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### **Spatio-Temporal Dimensions**

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# Socio-Legal Aspects of Labour Market Segmentation in the Agri-Food Sector in Sweden: Spatio-Temporal Dimensions

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## Abstract

Migrant labour constitutes an important feature of the Swedish agri-food sector – often employed with sub-standard working and employment conditions. Combining legal analysis and data from semi-structured interviews this article analyses the socio-legal factors and structure of the labour market and its interplay with the national migration regime that make possible the resort to exploitative practices in the employment of migrant labour in the Swedish agri-food sector. Theoretically speaking the article approaches migrant labour using Mariana Valverde's concept of the 'chronotopes of law' capturing the simultaneous and dynamic relationship between space and time in defining legal meaning. In short, the study of legal processes as the result of a space-time interaction.

## Keywords

migrant labour – labour exploitation – agri-food sector – Sweden – spatiotemporal dimensions of law

## 1 Introduction

With its almost 410,000 km<sup>2</sup>, Sweden is the third largest country in the European Union (EU) (after France and Spain). Yet its population density of 25 persons per km<sup>2</sup> places Sweden second last in the EU before Finland.<sup>1</sup> Most of its land is covered by forests and not much of it is farmed. Only about 6.5% of the total territory of Sweden is made of arable land – mostly in the Southern part of the country.<sup>2</sup> Sweden imports a variety of agriculture products, in particular vegetables and fruit, which makes the agri-food sector of the country comparatively smaller than Southern European countries that instead exports those products, often to Sweden.<sup>3</sup> Against a relatively small-size agriculture industry, Sweden has a flourishing berry-picking industry due to the forestry nature of its Northern part (*Norrboten*) that provides for berries to grow wild. The Swedish agri-food sector is therefore composed of a continental type of agriculture, mostly located in the South, with extended fields of different crops (wheat, rape, sugar beet), dairy cows and a meat industry, and of a flourishing berry-picking industry in the Northern forests. In both cases the temporality of seasons plays an important role. Wild berries only grow during the summer months and the temperatures during winter months does not favour much of farming activities in the South either. These temporal aspects inevitably shape the modalities of employment of workers in the sector.

Migrant labour constitutes an important feature of the Swedish agri-food sector – often employed with sub-standard working and employment conditions.<sup>4</sup> This article<sup>5</sup> illustrates and analyses the socio-legal factors that enable exploitative practices in the employment of migrant labour in the Swedish agri-food sector. Any issue concerning work and labour in the Swedish context, including questions of undeclared, exploitative and substandard work of labour migrants, relates to the structure of the labour market, its regulation – the particular Swedish model for labour market regulation, and its interplay

1 Source [www.worldometer.info](http://www.worldometer.info).

2 Jordbruksverket, Jordbruksstatistisk sammanställning 2019 med data om livsmedel – tabeller.

3 According to data published from 2018 by the Swedish Government Agency for Statistics (SCB) vegetables and fruit represent the second largest item that Sweden imports after fish and seafood, see <https://www.scb.se/hitta-statistik/statistik-efter-amne/jord-och-skogsbruk-fiske/amnesovergripande-statistik/allman-jordbruksstatistik/pong/tabell-och-diagram/import-och-export-av-jordbruksvaror-och-livsmedel/>.

4 Wingborg, M. (2014). *Villkoren för utländska bärplockare säsongen 2014*. Arena idé.

5 The research has been conducted within the project '*Is undeclared work in agriculture really just a Southern European problem – and, if not, what is driving the demand elsewhere? Case studies on migrant labour in Germany, the Netherlands and Sweden*' financed by Open Society Foundation and coordinated by the Migration Policy Centre and Robert Schuman Centre for Advanced Studies at the European University Institute.

with the national migration regime.<sup>6</sup> We unpack factors that contribute to depriving migrant workers in the agri-food sector of rights and exposing them to vulnerability and possibly exploitation.

The investigation combines legal analysis and data from semi-structured interviews (conducted November 2019–June 2020) with trade unionists and labour organisers active in the agri-food sector, representatives of the sectoral employers' organisation, and spokespersons of other stakeholders such as NGOs. While the phenomenon of labour migrants in the berry industry in Northern Sweden has been the focus of academic studies, the employment of migrant workers in the Southern fields constitutes a fairly unexplored topic.

While being less in the spotlights, the agriculture industry in Southern Sweden is also affected by exploitative practices of substandard work and employment of labour migrants, mostly in relation with the latest trends on the labour market such as outsourcing of labour services, and casualisation and flexibilization of employment.<sup>7</sup> This issue has acquired a renewed topicality considering the COVID-19 pandemic. Although their work has been considered essential and therefore their movements facilitated despite border closings,<sup>8</sup> migrant workers in the agri-food sector in several countries in Europe have not received adequate protection against the risk of exposure to the virus and in terms of access to social security schemes.<sup>9</sup>

The article unfolds as follows. First, we present the analytical framework to understand the Swedish model for labour market regulation and its interplay with migration law. Then we proceed to describing both the precarity and the legal constraints of migrant work in the agri-food sector. This is followed by a discussion on remedies against precarity on part of the state and of trade unions. Before concluding the article, we illustrate how the Covid-19 pandemic has affected migrant workers in the agri-food sector.

6 Woolfson, C., Fudge, J., and Thörnqvist, C., 2014. Migrant precarity and future challenges to labour standards in Sweden. *Economic and Industrial Democracy*, 35(4), 695–715.

7 Fudge, J. and Strauss, K. (eds) (2014). *Temporary Work, Agencies and Unfree Labour Insecurity in the New World of Work*. Routledge, Abingdon.

8 Mezzadra and Neilson note how the commodification of labour is the factor that allows certain categories of workers to cross borders even when they are close and the controls are particularly rigid. They describe this dynamic as one of the mechanisms that 'multiple' labour. See Mezzadra and Neilson (2013), *Borders as Method, or, the Multiplication of Labor*, Duke University Press, Durham, p. 19.

9 On Italy see Pietrogiovanni, V., 2020. Labour without the law: Migrant food workers in Italy. *Futures of Work*, issue 15, <https://futuresofwork.co.uk/2020/07/13/labour-without-law-migrant-food-workers-in-italy/>; on Germany see Bogoeski, V., 2021, Harvesting injustice. How the legacy of neoliberal labour market regulation helps exclude seasonal migrant workers from social security in Germany. *Verfassungsblog: On Matters Constitutional*, published on 20 April 2021, <https://verfassungsblog.de/harvesting-injustice/>.

## 2 Space and Time in Investigating Migrant Labour

Following Bridget Anderson's analysis of migration control and precarity at work,<sup>10</sup> we understand labour migration regimes as tools for governing the labour market. Migration control creates different status for workers on the labour market, which then produce precarity of employment status and working conditions by demarcating the borders for the entitlement of rights. Labour migration regimes have the effect of 'mapping' the labour market by producing what Sandro Mezzadra and Brett Neilson indicate as 'the diversification and heterogenization of workforces'.<sup>11</sup> Anderson's observation on the construction of different categories of workers based on migration status and the geographical understanding of the mapping effects on the labour market proposed by Mezzadra and Neilson call for an approach to the study of labour migration that combines space and time in analysing legal aspects. Accordingly, the socio-legal factors that expose migrant labour in the Swedish agri-food sector to vulnerability and, potentially, exploitation, are examined here as a spatio-temporal question.

In the Swedish context this approach is useful to capture the effects resulting from the interplay between a model of labour market regulation that relies on trade union membership and collective agreement enforcement and the liberal regime of labour migration from third countries introduced with the 2008 reform. The temporary conditions of stay and work for migrant workers in the agri-food sector, as set by the Swedish labour migration regime, is at odds with the requirement of union membership set by the Swedish regime of labour market regulation, as precarity of stay does not encourage trade union membership.

Yet, the precarity-effect on migrant workers of migration regimes is not a specialty of the Swedish context. Research in other jurisdictions show similar outcomes: legal entitlements and access to justice in work-related situations and claims are shaped – and restricted – by the precarity created through the regulations on the right to residence and work permits.<sup>12</sup> This aspect is only sharpened by the material conditions in which labour in the agriculture sector

10 Anderson, B., 2010. Migration, immigration controls and the fashioning of precarious workers. *Work, Employment & Society* 24(2), pp. 300–317.

11 Mezzadra, S. and Neilson, B. (2013). *Borders as Method, or, the Multiplication of Labor*, Duke University Press, Durham, p. 21.

12 Griffith, K.L. and Gleeson, S.M., 2017. The precarity of temporality: How law inhibits immigrant worker claims. *Comparative Labor Law & Policy Journal*, 39, pp. 111–141; Fudge, J., 2012. Precarious migrant status and precarious employment: The paradox of international rights for migrant workers. *Comparative Labor Law & Policy Journal*, 34, p. 95.

is conducted.<sup>13</sup> Seasonal work is the norm in agriculture.<sup>14</sup> The need for labour is therefore intermittent throughout the year depending on seasons. This is reflected in the Seasonal Work Directive,<sup>15</sup> which limits seasonal workers' entitlements to stay and settle down in the country of work, while at the same time favouring circular migration.<sup>16</sup> The implementation of the Directive in the Swedish context has not modified this aspect.

Along with the temporal dimension of migrant regimes and regulations, space and the spatial understanding of labour markets play a role too in creating precarity and vulnerability for labour migrants. National borders constitute the boundaries of labour markets by default. However, the spatial construction of labour markets is more complex, and borders have a less fixed role in this. Turning again to Mezzadra and Neilson, borders shape labour markets as instruments 'of filtering and differentiation' by creating different subjects and categories of workers.<sup>17</sup> The entitlements of working conditions and their enforcement occur along a cleavage between 'insiders' and 'outsiders' within the labour market – implicitly signifying more or less legitimacy to those entitlements depending on migration status.<sup>18</sup> Racial and colonial elements have contributed in shaping the law of the labour market by segmenting the labour force.<sup>19</sup> Geographical tools to understand space and spatialisation, such as scale, are defining features of labour market regulations, especially in the EU, where labour mobility and entitlements to rights depend on the spatio-legal construction of a cross-border jurisdiction.<sup>20</sup>

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- 13 Cf Vosko, L.F., Tucker, E. and Rebecca, C., 2019. Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability. *International Journal of Comparative Labour Law and Industrial Relations*, 35(2), pp. 227–254.
  - 14 Panda, S.S. and Mishra, N.R., 2018. Factors affecting temporary labour migration for seasonal work: a review. *Management research review*, 41(10), pp. 1176–1200.
  - 15 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L94 28.3.2014.
  - 16 See Fudge, J. and Herzfeld Olsson, P., 2014. The EU Seasonal Workers Directive: when immigration controls meet labour rights. *European Journal of Migration and Law*, 16(4), pp. 439–466.
  - 17 Mezzadra and Neilson, p. 19.
  - 18 Dias-Abey, M, Novitz T. and Rocca, M. (2020). Challenging binaries: Why we need new ways to talk about people who move for work, at <http://speri.dept.shef.ac.uk/2020/10/05/challenging-binaries-why-we-need-new-ways-to-talk-about-people-who-move-for-work/>.
  - 19 Dias-Abey, M., 2021. Determining the Impact of Migration on Labour Markets: The Mediating Role of Legal Institutions. *Industrial Law Journal*, 50(4), pp. 532–557.
  - 20 Iossa, A. and Persdotter, M., 2021. Cross-Border Social Dumping as a 'Game of Jurisdiction' – Towards a Legal Geography of Labour Relations in the EU Internal Market. *Journal of Common Market Studies*, 59(5), pp. 1086–1102.

The combination of time and space in understanding labour migration can be synthesised by Mariana Valverde's concept of the 'chronotopes of law'.<sup>21</sup> Valverde borrows the notion of 'chronotope' from the work of Russian philosopher Mikhail Bakhtin on the mutual constitutive relationship between space and time in the construction of a text and its meaning. By borrowing this concept, Valverde aims at disposing of an analytical concept for socio-legal investigations able to capture the simultaneous and dynamic relationship between space and time in defining legal meaning. In Valverde's words, 'different legal processes are shaped and given meaning by particular spacetime'.<sup>22</sup> With no claim to universal application,<sup>23</sup> this notion enables researchers interested in socio-legal questions to conceptualise and approach the study of legal processes as the result of spacetime interaction.<sup>24</sup>

The understanding of the conditions of migrant labour – and especially seasonal and casual migrant labour employed in the Swedish agri-food sector – can be approached with the spatiotemporal features of the concept elaborated by Valverde in mind. Migrant labour is at the same time spatially located (or displaced) on a nationally regulated labour market while being temporally contingent based on migration regime – and in the case of seasonal migrant workers in Sweden also because of the cycle of seasons. The legal category of migrant labour is jointly and contextually constructed by time and space in relation with local workforce and local labour markets.

### 3 Overview of Swedish Labour Market and Migration Regimes

The Swedish labour market is highly regulated through semi-mandatory legislation. This implies that the labour market parties by means of collective agreements derogate from the law – also *in pejus* for the employees.<sup>25</sup> The unionisation rate is high in Sweden: about 70 % of employees are member of a trade union. Furthermore, nine out of ten workers are working under

21 Valverde, M. (2015). *Chronotopes of Law. Jurisdiction, Scale and Governance*. Routledge. Abingdon.

22 Valverde, p. 11.

23 Kotiswaran, P., 2015. Valverde's chronotopes of law: Reflections on an agenda for socio-legal studies. *Feminist legal studies*, 23(3), pp. 353–359.

24 Gordon-Bouvier, E., 2019. Crossing the boundaries of the home: a chronotopical analysis of the legal status of women's domestic work. *International Journal of Law in Context*, 15(4), pp. 479–494.

25 Fahlbeck, R., 2006. Derogation from Labour Law Statutes under Swedish Law. *Juridisk tidskrift* 2006/07 p. 42 ff.

conditions decided by collective agreement.<sup>26</sup> Applicability of a collective agreement depends on the employer signing it or joining an employers' organisation bound by the agreement. The terms and conditions of the collective bargaining agreement largely apply to employees who are not member of the trade union.

Another characteristic feature of the Swedish model for labour market regulation is the absence of legislation on minimum wages. The system for wage formation is based on the assumption that trade unions through industrial action, not least sympathy actions, are able to safeguard wage levels.<sup>27</sup> Securing that workers receive their wages is not considered to be a task for any government agency. The individual worker will have to sue the employer requesting to be paid. Trade unions often aid their members in this respect. In sum, collective autonomy is the most cherished value in the Swedish labour market regulation.

In 2008 Sweden adopted what the OECD called "an almost entirely demand-driven system" for labor migration that "appears" to be "the most open labour migration system among OECD countries"<sup>28</sup> with reference to being driven almost entirely by employers' demand for labour. This system is founded on the principle that a third country national needs a work permit to be able to enter and work in Sweden (ch. 2, art. 7 of the Aliens Act 2005:716). A permit is issued based on a job offer under the condition that salary, social security protections and other employment conditions are not lower than those set by national collective agreements applied in the sector concerned, and with a salary enabling the foreigner to support himself (ch. 6, art. 2). Following reports about widespread abuse and exploitation of migrant workers the government is now proposing that the permit is to be based on a binding employment contract and not just on the offer.<sup>29</sup>

A work permit can only be issued "for a certain amount of time" (i.e. only temporarily) – and not be longer than two years or longer than the employment contract (ch. 6, art. 2a). This principle makes any labour migrant a short-time labour migrant until the acquisition of a permanent right to residence, which can be obtained if the foreigner has had a work permit (also for EU Blue Cards and Intra-Corporate Transfers) for at least four years under a period of seven years (ch. 5, art. 5). Sweden has implemented the EU Directives (i.e.

26 Medlingsinstitutet (2021). *Avtalsrörelsen och lönebildningen* 2021. p. 163.

27 Sjödin, E., 2019. Arbetsmarknadens skuggsida – rättsföljder vid för låga löner. *Juridisk tidskrift* 2019/20 p. 671 ff.

28 OECD (2011). *Recruiting Migrant Workers: Sweden* 2011. p. 11.

29 Government Bill 2021/22:134. Government White Paper 2021:5 and 2021:88.



the Employers' Sanctions Directive 2009/52/EC,<sup>30</sup> the Single Application Procedure Directive 2011/98/EU,<sup>31</sup> the Seasonal Workers' Directive 2014/36/EU,<sup>32</sup> the Intra-Corporate Transfer Directive 2014/66/EU<sup>33</sup>) on labour migration without going further than is required by EU-law. The Seasonal Workers' Directive re-introduced a legal entry route for agricultural and forestry workers into Sweden and fosters – through the application of different collective agreements depending on the employer being a Swedish-based company, a foreign or Swedish-based temporary work agency – fragmentation of the labour market.<sup>34</sup> The Aliens Act furthermore requires access to accommodation with appropriate standards in order to obtain the work permit for seasonal work (ch. 6c, sect. 2). The Aliens Act places conditions for the granting of the work permit upon the employer who intends to provide or rent out the accommodation to the seasonal worker: the rent needs not to be disproportionate for the worker's salary and for the standards of living; the rent cannot be deducted from the worker's salary; a written contract or agreement concerning the rent has been provided; the accommodation complies with health and safety regulations (ch. 6c, sect. 3).

A work permit for seasonal work shall not be issued if there is a risk that the worker does not intend to leave Sweden after the termination of the employment (ch. 6c, sect. 2) and it limits the duration of the permit to a maximum of six months over a period of twelve months (ch. 6c, sect. 9.2).

Posting of third-country nationals from outside the EU follows the same general rules on work permit as other types of labour migration from third countries. It is required that the job enables the migrant workers to support themselves and that the pay, insurance coverage and other terms of employment are not worse than the terms that follows from Swedish collective agreements or

30 Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

31 Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

32 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

33 Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

34 Calleman, C. and Herzfeld Olsson, P. (2016). Moves towards increased workforce fragmentation among labour immigrants, in: L. Carlsson, Ö. Edström and B. Nyström (Eds.), *Globalisation, fragmentation, labour and employment law. A Swedish perspective*, Iustus, Uppsala, 161–183.

practice within the profession or sector (Act 2015:716, ch. 2, sect. 7, ch. 6, sect. 2). The permit can be granted for a maximum of two years (ch. 6, sect. 2 a).

In sum, the Swedish labour migration regime has since 2008 been driven by demand for labour expressed by employers. Referencing the need to counter social dumping and the exploitation of migrant workers, the government suggested in April 2022 a shift in policy: work permits will only be afforded in sectors in which it is stipulated by government agencies that a lack of workers prevail.<sup>35</sup>

#### 4 Migrant Work in the Agri-Food Sector in Sweden: Precarity and Legal Constraints

##### 4.1 *Main Characteristics of the Agri-Food Sector and Labour*

In the Swedish socio-economic fabric, the agri-food sector has certain characteristics that contribute to produce segmentation in the workforce. Food production (slaughterhouses, food manufacturing), agriculture (farming, forestry, gardening, animal care and husbandry) and wild berry picking are separate branches of a wide agri-food sector. This is reflected in the conclusion and application of collective agreements and trade union organising activities. While workers employed in food manufacturing are organised by the Swedish Food Workers' Union (*Livsmedelsarbetareförbundet*) that negotiates with the employers' association *Livsmedelsföretagen*, workers in the agriculture sector and in the berry picking industry are organised by the Swedish Municipal Workers' Union (*Svenska kommunalarbetareförbundet*), that is the largest blue-collar worker union. Its employer counterpart in the agri-food branches is *Gröna Arbetsgivare*, which represents farming companies and not companies operating in the wild berry industry who are then not covered by the national sectoral collective agreements.<sup>36</sup> Furthermore, the autonomous trade union *Sveriges Arbetares Centralorganisation* (SAC) informed by anarcho-syndicalist views and strategies, is also active among workers employed in agriculture, especially in the Southern fields.

Against a national average of 85 % in the private sector,<sup>37</sup> only 54 % of the agriculture sector is bound by a collective agreement.<sup>38</sup> The low coverage of

35 <https://www.regeringen.se/pressmeddelanden/2022/04/utredning-om-arbetsmarknadsprovning-aviserar/>.

36 Interview with Gröna arbetsgivare representative.

37 Medlingsinstitutet (2022). *Avtalsrörelsen och lönebildningen*, p. 165.

38 Arbetsmiljöverket, Osund konkurrens (2016). *Arbetsgivare Gröna näringen*.

collective agreements limits the role and possibilities for trade unions to monitor the application of decent working conditions and therefore exposes the sector to practices of undeclared, exploitative, and substandard work.<sup>39</sup>

Given the spatiotemporal conditions of work in the agriculture industry, it is also common practice that employers (staffing companies, but also food companies) provide housing and transport to workers in the surroundings of the working fields. While these services are often included in the employment, it has been reported that the signing of a collective agreement causes the employer to demand that workers pay for those services, which makes the working conditions worse and changes workers' attitude towards the unions.<sup>40</sup> This reinforces the view that a factor driving the demand for substandard work in agriculture is the 'unholy' alliance between employers, who want to lower the costs, and migrant workers, who find employment in Sweden remunerative at almost any price and are keen to work for longer time, especially in the berry-picking industry where more hours of harvesting correspond to better pay.<sup>41</sup>

The low coverage rate of collective agreements is also a result of the socio-economic fabric of the sector itself. The agriculture industry is made prevalently of small companies. They constitute the largest group of companies in Sweden (20,9 % of total companies in 2019), though having a share of employees of only 13 % on the Swedish labour market.<sup>42</sup> Moreover, almost 87 % of the employees in the agriculture sector is employed by companies whose main workforce is composed by the owners and their spouse or partners and family members. Besides this latter group, which constitutes around 73 % of the total of employees in agriculture, the remaining share of the workforce is almost equally distributed between permanent and temporary employees.

The berry picking industry presents specific characteristics. First, a key element is the free availability of the product in nature as berries grow wild in the North of Sweden. Second, everyone has the right to pick berries that grow wild in nature according to the Swedish legal principle of *allmansrätten* (the

39 Herzfeld Olsson, P. (2018). Towards protection of vulnerable labour migrants in Sweden. The case of Thai berry pickers, in: *Towards a Decent Labour Market for Low-Waged Migrant Workers*. C. Rijken and T. de Lange (Eds.), pp. 159–167, Amsterdam University Press, Amsterdam, The Netherlands.

40 Interview with SAC representative.

41 Interview with Kommunal representative.

42 Swedish Agency for Economic and Regional Growth on the basis of statistics from the Swedish Statistics Authority <https://tillvaxtverket.se/statistik/foretagande/basfakta-om-foretag.html>. To place the data about the agriculture industry in perspective, the manufacturing industry represents 4.6 % of the total of Swedish companies but it employs 17.7 % of employees.

freedom to roam). The freedom to roam and public access to nature constitutes a general principle of Swedish law of customary origin that has received constitutional status in Ch. 2 Sect. 15.4, of the Fundamental Laws (Regeringsformen 1974:152), where it is defined as an exception to the right to property. This principle ensures to everyone free access to land and forests and the right to harvest certain wild products, like berries and mushrooms, with no need for asking for permission from the landowner.<sup>43</sup> Not to criminalise berry picking on someone else's land was first seen as common sense, since it was mainly an activity carried out on a family basis to provide extra food for children. Later it became the foundation of a flourishing industry.<sup>44</sup> Free availability in nature, low costs of production (mainly only labour costs) and high prices on the market (the domestic food processing market and as raw material for the cosmetic industry in Asia)<sup>45</sup> make berry picking a profitable industry.<sup>46</sup>

About 80 % of the workforce in the agri-food sector are migrants. Since 2010 labour migrants in the agriculture, gardening and forestry sectors have been the largest group applying for work permits.<sup>47</sup> The migrant workforce is reported to have a homogenous ethnic origin, although shifting throughout the years. It has been noticed how since early 2010s, labour migrants from Thailand and Ukraine have progressively replaced those from Vietnam, China and other South Asian countries.<sup>48</sup> This is reflected in the statistics published by the Swedish Migration Office as regards work permits. In the pre-pandemic year of 2019, among the 6,162 work permits issued for berry pickers and planters in agriculture (overall the largest professional group within the 21,950 total work permits issued in the year), 5,935 were issued to Thai nationals and 221 to Ukrainian nationals.<sup>49</sup> In addition, of the 197 work permits issued to other

43 Åslund, Å (2008). *Allemansrätten och marknyttjande*. Studier av ett rättsinstitut. PhD dissertation. Linköping University. LiU Tryck, Linköping.

44 La Mela, M., 2014. Property rights in conflict: wild berry-picking and the Nordic tradition of allemansrätt. *Scandinavian Economic History Review* 62(3), pp. 266–289.

45 Hedberg, C., 2013. 'Grapes of wrath'? Power spatialities and aspects of labour in the wild berry global commodity Chain. *Competition and Change* 17(1), pp. 57–74.

46 Eriksson, M. and Tolefsen, A., 2018. The production of the rural landscape and its labour: the development of supply chain capitalism in the Swedish berry industry. *Bulletin of Geography*. Socio-economic series 40, pp. 69–82.

47 Calleman, C., 2015. "The Most Open System Among OECD Countries". Swedish regulation of labour migration. *Nordic Journal of Migration Research* 5(1), pp. 28–35, p. 30.

48 Woolfson, C., Herzfeld Olsson, P. and Thörnqvist, C., 2012. Forced labour and migrant berry pickers in Sweden. *International Journal of Comparative Labour Law and Industrial Relations* 28(2), pp. 147–176. This pattern is also confirmed by our interviewees.

49 These national groups also constitute the two largest groups among those who received a work permit as forestry workers – a profession that includes tasks related to agriculture.

agriculture workers, 55 were issued to Ukrainian nationals followed by 39 Indian nationals. In 2020 these numbers had a slight decline mostly due to the border closings and travel restrictions adopted to handle the pandemic, which however only applied temporarily for workers in agriculture. On a total of 15,231 work permits for the year, 3,833 were issued to workers in berry picking and other agriculture activities (plus 777 to forestry workers, of which 558 to Ukrainian nationals and 167 to Thai nationals). Of these, 3,138 to Thai nationals and 616 to Ukrainian nationals. In the everyday organising, trade union activists have witnessed an increasing presence of refugees who are waiting for receiving asylum status, asylum-seekers or refugees that fell out of the procedure for receiving such a status, for instance migrants from Tunisia and Palestine.<sup>50</sup>

Along with non-EU nationals, agriculture work and berry picking are also performed by EU migrants. This group of migrant workers is mainly employed on farming land rather than in the forests picking wild berries.<sup>51</sup> It is composed of persons who are settled in Sweden and permanently live in the country as well as of persons who enter the country on temporary basis to work in the fields during the high season. No official data is available for EU citizens: since 2014 it is not mandatory for EU citizens to register their entry for working at the Migration Office; and most of those migrant workers only stay less than three months (the duration of the berry season), which is the time span in which EU citizens have a right to residence with no conditions nor formalities according to the Citizens' Rights Directive 2004/38/EC.<sup>52</sup> The time-based construction of the legal category of the intra-EU migrant thus favours the invisibility of those workers and contributes in creating conditions for exploitation. This group of migrants is mostly composed of citizens of EU Eastern European countries, mainly Bulgaria, Hungary, Poland and Romania.<sup>53</sup> Before the EU enlargement eastward, it was common for workers from Eastern European countries to enter Sweden during the berry season on tourist visas and work in the fields until the

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In 2019, 352 and 136 permits were issued to Thai and Ukrainian nationals respectively on a total of 531 permits.

50 Interview with SAC representative.

51 Interview with Gröna Arbetsgivare representative.

52 Art. 6 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

53 Interview with SAC representative. See also Mesic, N. and Woolfson, C. (2015). Roma berry pickers in Sweden: economic crisis and new contingents of the austeriat. *Transfer* 21(1), pp. 37–50.

visa expired.<sup>54</sup> The EU enlargement facilitated this type of labour mobility and many of these workers who enter Sweden on a seasonal basis often work during other periods of the year in agri-food activities in other EU countries where there are no seasonal breaks due to climate, such as Spain.<sup>55</sup>

Though, temporality also hits on other levels than the legal one and fosters precarity via terms and conditions of employment too. For instance, prices of berries and other farming products often oscillate depending on seasonal weather conditions.<sup>56</sup> The significant difference between seasons in terms of availability of products is reflected in the amount of work needed. This entails a high difference in income between seasons and high competition for those long-term migrant workers who are employed in the agriculture sector.<sup>57</sup> In the berry picking industry, this exposes workers to the risk of not being able to gather enough berries to receive a decent pay and puts workers in harsh competition among each other.<sup>58</sup> The prices of berries are also subject to practices in which distributors buy berries directly from those 'free pickers' that make combined use of the Swedish law on freedom to roam in nature and EU-law freedom of movement. The informality thus produced affects prices because of the circumvention of labour law regulations.<sup>59</sup> The oscillation of prices for agricultural products depends also on the decisions by different actors involved in the chain – distributors as well as big chains and supermarkets. It is common that agri-food products are sold by producers to distributing companies, which sell them to supermarkets and retail stores.<sup>60</sup> The effect on the adoption of exploitative and substandard working conditions of migrant workers in agriculture that derives from the role of supermarkets and big retailers was defined by one interviewee as 'largely underestimated'.<sup>61</sup> In this sense, the business model of many supermarkets and grocery retailers based on offering the lowest price possible have implications for the working and employment conditions of migrant workers.

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54 The practice of entering Sweden on tourist visa to work on the fields is still present among Thai workers and constitutes a legal practice due to the freedom to roam, see Krifors, K. (2017). *Managing Migrant Workers – moral economies of temporary labour in the Swedish IT and wild berry industries*. PhD dissertation. Linköping University. LiU Tryck, Linköping, p. 85.

55 Interview with SAC representative.

56 Krifors, (2017), p. 95.

57 Interview with SAC-representative.

58 Mesic and Woolfson, (2015), p. 41.

59 Krifors, (2017), p. 96.

60 Interview with Gröna Arbetsgivare representative.

61 Interview with Oxfam representative.

Considering the account given above, labour in the Swedish agri-food sector presents certain specific features: migrant, often seasonal, mostly ethnically homogeneous especially within branches. Furthermore, fieldwork research in disciplines like migration and citizenship studies describes the workforce in the agri-food sector as gender-mixed and family-based within both the specific branches and the national groups.<sup>62</sup>

#### 4.2 *Labour Recruitment Practices and Intersection with National Migration Regime*

The agri-food sector is labour-intensive. Both in Southern fields and Northern forests, a key factor in ensuring the profitability of the industry lies in the availability of cheap labour. These processes are mostly driven by employers who have a constant demand for flexible conditions of employment, i.e. the possibility to dismiss workers as soon as the season does not enable farming activities, but workers are also reported as occasionally appreciating the short-term work relations.<sup>63</sup> Recruitment practices play a fundamental role and follow similar patterns in the berry industry and in the farming industry. The role of labour intermediaries, like recruitment agencies, staffing companies and other temporary work agencies is dominant. However, as is common for low-paid jobs in labour-intensive sectors that do not require professional certification or education, labour recruitment also occurs via informal contacts and personal networks.<sup>64</sup> What seems to differ between berry picking and farming regards spatiotemporal aspects, such as the country of origin and of residence of the workers as well as the country of establishment of the employment agency – factors that determine migration status and therefore working conditions for the migrant workers.

Especially in the farming industry, the resort to ‘zero-hour’ employment contracts is common.<sup>65</sup> In the Swedish labour law system, these types of contracts, referred to as employment on demand (*behovsanställning*) or employment by the hour (*timanställning*), although used in practice, are not mentioned in the legislation, which only refers to ‘time-limited employment’ (*tidsbegränsad anställning*). Their regulation follows practices established via collective agreements, but also via workplace practices not subjected to monitoring or enforcement of the law.

62 Krifors, (2017); Mesic and Woolfson, (2015).

63 Interview with Kommunal.

64 Emilsson, E., 2014. Who gets in and why? The Swedish experience with demand driven labour migration – Some preliminary results. *Nordic Journal of Migration Research* 4(3), pp. 134–43, p. 139.

65 Interview with SAC representative.

In the berry picking industry, labour recruitment appears as a transnationally coordinated business. Workers are recruited by Thailand-based employment agencies, which act as the employer of the labour migrants. Those agencies then post workers to Sweden under contracts for the provision of manpower with Sweden-based berry companies.<sup>66</sup> The number of berry pickers to be employed each season is decided by the Swedish berry picking companies, which arrange and take care of the paperwork necessary for the migrant workers to receive the work permit.<sup>67</sup> There are no sectoral rules on posting of third country national migrant workers. However, due to the specificities of the berry picking industry, Swedish legislation sets some specific requirements and obligations for seasonal migrant workers and their employers. Often the Sweden-based berry companies provide accommodations for the migrant workers. But often they do not respect adequate standards as hygiene and safety required by the Aliens Act.<sup>68</sup>

Against the progressive institutionalisation of the berry industry, informal channels of recruitment still play a central role. Berry picking work has undergone a process of formalisation mainly as a consequence of both the massive presence of migrant workers, that led to increased state monitoring of working and employment conditions, and the shift from a harvesting system based on 'free pickers' to a regime grounded on work permits.<sup>69</sup> Reportedly, 'madams' – Thai women married with Swedish men – have acted as pioneers in the practice of recruiting Thai workers to the berry-picking industry. They find workers, through informal contacts in the country of origin, and provides translation, accommodation, and food to them. Their role has been progressively taken over by men along with the increased importance of the industry and of the formalisation of supply chain dynamics of labour provision.<sup>70</sup> The evolution of roles and work tasks in berry picking towards hierarchisation is based on ethnicity and gender. These dynamics often stem from the progressive institutionalisation of berry picking and the ensuing formalisation of recruitment practices.<sup>71</sup>

Yet recruitment through informal and personal networks is still the norm, especially among other ethnic groups working as 'free' berry pickers – such as Bulgarian Roma. 'Mindors' or patrons in the form of informal labour

66 Herzfeld Olsson, (2018), p. 156.

67 Wingborg, M., 2015. Så var säsongen för utländska bärplockare. *Arena Idé*, Stockholm, pp. 8–9.

68 Ibid.

69 Krifors, (2017), p. 84.

70 Krifors, (2017), p. 82.

71 Hedberg, (2016).



intermediaries or ‘contractors’ in the camps and fields where Bulgarian Roma pick berries, are tasked with arranging trips from Bulgaria and supervising the harvesting and selling of berries.<sup>72</sup> Often they arrive with families as ‘free pickers’ and are ‘informally employed,’ i.e. working without contract.<sup>73</sup> Some of them had already worked in other EU countries such as Italy, Spain and Germany, before reaching Sweden. Others contracted debts to afford to travel to Sweden to work in the fields and arranged the trip via informal agencies in Bulgaria.<sup>74</sup>

Similar patterns are present in the fields of Southern Sweden. Our interviewee describes that it is common to post official job advertisements, yet informal channels based on a network of intermediaries, often from the same national or ethnic group, are still the privileged way to find work in agriculture.<sup>75</sup> Labour recruitment practices are affected by the efforts of migrant workers to organise and demand better employment and working conditions. One of our interviewees was involved in the partially successful attempt to establish a local trade union for migrant workers employed in agriculture in the Southern Skåne County<sup>76</sup> and reported that, in these cases, the employer ‘switches’ ethnic group of reference by turning to different labour intermediaries. This dynamic is also dependent on the evolution of geo-politics and socio-economics: when the economy of a country develops enough (for instance Poland), migrants from other countries become more ‘convenient’ to employ (for instance Ukraine).<sup>77</sup> Similarly, when a country is in a situation of crisis, new fluxes of migrants arrive and can be recruited to work in the fields – as for instance in the abovementioned case of asylum-seekers and refugees from Middle Eastern countries.<sup>78</sup>

The resort to staffing companies or employment agencies is also predominant in the fields of Southern Sweden. In this way workers are recruited only for the limited time during which their services are needed and with no security of a continuous income. This temporally unstable employment relationship is a further element that produces precarity by intersecting with the spatially and temporally constructed precarity of migration status. Also, the relationship between owners of those agencies and owners of the companies

72 Mesic and Woolfson, (2015).

73 Mesic, (2016).

74 Mesic and Woolfson, (2015).

75 Interview with SAC representative.

76 See <https://www.arbetaren.se/2019/07/19/migrantarbetare-i-skane-vann-facklig-kamp/>.

77 This is not a trait exclusive of the agri-food sector. Similar dynamics have been reported in the transport and logistics sector.

78 Interview with SAC representative.

who make use of the work is often not clear.<sup>79</sup> Unlike for berry pickers though, these employment agencies are located in Sweden and the migrant workers they recruit are often EU citizens who have been living for years in Sweden but come in and out of casual employment. A practice recently established in the agricultural industry in Southern Sweden consists of international rural work exchange programmes, through which young workers, mainly from Ukraine, are recruited as so-called 'interns' for apprenticeships in agriculture firms.<sup>80</sup> The pre-set compensation for the internship is around 40 SEK per hour (about 4 euro). These programmes allow companies to lawfully recruit 'interns' to pick fruit and vegetables in substandard conditions.<sup>81</sup>

Overall, it must be noted that there are no evident cases of organised crime and corruption in labour recruitment practices. These practices are often lawful, though ethically questionable. However, it has often been reported that migrant workers are recruited with false promises and deceit and cheated by the recruitment agencies in their countries of origin as regards pay, working conditions and accommodation/transportation costs.<sup>82</sup>

## 5 Strengthening the Position of Migrant Workers

### 5.1 *National Policies Addressing Migrant Labour Precarity and Exploitation*

Several remedies against precarity and marginality in migrant labour have been enacted. These measures have in common the fact that they represent a deviation from the fundamental principles of the Swedish model for labour market regulation, which otherwise does not rely on the state or government agencies to enforce workers' rights.

The Employers' Sanctions Directive 2009/52/EC on obligations on employers, financial sanctions and criminalization are implemented into migration law (2005:716) and the rules on back payments to workers are laid down in a specific law (2013:644). Undocumented migrant workers, seasonal and posted workers, are subject to specific rules on wages. Undocumented migrants have a right to back pay from their employer, in some situations also against the contractor to which the employer is a direct subcontractor (act 2013:644). Workers

79 Interview with SAC representative.

80 <http://juf.se/ire/ire>.

81 Interview with SAC representative.

82 Woolfson, Herzfeld Olsson and Thörnqvist, (2012), p. 156; Krifors, (2017), p. 88.

that are Swedish citizens do not have access to this remedy. The generally applicable labour law regime applies to other working conditions of migrant workers and citizens alike.

The Seasonal Workers' Directive 2014/36/EU on conditions of admission, procedure and authorizations are implemented into migration law (2005:716) and the rules on the liability to compensate workers and to provide them with outstanding obligations are laid down in the law (2018:318) on the right to remuneration when a permit for seasonal work is revoked. In case the work permit is revoked because of the employer's wrongdoing, seasonal workers have a right to the wages that would have been paid if the permit had not been revoked (2018:318).

In legal terms the most forceful remedy against exploitation on the labour market is the 2018 criminalization of so-called 'human exploitation', which is applicable to citizens and non-citizens alike:

A person who, in cases other than those referred to in Section 1 or 1a, by unlawful coercion, deception or exploitation of another person's position of dependence, defenselessness or difficult situation, exploits another person in forced labour, labour under clearly unreasonable conditions or begging is guilty of *human exploitation* and is sentenced to imprisonment for at most four years.

CRIMINAL CODE Ch. 4, Art. 1 b

Three criteria must be fulfilled for the provision to apply. First: a particular means, i.e. coercion and deception. The lowest threshold is the exploitation of another person's position of dependence, defenselessness, or difficult situation. Second: exploitation, which is discussed in the proposal presented by the government in quite surprising terms: "an undue utilization of the victim". Third: the exploitation must be in one of the enumerated forms – either in forced labour, labour under clearly unreasonable conditions or begging.<sup>83</sup> The crime of human exploitation does not presuppose that the victim lacked a true or acceptable option besides accepting the exploitation.<sup>84</sup> This provision is enacted with reference to the precarious situation of migrant workers and will be applicable to many situations of low or absent wages in the agri-food sector. As of today, only one precedent exists, making it hard to estimate exactly which levels of remuneration and working conditions courts will brand

83 Government Bill 2017/18:123.

84 Government Bill 2017/18:123, p. 59.

as exploitative. The migrant worker accusing his or her employer of human exploitation shall, according to ch. 5. Sect. 15 of the Aliens Act, be granted a temporary residence permit to cooperate with the authorities in their investigation of the alleged crime. The injured party must end all contact with the employer.

The criminalization of human exploitation makes low wages and poor working conditions an issue for the government to handle in the form of police, prosecutors, and criminal courts. The shift away from the autonomous model for labour market regulation cannot be more radical.

## 5.2 *Trade Union and NGO Actions*

The Swedish trade union movement has begun to address migrant workers and the precarious position they are positioned in. Some trade unions within the central organizations LO (blue collar workers) and TCO (white collar workers) have established a non-profit organization – ‘Union Center for the Undocumented’ – tasked with ‘helping and supporting undocumented workers in the Swedish labor market’.<sup>85</sup> The centre introduces the undocumented worker to the usual resources available for members to put forward legal claims against the employer. Furthermore, trade unions are abandoning their strict policy of not helping non-members. In a much talked about case of exploitation in the forestry sector in the North of Sweden the trade union made “a unique decision” to grant the workers financial aid to sue the employer for wages not paid.<sup>86</sup>

The NGO Oxfam Sweden reports that Swedish supermarkets and retailers have joined initiatives monitoring labour rights in supply chains for agri-food products imported from Italy and Morocco. These initiatives are based on human rights assessments of suppliers carried out by the big retailers. When violations of labour and human rights are found, supermarkets are to require suppliers to remedy so as to foster good practices along the supply chain. These practices and new codes of conduct could be broadened to include agri-food products made in Sweden, by leveraging Swedish consumers’ awareness about ethical consumption.

85 <http://www.fcfp.se>.

86 <https://www.svt.se/nyheter/inrikes/facket-lovar-hjalpa-lurade-skogsarbetare>.

## 6 The Impact of the COVID-19 Pandemic on Migrant Agri-Food Workers

The Swedish strategy against the Covid-19 pandemic has been to avoid a total lock-down of society and instead favouring bans on large congregations of people and implementing a social distancing policy at workplaces and other areas of large gatherings.<sup>87</sup> Swedish unemployment benefits and social security schemes have been adapted to the strains on workers and labour markets, making them more inclusive for precarious workers.<sup>88</sup> The qualifying periods for these schemes and the way the short-time work allowance system operates, rendered them unavailable for migrant workers, especially those employed in the agri-food sector who have flexible (hourly-based) forms of employment contracts that reduce access to sick leave.<sup>89</sup>

In 2020, travel bans and similar restrictions were implemented before the start of the harvest season, which affected the possibility for workers to travel to Sweden in order to search for employment in the agri-food sector rather than the 'productivity' of the sector – again we encounter the temporality of seasons as a factor. This has been a concern for companies, especially for those employing non-EU citizens.<sup>90</sup> In the beginning of the pandemic in 2020, the ban on travelling to Sweden comprised migrant workers in the agri-food sector; but following political pressure, this category of migrants was excluded from the travel ban.<sup>91</sup> While it was possible to enter Sweden, travel bans in effect in other parts of the world made it hard to travel to Sweden. This shifted the composition of the workforce, as migrant workers mainly came via ferries from the Baltic countries and Germany.<sup>92</sup> At the same time, migrant workers who could travel to Sweden to work in agriculture, would have been not allowed to return to their countries because of restrictions there – especially for travellers coming from Sweden – which might have affected their decision to travel to Sweden in the first place.<sup>93</sup> Employers reported an acute demand

87 Nordberg, A. and Mattsson, T., 2020. CoViD-19 pandemic in Sweden: measures, policy approach and legal and ethical debates. *BioLaw Journal – Rivista di BioDiritto*, Special Issue 1/2020, pp. 731–739.

88 Johansson, C. and Selberg, N., 2020. Covid-19 and Labour Law: Sweden. *Italian Labour Law e-Journal*, Special Issue 13(1), <https://doi.org/10.6092/issn.1561-8048/10774>.

89 Interview SAC representative. Access to paid sick leave is based on the scheduled hours. An hourly-employed worker who is sick does not get hours scheduled, therefore cannot prove to have access to paid sick leave.

90 Interview with Gröna Arbetsgivare.

91 Regulation (2020:127) Temporary Prohibition against Entering Sweden.

92 Interview with Gröna Arbetsgivare representative.

93 Interview with SAC representative.

for labour with shortages of 5000 workers for the fields and 3000 workers for the forestry.<sup>94</sup> While workers from EU countries, mostly employed in farming, could travel to Sweden, the problem was for third-country nationals, especially from Thailand who would have travelled to Sweden to work in picking of wild berries in forests.<sup>95</sup>

Despite an overall increase in unemployment at national level, Swedish workers showed no interest in applying for jobs in the agri-food sector.<sup>96</sup> Labour market researchers suggested that the harsh working conditions, and not necessarily the low salaries, are the prime reason Swedish nationals do not take up jobs in this sector.<sup>97</sup> For those already employed in the agri-food sector, no significant new consequences have been reported on working conditions as a result of the pandemic.<sup>98</sup> The flexible and precarious working and employment conditions have been exacerbated, but at the same time the travel restrictions enabled migrant workers who already were present in Sweden to receive more hours of work so as to possibly receive a decent salary.<sup>99</sup> Safety officers have not reported any specifically COVID-19 related incidents as regards the agri-food sector.<sup>100</sup> From employers it has been highlighted that working environment in agriculture had possibly reduced the risk of infection because of work being performed in open fields and conditions of isolation.<sup>101</sup> However, this does not apply to all activities in the agri-food sector. In food processing plants space is limited, and no special measures have been taken by employers to protect workers' health.<sup>102</sup> The government have not provided migrant workers with any specific support in terms of access to benefits and services. Residence permits were not prolonged because of the pandemic. Trade unionists and labour organisers have reported problems concerning access to information for migrant workers regarding health and safety standards as well as for rules on access to unemployment schemes and sick leave.<sup>103</sup>

94 <https://www.lrf.se/mitt-lrf/nyheter/riks/2020/03/lantbruket-berett-att-ta-emot-per-mitterad-personal/>.

95 Interview with Gröna Arbetsgivare representative.

96 <https://www.dn.se/ekonomi/8000-erbjuds-jobb-inom-lantbruket/>.

97 [https://www.arbetsmarknadsnytt.se/allmanna\\_nyheter/jordbruket-ser-fortsatt-brist-pa-arbetskraft\\_774644.html](https://www.arbetsmarknadsnytt.se/allmanna_nyheter/jordbruket-ser-fortsatt-brist-pa-arbetskraft_774644.html).

98 This has been interestingly stated by both the Gröna Arbetsgivare representative and by the SAC representative. Interviews with Gröna Arbetsgivare and SAC representative.

99 Interview with SAC representative.

100 <https://www.av.se/om-oss/press/jobbrelaterade-coronaanmalningar/tillbudsanmalningar/>.

101 Interview with Gröna Arbetsgivare representative.

102 Interview with SAC representative.

103 Interview with SAC representative.

## 7 Concluding Remarks: Migrant Workers' Conditions in the Agri-Food Sector – Temporalisation and Spatialisation

The situation of migrant workers in the agri-food sector is characterised by temporary and seasonal work permits (or undefined status in relation to work as EU citizenship, refugees, whose right to permanent residence is tied to employment status, or rejected asylum-seeker), low coverage of collective agreements, low unionisation rate, massive resort to labour intermediaries and discontinuity in production due to the rotation of seasons. Working and employment conditions of migrant workers in the agri-food sector are shaped and determined by the interplay between these factors, which create the pre-conditions for substandard work. One of the interviewees defined the working and employment situation of migrant workers as 'regulated precarity'.

The spatiotemporal dimensions of migrant work in the agri-food sector are clearly visible. The cycle of seasons makes 'productivity' concentrate in a few months throughout the year and creates an inherently intermittent need for work, which is reflected in the practices of resorting to flexible forms of employment and recruitment via labour intermediaries and staffing companies. Employers' needs for flexible employment contracts seems to be constant. Employment is never open ended but intrinsically seasonal. The migration status of most of the migrant workers employed in the agri-food sector makes them only temporarily available for work and exposed to possible rejections of work permits or deportation, which would then deprive them (and often their families in the country of origin) of the source of earning. The Aliens Act subjects the issuing of a seasonal work permit to the condition of leaving the country after the period of work.

Along with the temporal elements, migrant work in the agri-food sector is shaped and defined by spatial attributes. The relevance of the migration status returns: regardless of status as third-country or EU nationals, migrant workers in the agri-food sector share the conditions of being 'alien' to the domestic labour market and represent discontinuities in the homogeneous application of working and employment standards because of their conditions of having migrated.<sup>104</sup> This seems to be particularly valid in relation to short-term

104 Calleman, C. and Herzfeld Olsson, P. (2016). Moves towards increased workforce fragmentation among labour immigrants, in: *Globalisation, fragmentation, labour and employment law. A Swedish perspective*. L. Carlsson, Ö. Edström and B. Nyström (Eds.), Iustus, Uppsala, pp. 161–183.

migrant workers (seasonal workers) and in the context of supply chains (berry supply chain).<sup>105</sup> At the same time, the structural conditions of the agri-food sector provide that work is carried out in rural and remote areas, such as open fields and forests, which are located far from population centres and where monitoring and enforcement of labour standards are difficult.<sup>106</sup> Following Valverde's conceptualization of the 'chronotope of law', temporalisation (time-limited work permit and seasonality of work) as well as spatialisation (migration status in relation to the national labour market and dislocation of work in fields and remote forests) become the simultaneous tools of governance of migrant workers in the agri-food sector.<sup>107</sup>

One tool of governance created by the simultaneous workings of temporalisation and spatialisation on working and employment conditions of migrant workers in the agri-food sector is the price of berries and other farming products. Availability of berries and crops to harvest decide the amount of work needed and in effect remuneration for work. Weather conditions translate into risks of not being able to achieve decent pay.

The regulation of migration implies the creation of labour market segmentation. The combination between the autonomous model for labour market regulation and the employer-driven and 'open' regime for labour migration lays the foundation for a system that can lead to exploitation of migrant workers. The autonomous enforcement of labour law obligations places a burden on the migrant worker. Suing the employer for wages not paid will in practice not be a realistic option. Trade unions have not been very successful in organizing migrant workers. The temporary nature of the work permit implies a strong dependency of the worker on the employer. Without the employment contract the right to reside in Sweden will quite soon disappear.

The ideal situation in the Swedish model is characterized of the employer being bound by a collective agreement and all workers are members of the trade union.<sup>108</sup> Thus, while the Swedish model for labour regulation might serve domestic workers well, the model is less suited for temporary migrant

105 Andrijasevic, R. and Novitz, T., 2020. Supply chains and unfree labor: regulatory failure in the case of Samsung Electronics in Slovakia. *Journal of Human Trafficking*, 6(2), pp. 195–208.

106 Eriksson, M. and Tollefsen, A., 2018. The production of the rural landscape and its labour: The development of supply chain capitalism in the Swedish berry industry. *Bulletin of Geography. Socio-economic Series*, 40(40), pp. 69–82.

107 Valverde, (2015), p. 34.

108 Herzfeld Olsson, P., 2019. Konsten att inkludera arbetskraftsmigranter i den svenska arbetsrättsliga modellen. *Juridisk tidskrift* 2019/20 p. 638 ff.



workers. The remedies against precarious working conditions are based on state/government action which represent a shift away from the inherited 'Swedish model' for labour relations favouring autonomous enforcement of workers' rights. The presence of migrant workers in the Swedish labour market has led to exploitative labour practices as well as to a renewal of the model for labour market regulation.