁴ Zimmermann, *Is Germany the North Star of Labour market policy?*, 2013, p. 6.

¹⁵⁵ *Ibid.*, p. 6.

¹⁵⁶ Svenskt Näringsliv - *Så vann Tyskland EM-guldet i jobbskapande – Lärdomar för Sverige*, 2016, p. 7.

¹⁵⁷ BT-Drucksache 15/26.

¹⁵⁸ Eichenhofer, *A European work-first welfare state*, 2008, p. 137.

employees with a minijob are 7 million and 1 of 3 is having the minijob as an extra employment. The system of mini jobs was introduced in the late 90s but the rules were made simpler in the second Hartz reform.¹⁵⁹ If combining a regular employment with a specific minijob, there are special minijobs-policies for the extra work. This makes it attractive to a low or eligible employment to also take a minijob. Within the household services are minijobs for half of the employees. The greatest proportion of minijobs are to find in sectors such as facility management, cooking, hotels and restaurants and in retail trade. Especially students, married women and senior citizens are those who have taken part in this employment.¹⁶⁰

4.1.3. Hartz III - The Federal Employment Agency

A number of measures were made to improve the Federal Employment Agency which had more than 90 000 employees in over 600 offices all around Germany in 2004. The first step was to change the name from “Bundesanstalt für arbeit” to “Bundesagentur für arbeit”. The change from *anstalt* to agency should symbolise the conceptual change of an administration to a modern enterprise.¹⁶¹ At first, program operations were fundamentally, long training courses with clear lock-in effects were replaced by shorter interventions with more practical content. The procurement of training was centralized and made more market-ready. More emphasis was added at the same time on job seeking activities and follow-up measures strengthen search activity. The new ways have kept over time and today more resources on individual job seeking-support, guidance and counselling and job matching has been added.¹⁶²

Outsourcing to other private actors has increased and the FR are focusing on counselling and guidance. Today, such as external actors – off the jobs of the Department stand for a significant part of the youth actions.¹⁶³

4.1.4. Hartz IV- Social security

The Hartz IV reform changed the social compensation and benefit system. In 2005, there was a massive merger of the social welfare and unemployment benefits at the level of the lower remuneration of the German supply support. A limit was based on two groups and the distinction between the non work-able and the work-able. The new law was going to decide whether the Employment service or the municipalities should have the administrative responsibility. The

¹⁵⁹ Svenskt Näringsliv, *Så vann Tyskland EM-guldet i jobbskapande – Lärdomar för Sverige*, 2016, p. 7.

¹⁶⁰ *Ibid.*, p. 19.

¹⁶¹ Eichenhofer, *A European work-first welfare state*, 2008, p. 137.

¹⁶² Svenskt Näringsliv, *Så vann Tyskland EM-guldet i jobbskapande – Lärdomar för Sverige*, 2016, p. 23.

¹⁶³ Klaus F Zimmermann, *Is Germany the North Star of Labour market policy?* 2013, p. 6.

law provides the general competence for the employment office but 69 of the municipalities received the right to administrate the new system. The employment service has to collaborate the great various social service of the municipalities which has turned out to be a complex task.¹⁶⁴

For those not qualified for unemployment insurance, there was only one level left in the new system. Everyone who worked more than three hours per day were included in the system since the reform. The level was linked to previous earnings. The remuneration amounts to 67 percent of previous wages of parents and 60% for those without children. For short-term unemployed was the change not noticeable when the compensation remained at the same level. The long-term unemployed was affected to a greater degree, and especially for older job-seekers. For example, the age limit increased periods of unemployment insurance, from 45 years to 55 years. At the same time streamlining the grant system up substantially: the replacement time for the unemployment hedge was reduced.¹⁶⁵

4.2 The German labour law

The German law follows the tradition of Roman law and is now a part of the European legal system. The important legal issues are covered by extensive legislation in shape of statutes, codes and regulations. Labour law started to develop as a legal area during the industrialization era in the 1800s. The first labour market organization, the German Workers Association, was founded in 1863 followed by the Industrial Code in 1869 which aimed to protect workers. At the end of the 1800s legislation to improve the social security started to emerge. After World War I protections against unfair dismissals, established in the Work Councils Act of 1920, section 84, became an important base towards employment protection. The labour court was introduced in the 1926 (1929 in Sweden).

In 1934, the National Labour Act was introduced and the labour market was regulated by the State. During that same time, as Nazi party was in charge, the unions were dissolved. After World War II, the new German Constitution (Grundgesetz – GG) was added and the labour law developed further.¹⁶⁶ Still, the labour law is governed by the federal statutes and is contained in several statutes, ordinances and legal provisions. Gaps have been filled by case law which plays an important field of the German labour law. Nowadays, employment law is strongly influenced by the EU legislation. There are strict federal procedure rules for the different

¹⁶⁴ Eberhard Eichenhofer, *A European work-first welfare state*, 2008, p. 138.

¹⁶⁵ Svenskt Näringsliv, *Så vann Tyskland EM-guldet i jobbskapande – Lärdomar för Sverige*, 2016, p. 28.

¹⁶⁶ Ilona Zenker, *Basic of German Labour Law*, 2014.

jurisdictions such as the Labour Court Act (Arbeitsgerichtsgesetz, ArbGG) and case law are of great importance in the field of labour law. The rules apply to all courts at all levels and even though there is no doctrine of precedent the lower court follows the higher.¹⁶⁷

4.2.1. The German Employment Protection

Employment law in Germany is constitute of a number of statues such as, the Civil Code, the Protection Against Dismissal Act, the Minimum Wage Act, the Part-Time and Limited Term, Employment Act, the Federal Vacation Entitlement Act, and the Working Time Act. Employment contracts are regulated in the Civil Code on General Contractual Terms and Conditions (Allgemeine Geschäftsbedingungen). Employment contracts have to be sufficiently transparent and are not allowed to contain substantial disadvantage for employees. The Part-Time and Fixed-Term Employment Act (Teilzeit- und Befristungsgesetz, TzBfG) is making it possible for employers to conduct fixed-term employment contracts in cases when there is cause for example by seasonal work, employee replacing a regular employee on sick leave, 14 § 1 sec. TzBfG. Fixed-term contracts can also be lawful without cause for a period of maximum two years and the contract can be extended up to three times during the period, 14 § 2 sec. TzBfG. The last way to settle a fixed-term contract is if the employee is at least 52 years of age and unemployed for at least four months. In that case the time limitations can be valid for up to five years, 14 § 3 sec. TzBfG. Limited-term employment contracts must be written to be valid, 14 § 4 sec. TzBfG. Employees who have been employed for at least six months in the same establishment can request to work part time according 8 § 1 sec. TzBfG.

In Germany there are two ways to unwillingly lose an employment, termination of good cause, sec. 626 civil law partnerships (BGB-Gesellschaft), or regular termination observing statutory notice periods, sec. 1, Wrongful Dismissal Protection Act (Kündigungsschutzgesetz, KSchG). A termination of good cause ends without any notice and the employer has to show the good cause. Employers have two weeks after he or she received knowledge about the cause to terminate the employee. Regular termination has to follow the statutory notice periods and the minimum period is four weeks but it increases according to the employee's length of service, sec. 622 § 2 BGB. The KSchG are valid only for those who have been employed for more than six months in a company with more than 10 employees. The employer also has to prove that it is not possible to continue employing the employee in another position or part of the company before dismissals. There are three statutory ground for termination according to the KSchG,

¹⁶⁷ Wendler et al., *Key Aspects of German Business Law: A Practical Manual*, 2009, p. 1.

conduct related reasons, which means that the employer has given the employee warning letters due to the same misconduct as before. *Personal related reasons* could be long- or short termed illness, that must be socially justified on the prognosis that the health condition is negative and the related absence will result in a detriment on the employer's business interests.

Dismissals for *operational reasons*, must be proven by the employer, and a social selection among comparable employees needs to be established. The employer has to compare social data of employees before selecting the employees whose employment will be terminated. The social selections are based on age, length of service, obligation to pay for family support and disability. The employer has to examine who needs greater social protection and are obligated to keep them from dismissals. The social selections are only made for similar employees in the same business area and cannot be extended to other areas. The employer can make an exception from this selection by keeping those who are in the legitimate interest of the business.¹⁶⁸

4.2.2. Collective agreement

Collective agreements are applicable to employees who are members of a trade union with a collective agreement. Employer can be bound by collective agreements by two reasons, if the employer enters an agreement directly with a trade union or if the employer is a member of an employer organization with a collective agreement. Similar to the Swedish collective agreements it contains regulation of working conditions, working hours, overtime, holidays and notice periods.¹⁶⁹ The scale of collective agreements in Germany are at a historically low level. In 2013 only 30% of the companies in western Germany and 17% of those in eastern Germany were covered by a sectorial collective agreement. The proportion of establishments covered by either a sectorial or a company agreements decreased from 39% to 32% between 2009 and 2013 in the western parts of Germany and from 23% to 20% in the eastern parts. Also, the coverage of employees has shrunk to 60% in the west and to 47% in the east.¹⁷⁰

At the end of 2014, around 4 million, only 12 percent, of the total employment were covered by extended collective agreements. The decreasing collective bargaining coverage and rising wage inequality in Germany led to the introduction of a new statutory minimum wage of € 8.50 per hour of work from the first of January 2015. The minimum wage does not apply to those under 18 years of age, to individuals in vocational training, to interns and to the former long-

¹⁶⁸ Wendler et al., *Key Aspects of German Business Law: A Practical Manual*, 2009, p. 8.

¹⁶⁹ *Ibid.*, p. 17.

¹⁷⁰ Kraemer, *Germany: Continued decline in collective bargaining and works council coverage*, 2015.

term unemployed.¹⁷¹ Until the year of 2020 it is expected that 1,5 million low-skilled refugees will enter a labour market were the current number of low skilled workers are 3,6 million. The alternative effects of the minimum wage could be rising unemployment if these two groups will concur for the same occupations and industries as a consequence of the exemption of minimum wages for refugees.¹⁷²

The Works Constitution Act (Betriebsverfassungsgesetz, BetrVG) gives permission for works councils (Betriebsrat) to participate in questions in relation to managerial decisions involving employees, social and operational matters. The act is only valid if a work council actually exists in the business operation and if there are more than five employees.

4.2.3. Discrimination on the basis of ethnicity

The question of discrimination is a new development in the German section of labour law. Equal treatment and prohibition against gender discrimination is however a topic that has existed for a long time in the German statutory law. The discrimination laws came into force in 2006 in the the *General Equal Treatment Act* (AGG) which implemented three EU directives, 2000/43/EC, 2000/78/EC and 2002/73/EC. The law has not yet been playing a significant role in the German labour law as it has in other European countries. The reason for that might be that the German courts historically have been reluctant to grant compensatory awards.¹⁷³

The General Equal Treatment Act (AGG), sec. 1, prohibits discrimination based on race or ethnic origin, religion or belief, sex, disability, age and sexual orientation. The grounds can be valid due to recruitment, employment conditions, employment relationships or promotions, sec. 2 AGG. The AGG protects all employees according to section 6. Similar to the Swedish legislation of discrimination it is qualified as discriminatory behaviour by direct discrimination, indirect discrimination, harassment, sexual harassment and employer instructions to discriminate.

4.3. Labour market integration in Germany

In 2015 and 2016, 1,2 million immigrants applied for asylum in Germany and more than 700 000 will obtain some sort of international protection.¹⁷⁴ Those who are recognised as refugees

¹⁷¹ Garloff, Alfred, *Side effects of the new German minimum wage on (un-)employment: First evidence from regional data*, 2016, p. 9.

¹⁷² Garloff, Alfred, *Side effects of the new German minimum wage on (un-)employment: First evidence from regional data*, 2016, p. 26

¹⁷³ Wendler et al., *Key Aspects of German Business Law: A Practical Manual*, 2009, p. 99.

¹⁷⁴ OECD, *Labour market integration of refugees in Germany*, 2017, p. 17-18.

including those with subsidiary protection, have full access to the German labour market. For asylum seekers and for those with toleration the access is more complex, even though many of them can apply for employment permit after three months. According to data from the national Federal Employment Agency, 445 000 refugees, asylum seekers and tolerated persons were registered as unemployed in February 2017.¹⁷⁵

Similar to the situation in Sweden, there is a large number of different stakeholders involved in the labour market integration for refugees. The government is responsible for the legal framework of the integration. The federal states (*Länder*) are tasked with the implementation of the legislation and they also have large leeway in the process, which means that they can implement own measures where the government has not already conducted law, Article 70–74 of the Basic Law. Most issues have already been regulated by federal laws including topics such as nationality, freedom of movement, registration, passports and immigration. The federal states can conduct framework for issues related to education, research and policing.¹⁷⁶

Municipalities are obligated to implement federal or regional legislation. The Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) is responsible for assessing asylum applications and designing the general and vocational language courses. BAMF is also responsible for examining the constitutional right for refugees as well as conducting asylum procedures. The process includes to determine responsibility related to the Dublin procedure, determine refugee status under the Geneva Convention and also to give subsidiary protection according to the Qualification Directive.¹⁷⁷ The integration courses are managed by local education providers. The Federal Employment Agency (Bundesagentur für Arbeit, BA) has a key role in finding employments for the immigrants as well as increasing their professional skills.¹⁷⁸

There are several important pieces of legislation and ordinances related to integration of refugees. The immigration law in Germany is built on international law, European law and the German constitutional and statutory law. In the first paragraph of article 16a in the *Basic law*, the right to be granted asylum is stated. In accordance with the Refugee Convention from 1951 the *Asylum act* and the *Residence act* give those nationals who are facing political persecution refugee status. The Residence act is also regulating residence titles for those who are qualified for asylum or subsidiary protection, entitled to refugee status or those who are having their

¹⁷⁵ Ibid., p. 23-24.

¹⁷⁶ Federal Office for Migration and Refugees, Migration, Integration, Asylum, *Political Developments in Germany 2015*. p. 15

¹⁷⁷ Ibid., p. 15

¹⁷⁸ OECD, *Labour market integration of refugees in Germany*, 2017, p. 25-27.

deportation tested. The Residence act forms the legal basis for integration of third-country immigrants. Another related law is the *Asylum Seeker's benefits Act* that regulates the asylum seekers benefits during the waiting procedure. The current *Immigration Act* came into force in 2005 and is controlling and restricting the immigration as well as regulating the residence and integration of immigrants.¹⁷⁹

Except from the federal laws there are several ordinances that have been adopted to specify the previous mentioned legal framework for example for residence, employment, integration and benefits during the asylum procedure. For example, the *Employment Ordinance* (BeschV) regulated the employment of those foreigners whose access to labour market has not been regulated by law. Another example is the the *Integration Course Ordinance* (IntV) explain the integration courses mentioned in the *Residence Act* in detail by terms of attendance, fees and the basic structure of the courses.¹⁸⁰

Since 2014 there has been made major changes in the integrations policies in Germany as an outcome of the increasing amount of asylum applications. The new system divides the asylum seekers into two groups, those who are likely to be granted asylum and those who are not. For the first group there has been made a gradual liberalisation and for the other group there is a more restrictive legalisation. The integration activities are starting earlier on, in some cases already during the asylum process. A number of measures have been made to give refugees the same access to labour market as everyone else. For example, the waiting time for accessing the labour market were reduced in 2014 from nine months to three months. In August 2016, temporarily suspended parts of labour market testing procedure for asylum seekers.¹⁸¹ The integration has been one of the most discussed topics in Germany since 2015. Especially since the Government decided to temporarily suspend from the Dublin regulation and let immigrants that reached Hungary keep on traveling into Germany. Temporary border controls were introduced in September in order to make quick registration of the immigrants.¹⁸²

The OECD report of labour market integration in Germany from 2017, shows that the framework for refugees in Germany is favourable and that the labour market conditions are positive. OECD declares that Germany has taken impressive actions both at a Federal level as

¹⁷⁹ Federal Office for Migration and Refugees, Migration, Integration, Asylum, *Political Developments in Germany 2015*. p. 17,

¹⁸⁰ *Ibid.*, 17.

¹⁸¹ OECD, *Labour market integration of refugees in Germany*, 2017, p. 27-28.

¹⁸² Federal Office for Migration and Refugees, Migration, Integration, Asylum, *Political Developments in Germany 2015*, p. 19.

well as in the civil society. In an international perspective, Germany is in front of early intervention such as early entrance to labour market and to integration courses.¹⁸³

4.3.1. Working permits

Immigrants are allowed to work in Germany if they have received a work permit. Other EU nationals and nationals of other European countries in the European Economic Area (EEA), for example Iceland and Norway, are allowed to work without a working permit, the only thing required is a valid identify card. In order to stay in Germany for more than 3 months the individuals have to register themselves to the German Registration Office and if they can prove sufficient health insurance and funds they receive a certificate with the freedom to move.

Non-EU nationals, with the exception of for example Iceland and Norway, are usually required a valid residence permit such as a Visa, restricted residence permit, unrestricted settlement permit or a EU long-term residence permit. The work permits are in general granted as a part of the residence permit, no. 1, section 4, the Residence Act.¹⁸⁴

According to the first paragraph in section 18 in the the Residence Act, the admission of foreign employees shall be in line with the current labour market situation according to the German economy. The sections 16-21, together with the Employment Ordinance, are opening up several ways for third-country immigrants to seek employment in Germany and then be granted residence permits. The labour market access for refugees are depending on their status under the Residence act. There are no possibility to access the labour market during the initial stay in the reception centre, for those who are themselves responsible for their deportation or those who have infringed their obligations to cooperate in removing the barrier to leave. If an asylum seeker has stayed in Germany for three months he or she will be gaining access to the labour market, section 61 in the Asylum Act. Asylum seekers or tolerated persons can work without the need for a priority review if they meet the requirements for receiving a EU Blue Card for shortage occupations and are having a university degree in shortage occupations, such as IT, engineers, physicians or are skilled individuals with recognised qualified vocational training in shortage occupations. The exceptions can also be made for individuals who perform a practical activity for the recognition of their occupational qualification or for those who have been in Germany for 15 months.¹⁸⁵

¹⁸³ OECD, *Labour market integration of refugees in Germany*, 2017, p. 67-69.

¹⁸⁴ Michael Wendler, Bernard Buecker & Bernd Tremml, *Key Aspects of German Business Law: A Practical Manual*, 2009, p. 55.

¹⁸⁵ BMAS, *Ways for refugees to gain access to the labour market*, 2015-10-07.

On basis of section 42 in the Residence Act, the Federal Ministry of Labour and Social Affairs has conducted two ordinances regulating the employment of foreigners. The *Ordinance on Official Procedures Enabling Resident Foreigners to Take Up Employment* (BeschVerfV), is valid for the procedure and permits for foreigners living in Germany. The other ordinance is the *Ordinance on the Admission of Newly-Arrived Foreigners for the Purpose of Taking up Employment* (BeschV).

4.3.2. The Integration Course

The first paragraph in section 43-45 in the Residence Act from 2005 enshrined that integration courses should be offered for those foreigner that are lawfully in Germany.

(1) Foreigners living lawfully in the federal territory on a permanent basis shall be provided with support in integrating into the economic, cultural and social life of the Federal Republic of Germany and are expected to undertake commensurate integration efforts in return.

According to the second paragraph the integration efforts should be supported by integration courses with the aim to impart the language, legal system, culture and history to the immigrants. The integration course shall be coordinated by the Federal Office for Migration and Refugees which can enlist the services of both private and public organisations. The fees for the integration course should be reasonable and consideration has to be taken due to the person's ability to pay, no. 3. The Federal Government are entitled to regulate further details of the integration course such as structure, duration, content and criteria, no. 4.

Immigrants who are in Germany on a permanent basis shall be given access to an integration course by one of the following occasions according to the first paragraph in section 44:

1. upon receiving a temporary residence permit for the first time
 - a) for employment purposes (Sections 18, 21),
 - b) for the purpose of subsequent immigration by dependants (Sections 28, 29, 30, 32, 36),
 - c) on humanitarian basis pursuant to Section 25 (1), (2), (4a), sentence 3, or Section 25b,
 - d) as a long-term resident pursuant to Section 38a or
2. upon receiving a residence title pursuant to Section 23 (2) or (4).

The integration course is not applicable on three different categories according to the third paragraph. At first it is not available for children and young adults who are attending school education in Germany. It is also not available when the need for integration is minimal or at last, when the immigrant already holds sufficient knowledge of the German language.

All integration measures are based on the 43-45 paragraphs in the Residence Act. One important change made during 2016 were the new Integration Act (*Integrationsgesetz*) that entered into force in August. The Integration Act increases the availability of Germans main instrument for integration, the Integration Course. The Integration Course combines language practise, 600 h, with civic orientation, 100 h. A new program, *Integration measures for refugees* (Flüchtlingsintegrationsmaßnahmen, FIM), were also introduced for asylum seekers. The program aims to create 100 000 low-threshold work opportunities which does not constitute formal employments. Refugees are required to remain in the same federal state as they lived in during their asylum procedure to be entitled to social assistance. Refugees can in some cases apply for an exception if they or their families find employment elsewhere in Germany. Permanent residence permit is given after five years and only if the refugees have become well integrated. For some exceptions a permanent residence permit can be given already after three years.¹⁸⁶

The idea of the Integration Act has been to support and to challenge those refugees who are showing the potential to integrate in the German society. Those refugees will receive a better chance to stay permanently in Germany and to access a faster integration course as well as employment opportunities but they will also have to work hard on their own integration. Those asylum seekers who are not taking the integration course will have reduced benefits. More integration courses are being offered to make the refugees learn the German language quicker as well. Another important change will be to engage the refugees in meaningful employment during the asylum procedure.¹⁸⁷ From 2005 to 2015 over 1.32 million immigrants started an integration course and 2.03 billion EUR were spent by the Government.¹⁸⁸

There are several integration measures in other levels in Germany. For example, the Migration Consultation for Adult Immigrants is a program where migrants that are older than 27 years to receive individual advice for a limited period, according to Section 75, no. 9 of the Residence Act. The Federal Government also supports project for integration which promotes local participation and provides meetings between the community and the immigrants. Another course is the German language courses for professional purposes that is regulated from 2016 in the 45a section in the Residence Act. The program combines language training with professional training, employment or active labour market policies.

¹⁸⁶ OECD, *Labour market integration of refugees in Germany*, 2017, p. 27-28.

¹⁸⁷ The Federal Government, *Integration Act to support and challenge*, 2016-07-08.

¹⁸⁸ Federal Office for Migration and Refugees, *Migration, Integration, Asylum - Political Developments in Germany 2015*, p. 29.

Another measure from 2015 was to change the 32 section in the Employment ordinance which will give those who has had their deportation suspended and those who had filled in their asylum application and received the permission to stay, access to internships. The new provision concerns obligatory internships with a length of three months which help immigrants to choose a professional training program or a course to study. For those who had their deportation suspended they can start such an internship on their first day and for those who hold permissions to stay, can start after three months of residence in Germany.

The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth started a program in 2015, *Strong on the Job – Mothers with Migration Backgrounds joining the Workforce*. The aim of the program was to help immigrated mothers to find their place on the labour market between 2015 and 2020.¹⁸⁹

¹⁸⁹ Federal Office for Migration and Refugees, *Migration, Integration, Asylum - Political Developments in Germany 2015*. p. 30.

5. Analysis

This thesis has focused on three different fields of labour market integration where the first chapter has introduced the international and European framework for this issue. The international legal framework for refugees and asylum seekers rights are widespread and covered by legislation from the United Nation (UN), the UN refugee Agency (UNHCR) the International Labour Organisation (ILO) as well as from the European Union (EU). The second part of the thesis has been presenting the Swedish legislation, history and labour market measures made to improve the labour market integration for refugees and asylum seekers. A long side with Sweden, Germany has welcomed refugees in large scales during the most recent years. The German legislation and its labour market have been presented in the last part of the thesis. The Swedish and the German labour legislation have been introduced in order to understand if the systems promotes or weaken the refugee and asylum seekers access to the labour market.

5.1. International framework and labour market integration

The tradition of welcoming refugees to Sweden goes back for centuries and has been an important part of the countries growth and development during the years. After World War II most of the immigrants in Sweden were labour migrants and the employment rate were higher among the foreign born than among the inborn at that time. The Swedish Government has been emphasizing the principals of equality, freedom of choice and diversity since the late 60s and the topic of integration for foreigners has been recognised for a long time. During the mid-80s the inflow of refugees started to increase and in the 90s, Sweden welcomed over 100 000 refugees from former Yugoslavia. As an effect of the large inflow of refugees, a more restrictive immigration policy started to emerge even though the hospitality in the system remained. In 2015 the number of asylum seekers to Sweden reached its all time high, when 162 877 had applied for an asylum. Sweden has been the country with the highest reception of refugees per-capita in all OECD countries.

The Refugee Convention from 1951 has defined who is a *refugee* and has highlighted the difference from *asylum seekers*, who has not yet been achieving refugee status. The *right to work* has been stated to be a human right for everyone according to article 23 in the UDHR. In 1966, this right became legally binding by the ICCPR as well as the ICESCR. An important acknowledgment is that the right to work does not mean a guarantee to receive work. Sweden has nonetheless, commitments due to the Refugee Convention to endorse employment for

refugees by article 17 and 18. According to article 17, refugees should be treated at least like the inborn population in the possibility to engage in wage-earning employments. Right to self-employment follow by being *lawfully in* the country, according to article 18, which has been compared with being an asylum seeker by the Michigan Guidelines. Wage-earning employment follow by *lawfully staying* in the country equal defined as a refugee. The Swedish immigrants could also be concluded in the UN Migrant Workers Convention, but Sweden has chosen not to ratify this convention. Unlike other human rights, the right to work are not protected by one specific organ such as, for example, the right to healthcare. The right to work is a political issue and the question of who is responsible to fulfil and secure this right remains. Employers are not forced to employ anyone and no one is responsible if someone doesn't get their right to work satisfied, except if it is a question of discrimination. The right to work does rather protect the right to apply for work instead of actually being employed.

There seem to be a gap in Sweden between the right to work and to actually achieving work. For example, it takes 7-10 years for a refugee to establish themselves on the labour market according to the Swedish National Audit Office. The number of unemployed refugees are an increasing group and the unemployment rate is expected to rise even more when the two-year-period in the integration program ends. In 2016, only 27% of the immigrants that participated in the integration program received work among 90 days after that the program has ended and 6% began to study. Refugees are also struggling to find permanent jobs and they are overly representing both in having temporary employments as well as being employed by the staffing businesses.

The Common European Asylum System (CEAS) are supposed to eliminate variances in the treatment of asylum seekers in the member states of the EU and are built up on five pieces. Article 15 in the recast *Reception Conditions Directive 2013/33/EU*, ensure that asylum seekers should gain access to the labour market within nine months after they applied for asylum. The Swedish Government has made efforts to increase the possibility to work without a work permit already during the wait for asylum since the year of 1992. Although the possibility of actually gaining employment were expected to be challenging and hard for the asylum seekers already at that time. In 2007, statistics showed that only 611 of the 13 258 individuals who had the right to work without a permit reported that they worked, although the statistic does not show how many of them that actually applied for work or wanted to work. Because of the lack of identify documents, the government restricted the right for asylum seekers to work and the number was reduced from 17 000 in 2008 to less than 4000 in 2010. By changing the rules again in 2010, the possibility to work raised to over 25 000 for the asylum seekers in 2014. To increase the

ability of asylum seekers to work has been in line with the framework of the EU, to facilitate the access of asylum seekers on the labour market. There is still a problem for many refugees to prove their identity and therefore only 1 of 60, or 447 individuals, actually gained employment in Sweden during 2014. Still, the question remains in how many of them that actually has been interesting in working during the asylum period. Both refugees and asylum seekers who can prove that they are exempt from the obligation to have a work permit (AT-UND) and has submitted acceptable identity documents, or otherwise helps to clarify their identity has *the right to work* in Sweden. Although the chances to gain employment has been proven to be difficult for both groups.

Besides the issue of having the right to work, the international framework on labour market integration sets out directions for protection of discrimination against refugees and asylum seekers. The right to not be discriminated is known as a human right. Article 1 in the UDHR states everyone's freedom and equal rights and article 2 establishes these rights without divergence of race, skin colour, language or ethnic origin. A free choice of employment, favourable working conditions as well as equal pay for equal work is also human rights according to article 23. The ICCPR and the ICESCR has put these norms into binding obligations for the member states of the UN. Also the refugee convention stipulates the right for refugees and asylum seekers not to be discriminated. The international Labour organization (ILO) states that the member states have the obligation to adapt equality policies that promotes equality in the workplaces according to the ILO convention No. 111. Since 2009 the EU charter is legally binding for the member states and it protect against discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of national minority's, property, birth, disability, age or sexual orientation

The Swedish Government started to acknowledge the question of discrimination during the 70s and 80s. The current legislation of discrimination came into force in 2009 in the Discrimination Act (DiskL) but is also protected in the Constitution Act (RF) from 1974. Even though Sweden has taken actions to improve the human capital for refugees as well as combating discrimination by law the question of discrimination remains. Except from the new legislation in 2009, the Swedish Government also took administrative measures by the establishment of the Ombudsman of equality. Educational measures have been made by given the municipalities the responsibility of reception and language courses for refugees and the Employment Service is responsible for the integration program.

Different studies have shown that immigrants manage worse than the inborn in the possibility of finding employment. One explanation has been that many of the immigrants tend to have lower level of education and has gained their experience from a different labour market. Of course, the country's general economy plays an important role in the integration process for refugees and a strong economy creates more job opportunities than in periods of a weak economy. Refugees are a homogeneous group and for those with greater level of education and long work experience the access to labour may differ from those with a lower level of education as well as for those with limited work experience.

Another study points out differences in wage-earning were foreign born on average earn between 16-18 % less than the inborn population. There are also evidence that discrimination occur when foreign born apply for employment. The study made by Carlsson and Root in 2006 exposed that discrimination appeared in 29,4 % against applicants with Arabic names and that 9,6 % of the firms in the study discriminated foreigners. The last presented study was made before the financial crisis as well as the refugee crisis and the Swedish labour market and society has been through many changes since then. One study alone can not prove the magnitude of discrimination against foreign born even though it can picture inclinations that may still be current.

Even though Sweden has taken comprehensive measures to improve the establishment and participation of immigrants on the labour market, the struggle to find an employment for refugees and asylum seekers remain. The governments actions have been in accordance with the relevant provisions of the international and European framework to combat discrimination. Sweden has taken administrative, educational and legislative measures to eliminate discrimination but it nevertheless still occurs on the labour market. There also seem to be a complex situation in Sweden for individuals to prove that there has been a case of ethical discrimination and only a few cases have been taken to the Labour Court. The limited number of cases law and on contrary, the large number of studies pointing on the widespread of discrimination, different wages and employment for foreign born, seem to be an insoluble equation.

5.3. Sweden vs. Germany

Germany has also had a long history of welcoming immigrants and there are a lot of similarities in the integration systems in Germany and Sweden. In both countries, the Employment agencies have an important role for integration of immigrants into the labour market by increasing their professional skills. Both countries are bound by international legislation as well as the European

legislation. The constitutional law in combination with other more specific laws and ordinances creates the foundation for labour market integration. Germany and Sweden has both been recognised as favourable countries for refugees and are known as preferred destinations. Border controls as well as temporary residence permit are similarities in the countries. The German labour market was troubled at the end of the 90s and to change that, Germany made some major reforms in 2002-2005 known as the Hartz reform. The number of employed persons increased by over 3 million after the reform in approximately ten years. Germany has at the moment one of the lowest unemployment rate in Europe.

One element that differ from the Swedish system was the merger of the benefits for the unemployed and the social welfare system. This has led to that everyone is given the same opportunities to find work and gain access to the benefits. Although, this reform may not have been directly affecting the labour market integration for immigrants, it creates a diversity among the countries systems. In Sweden, the Government presented a new proposal for legislation in March 2017, stipulating that the same regulation for unemployed should be valid for newcomers as well as other job seekers. This legislation will directly affect the labour market integration for immigrants if it will be adopted.

Another change in the Hartz reform was to reorganise the Federal Employment Agency which has been identified to be ineffective. Instead, Germany created local job centres, driven by external actors that focusing on counselling as well as finding work opportunities, the Federal Employment Agency has become more of a controlling function. Also, programs that were not effective were removed and new more effective measures were taken. The discussion about a reformed Employment Agency became present in Sweden during 2016, over a decade after the German reform, and the suggestion is to let other external actors work with the job matching in the future.

Another part of the reform was to improve the already existing mini jobs by lowering the overhead for taxes and other social contributions. The minijobs are often seen as a complement to another job and has been very popular in Germany for especially students, married women and elderly but not in particularly for refugees. The minijobs have also been discussed to create a two-tiered labour market with a lot of low paid jobs. In Sweden there are no minijobs, instead there is huge opportunities for employers to hire individuals with different forms of subsidizing. The subsidized employments in Sweden have increased during the last decades and are proven to be an effective measure to provide employment. For refugees there are especially two forms of subsidised employments, new start jobs and entry level jobs and both employments have been serving the intended way. Germany introduced a minimum wage of € 8,50 per hours since

the first of January 2015. In Sweden, there are no legal minimum wage in the legislation, instead minimum wages are stipulated by collective agreements. There is also a greater proportion of wage distribution in Germany and the entry wage is lower than in Sweden. The lowest wages in Germany for a full time worker has been approximated to 14 000 SEK compared with 20 000 SEK in Sweden. The high entry wages have been discussed as one of the issues for immigrants to find their place on the labour market.

The legislation for temporary agency work were also changed in the Hartz reform to increase the flexibility on the labour market. In Germany, the temporary agencies employ 2.5 % compared 1.5 % in Sweden. Temporary agency work may create a lot of work opportunities but it also comes with a more uncertain future for the individuals. Temporary employments have been another issue in Sweden and are common especially for foreigners. After the Hartz reform in Germany there are about 8 % of the employees who have a temporary employment, compared with 15 % in Sweden. In Germany, 71 % of the working fit population has experienced a time-limited work during a period of five years. Instead temporary agency work is more common on the German labour market.

In both Germany and Sweden there are a well established integration courses or integration programs for refugees and asylum seekers. The German integration course are stipulated in the Residence Act from 2005. Foreigner living lawfully in Germany are entitled to receive the integration course that combines language practise, 600 h, and civic orientation, 100 h. In Sweden, the integration program is ongoing for two years and is based on an individual introduction plan with a combination of different activities among others, SFI and civic orientation. Similar in both countries are that the immigrant need to participate in the programs to receive compensation. In Germany, it has been expressed as promoting and demanding.

Germany has put a lot of efforts to create earlier measures for refugees and asylum seekers which have been made through the implementation of the Integration Act in 2016. The new program is designed to create over 100 000 low-threshold work opportunities for asylum seekers. The integration course is also available earlier on for asylum seekers to help them integrate by learning the language faster. There is no equivalent to this category of earlier efforts in Sweden yet.

5.4. Is the Swedish Labour Law sufficient to succeed with the Integration?

There is no clear way of how to deal with labour market integration for refugees and asylum seekers according to the international and European framework. The framework is setting the outline for integration programs and reception of refugees and asylum seekers as well as

stipulating the right to work. According to the international sources there are no explicit right for refugees and asylum seekers to find work, but it is regulated in the European legislation. Although, there seem to be a gap between the immigration law and the labour law and it has been recognized that there are not many countries that have been taken labour legislative measures to improve the labour market integration for refugees.

When the first Employment Protection Act from 1975 came into force in Sweden it was designed to protect the most vulnerable groups on the labour market, the oldest workers. Unemployed immigrants were not an issue during this period. This indication is still noticeable when termination due to redundancy when those with the shortest time of employment will be the first to leave according to the 22 § LAS. The employer has the right to make an exception for two employees if there are ten or less employees on the workplace. This paragraph has been criticised to be an obstacle for immigrants as well as young people on the labour market. The main issue in this essay has been the refugees' and asylum seekers' struggle to find work and gain access to the labour market. The 22 § LAS is current only in situation when they already have received work which does not make it a barrier to receive work. Although, it can be an obstacle in order to keep their employment.

The Swedish labour law has also been criticised to create barriers for immigrants because of the large costs of recruitment and termination which tend to make employers more careful when hiring employees. Jan Ekberg, argues that there is not only a struggle for the immigrants to find work, but also to keep their employment. In Germany, the dismissal due to redundancy differ from the Swedish way. For example, the employer has to compare social data of employees before selecting which employees to terminate. The social selection is based on age, length of service, obligation to pay for family support and disabilities. The German way is taken in consideration who is in most need of the work and are then obligated to keep them. Similar to Swedish system, employers can make exceptions for those who are in legitimate interest of the business.

The main rule is that employment shall apply until further notice according to 4 § LAS. Temporary employments can be applicable but only in specific situations mentioned in the 5 § LAS. In Germany, temporary employments are valid if there is a special cause and maximum for a period of two years, although it can be extended to three years. Statistics have shown that temporary employments are used in a greater amount in Sweden than in Germany. Because of the trade unions large impact on the Swedish labour market there are also possibilities to negotiate on other situations when to agree on temporary employments than those mentioned

in LAS. There has for example been made special employments for immigrants by collective agreements in Sweden. As well as negotiate of the formalisation of the employment it is also possible to reduce the salary for immigrants by collective agreements. In both collective agreements mentioned in this thesis the salary has been reduced to a level of 75 % of the minimum wage and the employment is then combined with special training. Collective agreements are widespread in Sweden and almost everyone on the Swedish labour market is covered by such an agreement. In Germany, the collective agreements have reached an historically low level to 12 % of the total employment, that were covered by some collective agreement. The recently developed minimum wage has been an effect of the low rate of collective agreements in Germany. The trade unions in Sweden has been undesirable to implement a minimum wage in Sweden and instead, argues for more education and skill upgrading. The employer's organisations are on the contrary debating for reduced entrance salaries. On a Governmental level there are no formal discussion about implementing a minimum wage in Sweden because of the large impact on wages from the trade unions.

Another important part of the labour legislation is the fact that some groups are not covered by the Employment Protection Act. For example, those who are employed with an employment support does not receive the employment protection and benefits. On the contrary they are neither covered by the 22 § LAS and can be released from the reorder of dismissals due to redundancy. Subsidised employments are used in great amounts by the Swedish employers. According to the Employment service there is no indication for over-exploitation of subsidised employment and the majority of the employers have only had one employee with subsidizing and in 38 % the employment lead to employment without subsidizing. Even though the statistic shows that the exploitation of subsidized employment is rare it still occurs. The latest statistics is from 2014 and the refugee and asylum situation has increased dramatically since then. There is still a possibility for employers to keep employ individuals with subsidizing directly after one another and the labour law does not put any obstacles for that. There are even some parties that argues that the great amount of subsidized employment for immigrants could be a discrimination against the inborn population if the employers tend to employ those only because of the financial support.

6. Conclusion and recommendations

To answer the first question, how the Swedish labour law comply with the international and European framework for labour market integration of refugees and asylum seekers the following findings has been made. The Swedish legislation comply with the international and European framework in both the issue of the right to work as well as combating discrimination of ethnicity. The right to work is not a guarantee to receiving work even though Sweden has commitments to endorse employment. Although, the right to work has been protected by Swedish law for both refugees and asylum seekers, there seem to be gap in actually receiving employment. For refugees it takes 7-10 years to find work and only 1 out of 60 of the asylum seekers that were aloud to work actually worked. Also, the question of responsibility on the issue of the right to work has been highlighted in this thesis and there is no one responsible if an individual does not find work, whether it is not a question of discrimination. The Government has taken administrative, educational and legislative actions to eliminate discrimination but it still occurs on the Swedish labour market. It also seems to be hard to prove that discrimination has occurred and only a few cases have been taken to the Labour Court. Even though the legislation complies well with the international and European framework, the outcome may not fulfil the purpose of succeeding with labour market integration.

The second research question, on which ways the Swedish and German labour legislation differ in relation to labour market integration for refugees and asylum seekers has been pointing out several differences as well as similarities. Some of the key findings of the German accomplishment has been the earlier efforts for integration by making it possible for asylum seekers to begin the integration course as well as working already during the asylum period. Another vital difference has been changes in the employment protection, in forms of reduced costs to employ, that has made the employers more willing to hire the unemployed. Also the increased staffing business has been a step towards a more open labour market in Germany. The minimum wage, the lower entrance wage as well as more widespread range of wages has also been an important aspect of the German labour market integration. Germany has also been constructing low skilled jobs that are available for refugees and asylum seekers. In Sweden there are great opportunities to hire refugees with subsidized employments and it is also possible to employ refugees with special collective agreements because of the great influence from the unions. Both countries have well established integration courses and programs for refugees and asylum seekers.

The labour law does not directly create any barrier for refugees and asylum seekers, neither does it promote the labour market integration. The labour law can be confirmed to be consistent with the international and European framework for labour market integration in both Sweden and Germany, mainly because there are no directions from the international or European level. Measures that has been made to promote the integration of refugees and asylum seekers seem to be compatible with the principle of proportionality and the relationship between aim and measure has been clear from the Government. The measures have therefor not been found to be discriminating on the basis on ethnicity. Although, the question if special treatment for refugees could be discriminated against the inborn population was recently highlighted and will be further discussed in the Swedish parliament in June 2017.

Sweden has not been taken any labour legislative actions to improve the integration for immigrants, instead other measures and legislation are in the centre. The possibility to employ immigrants with subsidizing as an exception from LAS creates opportunities for employers to erode the employment protection and also to create a two tired labour market for those with or without the subsidizing. This possibility is increasing even more by the potentials of conducting special collective agreements for immigrants with other wages as well as differentiated working conditions. There have been no indications yet, that the current system of integration could be derived to discrimination of ethnicity. Although, subsidizing has been a measure proven to work well for making immigrants gaining access to the labour market. However, in the future, it may develop in to a more divided labor market. The existing labour law is not by it self an obstacle for integration of refugees and asylum seekers and therefor it may not be relevant to make any major changes. On the basis of the thesis analysis, the following recommendations are given;

- The right to work protect the right to apply for work rather than actually the right to achieving work. To guarantee all people work seems to be an impossible task for the legislature to fulfil.
- The discrimination act creates an extensive protection for discrimination on the basis of ethnicity, still it occurs on the labour market and very few cases have reached the labour court. Case law could pave the way for improved assessments in the future.

- Earlier integration efforts, already during the asylum period is crucial to produce a quicker labour market integration for the immigrants. Earlier efforts can conclude language practise as well as work practise.
- Subsidized employments as well as special collective agreements for refugees could be a good way in to the labour market. But it could also potentially create a two tired labour market where one group is treated differently. This would be an important aspect to take into consideration.
- Recommendation to investigate if actions of lowering entrance wages as well as lower costs to hire could be a possibility to give refugees and asylum access to the labour market in larger scales.

Bibliography

International legal documents and instruments

Charter of the United Nations. Signed on 26 June 1945 in San Francisco at the conclusion of the United Nations Conference on International Organization. Came into force on 24 October 1945.

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 *laying down standards for the reception of applicants for international protection*

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 *on common procedures for granting and withdrawing international protection.*

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 *on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*

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

International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

European Convention on Human Rights. As amended by Protocols Nos. 11 and 14 and supplemented by Protocols Nos. 1,4,6,7,12 and 13.

European Commission, *A European agenda for migration*, Brussels, 13.5.2015.

ILO Declaration on Fundamental Principles and Rights at Work, 1998.

ILO Convention: Worst Forms of Child Labour Convention, 1999 (No. 182).

ILO Convention: Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

ILO Convention: Minimum Age Convention, 1973 (No. 138).

ILO Convention: Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

ILO Convention: Abolition of Forced Labour Convention, 1957 (No. 105).

ILO Convention: Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

ILO Convention: Equal Remuneration Convention, 1951 (No. 100).

ILO Convention: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

ILO Convention: Forced Labour Convention, 1930 (No. 29).

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 *establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.*

Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 *on the establishment of 'Eurodac'.*

The Schengen acquits - Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

UN General Assembly, *The New York Declaration for refugees and migrants*, 13 September 2016, United Nations.

UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

Universal Declaration of Human Rights: adapted and proclaimed by General Assembly resolution 217 (III) of 10 December 1948.

Swedish legal documents and instruments

Aliens Act (2005:716) issued: 29 September 2005 with amendments: up to and including Swedish Code of Statutes 2009:16.

Aliens Ordinance (2006:97) issued: 23 February 2006 with amendments: up to and including Swedish Code of Statutes 2008:982.

Co-Determination in the Workplace Act (1976:580) issued: 10 June 1976 with amendments: up to and including SFS 2013:615.

Committee of Employment, report 2016/17:AU16, The labour market investigation.

Compensation to some Immigrants Ordinance (2010:407) issued: 20 May 2010 with amendments: up to and including SFS 2016:1362.

Compensation by State for some Immigrants Ordinance (2010:1122) issued: 10 September 2010 with amendments: up to and including SFS 2017:199.

Council on Legislation, Referral, a new framework for newly arrived immigrant's establishment in working and social life. Issued: 2 March 2017.

Discrimination Act (2008:567) issued: 5 June 2008 with amendments: up to and including SFS 2014:958.

Employment Protection Act (1982:80) issued: 24 February 1982 with amendments: up to and including SFS 2008:564.

Establishment Act (2010:197) issued: 18 March 2010 with amendments: up to and including SFS 2016:754.

Government official letter, 2013/14:199, The national audit report on subsidized jobs for new arrivals.

Government prop. 2016/17:1.

Budget proposition

Government prop. 2016/17:175.

Ett nytt regelverk för nyanlända invandrades etablering i arbets- och samhällslivet

Government prop. 2009/10:60.

Nyanlända invandrades arbetsmarknadsetablering - egenansvar med professionellt stöd

Government prop. 2007/08:147.

Nya regler för arbetskraftsinvandring

Government prop. 2007/08:95.

Ett starkare skydd mot diskriminering

Government prop. 1997/98:16.

Sverige, framtiden och mångfalden – från invandrarpolitik till integrationspolitik

Government prop. 1993/94:94.

Mottagande av asylsökande m.m.

Government prop. 1973:129.

Kungl. Maj:ts proposition med förslag till lag om anställningsskydd, m.m.

Integration Measures for Immigrants Ordinance (2010:409) issued: 20 May 2010 with amendments: up to and including SFS 2016:666.

Motion 2016/17:2561.

Diskriminering av svenskar.

Reception of Asylum-Seekers Act (1994:137) issued: 30 March 1994 with amendments: up to and including SFS 2017:229.

Reception of Asylum-Seekers Ordinance (1994:361) issued: 11 May 1994 with amendments: up to and including SFS 2015:608.

SOU 2006:22.

En sammanhållen diskrimineringslagstiftning

SOU 2004:21.

Egenförsörjning eller bidragsförsörjning?

German legal documents and instruments

Asylum Act in the version promulgated on 2 September 2008 (Federal Law Gazette I, p. 1798), last amended by Article 2 of the Act of 11 March 2016 (Federal Law Gazette I, p. 394).

Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz) in der Fassung der Bekanntmachung vom 5. August 1997 (BGBl. I S. 2022), das zuletzt durch Artikel 20 Absatz 6 des Gesetzes vom 23. Dezember 2016 (BGBl. I S. 3234) geändert worden ist.

Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 23 December 2014 (Federal Law Gazette I p. 2438).

Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by Article 4 para. 5 of the Act of 1 October 2013 (Federal Law Gazette I page 3719)

Discrimination Act. (Allgemeines Gleichbehandlungsgesetz) vom 14. August 2006 (BGBl. I S. 1897), das zuletzt durch Artikel 8 des Gesetzes vom 3. April 2013 (BGBl. I S. 610) geändert worden ist.

Employment Ordinance. (Beschäftigungsverordnung vom 6. Juni 2013 (BGBl. I S. 1499), die zuletzt durch Artikel 2 der Verordnung vom 31. Juli 2016 (BGBl. I S. 1953) geändert worden ist.

Integration Act of 31 July 2016, Official Gazette I no. 39 (2016) of 5 August 2016, 1939.

Integration Course Ordinance (Integrationskursverordnung) vom 13. Dezember 2004 (BGBl. I S. 3370), die zuletzt durch Artikel 5 der Verordnung vom 31. Juli 2016 (BGBl. I S. 1950) geändert worden ist.

Minimum Wage Act of 11 August 2014 (Federal Law Gazette [BGBl.] Part I p. 1348), as amended by Article 2 of the Act of 17 February 2016 (Federal Law Gazette I p. 203).

Residence Act in the version promulgated on 25 February 2008 (Federal Law Gazette I p. 162), last amended by Article 1 of the Act of 11 March 2016 (Federal Law Gazette I p. 394).

Part-Time and Limited Term Employment Act (Teilzeit- und Befristungsgesetz) vom 21. Dezember 2000 (BGBl. I S. 1966), das zuletzt durch Artikel 23 des Gesetzes vom 20. Dezember 2011 (BGBl. I S. 2854) geändert worden ist.

Protection Against Dismissal Act (Kündigungsschutzgesetz) in der Fassung der Bekanntmachung vom 25. August 1969 (BGBl. I S. 1317), das zuletzt durch Artikel 3 Absatz 2 des Gesetzes vom 20. April 2013 (BGBl. I S. 868) geändert worden ist.

Federal Vacation Entitlement Act (Bundesurlaubsgesetz) in der im Bundesgesetzblatt Teil III, Gliederungsnummer 800-4, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 3 Absatz 3 des Gesetzes vom 20. April 2013 (BGBl. I S. 868) geändert worden ist.

Working Time Act (Arbeitszeitgesetz) vom 6. Juni 1994 (BGBl. I S. 1170, 1171), das zuletzt durch Artikel 12a des Gesetzes vom 11. November 2016 (BGBl. I S. 2500) geändert worden ist.

Books

- Adlercreutz, Axel & Mulder, Bernard Johann, *Svensk arbetsrätt*, 14., [rev.] uppl., Norstedts juridik, Stockholm, 2013.
- Bogdan, Michael, *Komparativ rättskunskap*, 2. uppl., Stockholm : Norstedts juridik, 2003.
- Boguslaw, Julia, *Svensk invandringspolitik under 500 år: 1512 - 2012*, Studentlitteratur, Lund, 2012.
- Carlson, Laura, Edström, Örjan & Nyström, Birgitta (red.), *Globalisation, fragmentation, labour and employment law: a swedish perspective*, 1. uppl., Iustus, Uppsala, 2016.
- Cochrane, A., Clarke, J. & Gewirtz, S. *Comparing Welfare States* (2nd ed.). London: SAGE Publications, 2001.
- Costello, Cathryn & Freedland, M. R. (red.), *Migrants at work: immigration and vulnerability in labour law*, Oxford University Press, Oxford, 2014.
- Daenzer, Patricia M. & Van Aerschot, Paul (red.), *The integration and protection of immigrants: Canadian and Scandinavian critiques*, 2014.
- Ekberg, Jan, *Försvårar arbetsrätten för invandrarna på arbetsmarknaden*, Arbetsrätt, rörlighet och tillväxt., p.139-153, 19 ref., 2006.
- Fransson, Susanne & Stüber, Eberhard. *Diskrimineringslagen – En kommentar. 2:a upplagan*. Norstedts Juridik. Stockholm. 2015.
- Fransson, Susanne och Stüber, Eberhard, *Samverkan och lönekartläggning – en rättsutveckling*. Arbetsmarknad & Arbetsliv, årgång 10, nr 3, 2004.
- Hansson, Mikael, *Kollektivavtalsrätten – En rättsvetenskaplig berättelse, akademisk avhandling*, Iustus Förlag AB, Uppsala 2010.
- Hathaway, James C. *The Michigan Guidelines on the Right to Work*, 31 Mich. J. Int'l L. 293 2010.
- Hathaway, James C., *The rights of refugees under international law*, Cambridge University Press, Cambridge, 2005.
- Hydén, Håkan, *Rättssociologi som rättsvetenskap*, Studentlitteratur, Lund, 2002.
- Källström, Kent; Malmberg, Jonas & Öhman, Sören, *Den kollektiva arbetsrätten*, Författarna och Justus Förlag AB, Uppsala, 2016.
- Källström, Kent & Malmberg, Jonas, *Anställningsförhållandet: inledning till den individuella arbetsrätten*, 3., [rev.] uppl., Iustus, Uppsala, 2013.
- Lehrberg, Bert, *Praktisk juridisk metod*, 7. [uppdaterade och omarb.] uppl., Iusté, Uppsala, 2014.

Malm Lindberg, Henrik, Karlson, Nils & Grönbäck, Johanna, *Ultima ratio: Svenska konfliktregler i ett internationellt perspektiv*, 1. uppl., Iustus, Uppsala, 2015.

Penner, J. E., Melissaris, Emmanuel, McCoubrey, H. & White, N. D., *McCoubrey & White's textbook on jurisprudence* / by James E. Penner, Emmanuel Melissaris., 5th ed., Oxford University Press, Oxford, 2012.

Sandgren, Claes, *Rättsvetenskap för uppsatsförfattare: ämne, material, metod och argumentation*, 3., [utök. och rev.] uppl., Norstedts juridik, Stockholm, 2015.

Sigeman, Tore, *Arbetsrätten: en översikt*, 5., [rev. och utök.] uppl., Norstedts juridik, Stockholm, 2010

Eichenhofer, Eberhard, Hartz' Reforms – Hard reconstructions?, in, Stendahl, Sara, Erhag, Thomas & Devetzi, Stamatia (red.), *A European work-first welfare state*, Centre for European Research, University of Gothenburg, Göteborg, 2008.

Södergran, Lena, *Svensk invandrar- och integrationspolitik: en fråga om jämlikhet, demokrati och mänskliga rättigheter*, Univ., Diss. (sammanfattning) Umeå : Univ., Umeå, 2000.

Wacks, Raymond, *Understanding jurisprudence: an introduction to legal theory*, 4. ed., Oxford Univ. Press, Oxford, 2015.

Wendler, Michael., Buecker, Bernard. & Tremml, Bernd., *Key Aspects of German Business Law: A Practical Manual*, Springer Berlin Heidelberg, Berlin, Heidelberg, 2009.

Weiss, Manfred & Schmidt, Marlene, 2010. *Germany*. Kluwer Law International.

Zenker, Ilona, *Basic of German Labour Law*, Books On Demand, 2014.

Articles

Andersson Joonas, P., Wadensjö, E. (2012). *A Price for Flexibility? The Temp Agency Wage Gap in Sweden 1998–2008*. Discussion paper, no. 6587. Institute for the study of labor (IZA).

Edwards, A. (2005). *Human rights, refugees, and the right “to enjoy” asylum*. *International Journal of Refugee Law*, 17, 293–330.

Inghammar, Andreas (2010). *Employment Contract Revisited. Undocumented Migrant Workers and the Intersection between International Standards, Immigration Policy and Employment Law*. *European Journal of Migration and Law*, 12, 193–214.

Jansen, Heniz & Kuhnert, Stefan (2004), *Labour Market Reform in Germany: Fact or Fiction?* Economic analysis from the European Commission's Directorate-General for Economic and Financial Affairs. Volume 1, Issue 3.

Kogan, Irena (2011) *New Immigrants — Old Disadvantage Patterns? Labour Market Integration of Recent Immigrants into Germany*. *International Migration* Vol. 49 (1).

Magnus Carlsson och Dan-Olof Rooth (2007), *Evidence of ethnic discrimination in the Swedish labor market using experimental data*, Labour Economics, 14:716-729.

See J.-P. Brekke, G. Brochmann (2015), *'Stuck in transit: secondary migration of asylum seekers in Europe, national differences, and the Dublin Regulation'*, in Journal of Refugee Studies, 28(2).

Bhattacharjee, Saurabh (2013), *Situating the right to work in international human rights law: An agenda for the protection of refugees and asylum-seekers*. NUJS Law Review. 6 NUJS . Rev. 41.

Studies and rapports

Arbetsförmedlingen, *Kartläggning av subventionerade anställningar*, 2016.

https://www.arbetsformedlingen.se/download/18.268596231533325909ada4f/1464682174354/Subventionerade_anstallningar.pdf

Calleman, Catarina and Hertzfeld Olsson, Petra, *Arbetskraft från hela världen - Hur blev det med 2008 års reform?* Rapport 2015:9. Statens offentliga utredningar.
<http://www.arenaide.se/files/2015/12/Arbetskraft-från-hela-världen.pdf>

Eliasson, Tove, *Löneutveckling bland invandrade och infödda – betydelsen av arbetsplatser och yrken*. Rapport 2013:5. Institutet för arbetsmarknads- och utbildningspolitisk utvärdering (IFAU).

Eichhorst & Tobsch, *Not so standard anymore? Employment duality in Germany*, 2014.
<http://ftp.iza.org/dp8155.pdf>

Federal Office for Migration and Refugees, *Migration, Integration, Asylum - Political Developments in Germany 2015*. 2016.
http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/EMN/Politikberichte/emn-politikbericht-2015-germany.pdf?__blob=publicationFile

Finansdepartementet, *Utrikes födda på den svenska arbetsmarknaden I: Vägen till arbete – arbetsmarknadspolitik, utbildning och arbetsmarknadsintegration*, bilaga 4. Långtidsutredningen 2011. SOU 2010:88.

Garloff, Alfred, *Side effects of the new German minimum wage on (un-)employment: First evidence from regional data*, 2016.
<http://doku.iab.de/discussionpapers/2016/dp3116.pdf>

ILO, *The access of refugees and other forcibly displaced persons to the labour market*, 2016.
http://www.ilo.org/global/topics/labour-migration/publications/WCMS_490753/lang--en/index.htm

Kraemer, Birgit (2015), *Germany: Continued decline in collective bargaining and works council coverage*, Eurwork.
<https://www.eurofound.europa.eu/observatories/eurwork/articles/industrial-relations/germany-continued-decline-in-collective-bargaining-and-works-council-coverage>

Lundborg, Per, *En ekonometrisk analys av minimilönernas effekter på flyktinginvandrarers arbetslöshet*. Underlagsrapport till Konjunkturinstitutet, 2012.

Medlingsinstitutets årsrapport, *Avtalsrörelsen och lönebildningen 2015*
<http://www.mi.se/publicerat/arsrapporter/>

Möller, Joachim, *Did the German Model Survive the labour market reforms*, 2015.
http://europe.unc.edu/wp-content/uploads/2014/08/moeller_german-model.pdf

Poptcheva, *EU legal framework on asylum and irregular immigration 'on arrival'*, EPRS, European Parliamentary Research Service, 2015.
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/551333/EPRS_BRI\(2015\)551333_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/551333/EPRS_BRI(2015)551333_EN.pdf)

Poptcheva and Stuchlik, *Work and social welfare for asylum- seekers and refugees Selected EU Member States*, EPRS, European Parliamentary Research Service, 2015.
[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/572784/EPRS_IDA\(2015\)572784_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/572784/EPRS_IDA(2015)572784_EN.pdf)

Svenskt Näringsliv, *Så vann Tyskland EM-guldet i jobbskapande – Lärdomar för Sverige*, 2016.
https://www.svensktnaringsliv.se/migration_catalog/Rapporter_och_opinionsmaterial/Rapporter/sa_vann_tysklandpdf_650883.html/BINARY/Sa_vann_Tyskland.pdf

UN General Assembly, *In safety and dignity: addressing large movements of refugees and migrants, Report of the Secretary-General*, 21 2016-04-21.
https://refugeesmigrants.un.org/sites/default/files/in_safety_and_dignity_-_addressing_large_movements_of_refugees_and_migrants.pdf

OCED, *Working Together: Skills and Labour Market Integration of Immigrants and their Children in Sweden*, OECD Publishing Paris, 2016.
http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/working-together-skills-and-labour-market-integration-of-immigrants-and-their-children-in-sweden_9789264257382-en

OECD, *Labour market integration of refugees in Germany*, OECD Publishing Paris, 2017.
<https://www.oecd.org/els/mig/Finding-their-Way-Germany.pdf>

European parliament, *Labour market integration of refugees: strategies and good practise*, 2016
[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU\(2016\)578956_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU(2016)578956_EN.pdf)

P. Weis, *Travaux Préparatoires and Commentary to the UN Refugee Convention*.
<http://www.unhcr.org/4ca34be29.html>

Riksrevisionen, *Nyanländas etablering - är statens insatser effektiva?*, riksdagens internttryckeri, Stockholm 2015.
http://www.riksrevisionen.se/PageFiles/22578/RiR2015-17_Etabl%20%20integration_Anpassad.pdf

Riksrevisionen, *Ett steg in och en ny start – hur fungerar subventionerade anställningar för nyanlända*, Riksdagens internttryckeri, Stockholm 2013.

http://www.riksrevisionen.se/PageFiles/18558/RiR_2013_17_Anpassad_Instegsjobb.pdf

SCB, *Integration – utrikes födda på arbetsmarknaden. Integration: Rapport 2*, 2009.
Statistiska centralbyrån

Szulkin, R., L. Nekby, M. Bygren, C. Lindblom, K. Russel-Jonsson, R. Bengtsson och E. Patrick Joyce Normark, *På jakt efter framgångsrik arbetslivsintegrering*. Forskningsrapport 2013/1. Institutet för Framtidsstudier, 2013.

Teknikföretagen, *Sverige behöver ett modernt anställningsskydd*, 2015.

<https://www.teknikforetagen.se/globalassets/i-debatten/publikationer/arbetsratt/sverige-behover-ett-modernt-anstallningsskydd.pdf>

UNHCR, *Global trends 2015 forced displacement*, 2016.

<http://www.unhcr.org/576408cd7.pdf>

Zimmermann, Klaus F, *Is Germany the North Star of Labour market policy?* 2013

<http://ftp.iza.org/dp7260.pdf>

Internet

Regeringen, *Etableringspaketet*, 2017-03-08:

<http://www.regeringen.se/regeringens-politik/regeringens-etableringspaket/regeringens-etableringspaket-jobb/>

BMAS, *Ways for refugees to gain access to the labour market*, 2015-10-07.

<http://www.bmas.de/EN/Our-Topics/Fresh-start-in-germany/Ways-for-refugees-to-gain-access-to-the-labour-market.html>

Fastigo, *Nytt kollektivavtal att anställa nyanlända*, 2016-06-16.

<https://fastigo.se/blog/2016/06/nytt-kollektivavtal-att-anstalla-nyanlanda/#.WPOKHxeHJAY>

Government, Prime Minister to meet with Federal Chancellor Angela Merkel, 2016

<http://www.government.se/press-releases/2016/08/prime-minister-to-meet-with-federal-chancellor-angela-merkel/>

Regeringskansliet, *Nya regler för nyanländas etablering*, 2017-03-06.

<http://www.regeringen.se/495930/contentassets/c7d01cf2de1d4665b912140087a0c290/uppdaterad-presentation-23-mars-2017-nya-regler-for-nyanlandas-etablering>

Migrationsverket, *History*, downloaded 2017-05-14:

<https://www.migrationsverket.se/English/About-the-Migration-Agency/Facts-and-statistics-/Facts-on-migration/History.html>

The Federal Government, *Integration Act to support and challenge*, 2016-07-08.

https://www.bundesregierung.de/Content/EN/Artikel/2016/07_en/2016-05-25-integrationsgesetz-beschlossen_en.html

The Federal Chancellor, *Speech by Federal Chancellor Dr Angela Merkel on 18 February 2017 at the 53rd Munich Security Conference*, 2017-02-18.

https://www.bundeskanzlerin.de/Content/EN/Reden/2017/2017-02-18-bkin-rede-msk_en.html?nn=645302#Start

UNHCR, *About us*, downloaded 2017-05-14.

<http://www.unhcr.org/about-us.html>

UNHCR, *Definitions*, downloaded 2017-05-14.

<http://refugeesmigrants.un.org/definitions>

UN, *About the UN - Overview*, downloaded 2017-05-14.

<http://www.un.org/en/sections/about-un/overview/index.html>

UN, *Statements messages*, SG/SM/17670-REF/1228, 2016-04-15.

<http://www.un.org/press/en/2016/sgsm17670.doc.htm>

News articles

Arbetet, *Mycket få asylsökande har jobb trots tillstånd*, 2015-06-05.

<http://arbetet.se/2015/06/05/mycket-fa-asylsökande-har-jobb-trots-tillstand/>

Arbetsmarknadsnytt, *Så kan tyska reformerna sänka trösklarna i Sverige*. 2016-05-17.

<http://arbetsmarknadsnytt.se/sa-kan-tyska-reformer-sanka-trosklar-i-sverige/>

Arbetsvärlden, *Alliansparterierna förslag på nya anställningsformer*, 2016-02-19.

<http://www.arbetsvarlden.se/allianspartiernas-forslag-pa-nya-anstallningsformer/>

Centerpartiet, *Jobb och företag*. Downloaded 2017-05-14.

<https://www.centerpartiet.se/vart-parti/for-elever/jobb-och-foretag.html>

CNN, *Sweden Stockholm attack: Uzbek man held on suspicion of terrorism*, 2017-04-08.

<http://edition.cnn.com/2017/04/08/europe/sweden-stockholm-truck-attack/>

Dagens Nyheter, *DO undviker systematiskt att utreda etnisk diskriminering*, 2013-05-25.

<http://resolver.ebscohost.com.ludwig.lub.lu.se/openurl?sid=EBSCO%3aedsswe&genre=article&issn=11012447&ISBN=&volume=&issue=25+maj&date=20130101&spage=&pages=&title=Dagens+nyheter&atitle=DO+undviker+systematiskt+att+utreda+etnisk+diskriminering&author=Schömer%2c+Eva%2c+Author&id=DOI&site=ftf-live>

Lag och Avtal, *Tunga parter tecknar migrationsavtal*, 2016-12-07.

<http://www.lag-avtal.se/avtalsrorelsen/tunga-parter-tecknar-migrationsavtal-6809783>

Svenska dagbladet, *Det behövs fler undantag från LAS*. 2015-06-29.

<https://www.svd.se/kd-det-behovs-fler-undantag-fran-las>