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# The Impact of Populism on Scandinavian Labour Law: The Cases of Norway and Sweden

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*Modern populism has developed in Scandinavia since at least the 1970s, first in Norway and Denmark but more recently also in Sweden. Populist political parties have been well-established in Scandinavian Parliaments for many years. However, from a labour law perspective, the populist impact, if any, has been limited and populist discourse has primarily focused on issues such as migration and the European Union (EU), and to some extent ‘welfare tourism’. This article examines the development of populist movements in Norway and Sweden and analyses the possible impact of populist policies on national labour law. The conclusion is that Nordic industrial relations and labour market regulations, based on strong and representative trade unions and well-organized and responsible employer federations, act as a robust counterweight to populist policies on the labour market.*

*Section 2 of the article consists of a discussion of how we understand the development of modern populism in a Norwegian and Swedish perspective. Section 3 explores the extent to which populist political ideas have directly impacted or indirectly influenced labour market regulations in the two countries. In concluding, section 4 monitors the potency of strong and well-established industrial relations as a countervailing force to populist political movements.*

**Keywords:** Populist Policies, Labour Market Regulation, Scandinavia, Norway, Sweden, Resilience to Populism

## 1 INTRODUCTION

This article examines populist developments in Norwegian and Swedish labour market regulation. In recent decades, far-right or populist parties have been established and expanded their positions – though in Norway (as well as in Denmark) they have also gone into decline after holding office – while in Sweden this process started later and has not (yet) reached a downturn.<sup>1</sup> Other countries, in continental Europe and across the globe, have experienced not only

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<sup>1</sup> Jens Rydgren & Sara van der Meiden, *The Radical Right and the End of Swedish Exceptionalism*, 18 Eur. Pol. Sci. 439–455 (2019).

growing populist sentiments, but in some cases direct political power for such movements with an impact on labour law regulations. In contrast, the political landscape of Scandinavian labour law has been affected by populist movements only indirectly, and to a lesser extent. The observations in this article indicate a resilience through well-established industrial relations models and the limited impact of statutory law.

The article takes as its starting point the development of political populism in Norway and Sweden, with a focus on the present-day situation, followed by a description and analysis of the labour market regulations in the two countries and the impact of populist policies on labour law. The analysis will explore different areas of labour regulation more or less affected by such influences. Since the development of populist politics differs in time and form, the labour market regulations affected by political populism vary across the two countries. This is discussed primarily in section 3 where some features or populist narratives are found to be common to Norway and Sweden (migration, the role of the European Union (EU) and globalization), while others, such as worker protection (Norway) and social security and labour migration (Sweden) have developed differently in the two countries. The conclusion, based on the Scandinavian experience, is that political policy and statutory law might be more easily impacted by populist political parties than collective agreements and long-term industrial relations between strong and independent collective partners.

## 2 THE RISE OF MODERN POLITICAL POPULISM IN THE SCANDINAVIAN CONTEXT

Our investigation of populism in this article is first outlined in the introduction to this issue,<sup>2</sup> that casts light on the diversity and complexity in one single concept of populism.<sup>3</sup> The current situation in Norway differs from the situation in Sweden, as does the development and emergence of populist parties, to be discussed in the following.

In Norway, the right-wing Progress Party, part of the government 2013–2020, was less successful in the 2021 elections (with its share of the vote declining from 15.2% to 11.6%). However, the Centre Party (*Senterpartiet*), which in recent years has also been described as having populist elements, achieved a corresponding increase (from 10.3% to 13.5%) and formed a government with the Labour Party in the fall of 2021.<sup>4</sup> The latest Swedish parliamentary elections witnessed the

<sup>2</sup> Piotr Grzebyk, in the introduction to the special issue.

<sup>3</sup> *Ibid.*, also Cas Mudde & Cristóbal Rovira Kaltwasser, *Populism. A Very Short Introduction* 6 (OUP 2017).

<sup>4</sup> <https://valgresultat.no/?type=st&year=2021> (accessed 29 Sep. 2022).

continued rise of the far-right Sweden Democrats (20.54% in 2022) and the party supports the recently formed conservative government based on a coalition of four parties. While the Sweden Democrats are not represented in the government, they have come to influence the coalition significantly.<sup>5</sup>

In both Norway and Sweden, labour parties have traditionally stood at the forefront of a social transformation towards social democracy. A regulated economy, in line with Keynesian principles, became the focus of the new order.<sup>6</sup> Social democracy proved to be the over-arching political model for many decades from the 1940s until the 1960s (and even longer in Sweden). It is common among historians to say that this ‘social democratic era’ ended around 1970.<sup>7</sup> Various aspects characterize this disruption. The ‘return of the market’ is one essential aspect.<sup>8</sup> Another one is new political movements. In Norway, the 1970s have been referred to as the ‘decade of conflicts’.<sup>9</sup> The Norwegian Labour Party was criticized by different movements. The referendum on whether to join the European Economic Community (EEC) in 1972, in which a majority (53.5%) voted against membership, was an important turning point. This debate was heated, and the question split the nation. It was in this polarized political context that modern populism developed in Norway. In Sweden the early rise of populism came later and was more related to migration, not necessarily the membership of the EU (in 1995), fuelled by non-intellectual external forces.<sup>10</sup>

## 2.1 NORWEGIAN LEFT-GREEN POPULISM

In today’s political debate, the term ‘populism’ often has a clear negative connotation and is, in particular, associated with anti-immigration and irresponsible financial spending.<sup>11</sup> However, the term did not originally have such associations, when it was first introduced by the social scientist Ottar Brox in 1966. He criticized the Labour Party government’s development plan for Northern Norway, where industrialization, specialization and urbanization were essential elements.<sup>12</sup> This was system-critical opposition, and Brox described populism as the opposite of the

<sup>5</sup> <https://www.val.se/valresultat/riksdag-region-och-kommun/2022/valresultat.html> (accessed 29 Sep. 2022), also the agreement between the coalition parties, the so called *Tidöavtalet*; [tidöavtalet.se](https://tidöavtalet.se) (accessed 4 Dec. 2022).

<sup>6</sup> Finn Olstad, *Den lange oppturen. Norsk historie 1945–2015*, 57 Oslo 242 (2017).

<sup>7</sup> *Ibid.*, at 41.

<sup>8</sup> *Ibid.*, at 239.

<sup>9</sup> Francis Sejersted, *Sosialdemokratiets tidsalder. Norge og Sverige i det 20. århundre* 399 (Oslo 2013).

<sup>10</sup> Jens Rydgren & Maria Tyrberg, *Contextual Explanations of Radical Right-Wing Party Support in Sweden: A Multilevel Analysis*, 22(5) Eur. Societies 555–580 (2020).

<sup>11</sup> Anders R. Jupskås, *Populisme på norsk*, in *Populisme* 7–11 (Cas Mudde & Cristóbal Rovira Kaltwasser eds 2019).

<sup>12</sup> Ottar Brox, *Hva skjer i Nord-Norge? En studie i norsk utkantpolitikk* (1966).

Labour Party's technocratic governing ideology.<sup>13</sup> He argued against a technocratic position in which the basis for community planning was a nation consisting of different industries and sectors. Brox expressly called his approach populist.<sup>14</sup> Like the Russian populist movement of *Narodniks* 100 years earlier, these Broxian populists were intellectuals.<sup>15</sup>

This populist movement also died with opposition to the EEC though it had some influence on the Social Left Party (*Sosialistisk Venstreparti*). More notably, the Broxian populist movement, together with the opposition to the EEC and the 1970s 'green-movement', led the Labour Party to change its industrialization policies from centralization to a more district-friendly direction.<sup>16</sup> Hence, the centre-periphery dimension that has been an essential part of the development of Norwegian society was revitalized.<sup>17</sup>

The tension between the centre and the periphery is part of the current political discourse and was apparent in the two referendums on EU membership. Today, the term 'periphery-populism' is sometimes used to describe a form of populism, related to this dimension, where the two antagonistic groups are framed as the 'people' versus the 'elites', bureaucrats, politicians and experts in Oslo or Brussels. The Centre Party (*Senterpartiet*) has been accused of having periphery-populistic elements, at least in its rhetoric.<sup>18</sup> This was more prominent during the most recent elections (2017, 2019 and 2021). In his criticism of the Solberg government (2013–2021), the party leader has talked several times about the 'political elite in the capital' not understanding how 'the ordinary people' in the districts suffer under 'the policies of the elite'.<sup>19</sup> In 2016, he argued that the Brexit referendum result and Trump's electoral victory reflected 'to a large extent ... the people's revolt against technocracy and bureaucracy' and pointed to the EU as the body responsible for bureaucratization and 'expertization' of policies.<sup>20</sup>

The Centre Party is a prominent opponent of the EU.<sup>21</sup> It achieved its best election result ever in 1993 (16.7%) when the question of EU membership dominated the elections. Today, strong criticism is aimed at the European Economic Area (EEA) agreement. The claim is that Norway 'has given massive

<sup>13</sup> *Ibid.*, at 178, also i.e., Tor Bjørklund, *Norsk populisme fra Ottar Brox til Carl I. Hagen*, in *Nytt Norsk Tidsskrift* 410 (2004).

<sup>14</sup> Brox, *supra* n. 12, at 192–195.

<sup>15</sup> Bjørklund, *supra* n. 13.

<sup>16</sup> Trond Berg Eriksen et al., *Et lite land i verden. Norsk Idéhistorie Bind VI* 171 (2003).

<sup>17</sup> *Ibid.*, at 170–171.

<sup>18</sup> Jupskås, *supra* n. 11, also Hilde Gunn Slottemo, *Distriktbasert elitisme? Et forsøk på å knekke Senterpartikoden, Samtiden* 15–20 (2018).

<sup>19</sup> <https://www.nordnorskdebatt.no/den-norske-populismen/o/5-124-809> (accessed 4 Oct. 2022).

<sup>20</sup> <https://www.vg.no/nyheter/meninger/i/kknXQ/folk-er-ikke-dumme> (accessed 4 Oct. 2022).

<sup>21</sup> Vi tror på hele Norge, *Senterpartiets prinsipp- og handlingsprogram* 7 (2021–2024).

power to a bureaucracy located in Brussels far from the Norwegian reality'.<sup>22</sup> Norway's accession to the EEA in 1992 is framed almost as a betrayal of the will of 'the people' since the referendums on EU membership in 1972 and 1994 resulted in a vote against membership.<sup>23</sup> According to their political programme for 2021–2024, political and economic integration into the EU undermines democracy and deprives Member States of economic and political freedom, resulting in greater inequality and weakened control of, among other things, the labour market.<sup>24</sup>

Hence, the periphery-populistic rhetoric in the Centre Party consists of references to 'the people', mainly understood as people outside the capital, Oslo, and to some extent anti-elitism, where the elites are understood as politicians, experts and bureaucrats in Oslo and Brussels, while accepting other elites (politicians, business leaders) as long as they have a regional or local affiliation.<sup>25</sup>

The party has been in government several times, most recently from 2005–2013. However, populist rhetoric has become more explicit in recent years. The party has made considerable gains in opinion polls, and the local elections in 2019 resulted in a 5.9% increase in support (reaching 14.4%), described as a 'roar from the periphery'.<sup>26</sup> Support for the party increased by 3.2% in the 2021 parliamentary elections, enabling it to form a government with the Labour Party.<sup>27</sup> In the same election, another political party perceived as having populist traits and representing strong opposition to the EU/EEA<sup>28</sup> made a breakthrough: the far-left socialist party, the Red (*Rødt*), doubled its share of the vote to 4.7%.

## 2.2 NORWEGIAN RIGHT-WING POPULISM

In 1973 a right-wing party, Anders Lange's Party for a Strong Reduction in Taxes, Duties and Public Intervention, was founded by a self-proclaimed demagogue, Anders Lange.<sup>29</sup> The movement had clear populist characteristics, and Lange despised the established political parties.<sup>30</sup> His rhetoric was anti-establishment, anti-elite and anti-intellectual, claiming to have a unique ability to represent 'the

<sup>22</sup> <https://www.nettavisen.no/meninger/friskemeninger/skit-i-norge-leve-storbyen/s/12-95-3423479868> (accessed 4 Oct. 2022).

<sup>23</sup> <https://www.senterpartiet.no/politikk/hjertesaker/nei-til-eu> (accessed 4 Oct. 2022).

<sup>24</sup> Vi tror på hele Norge, *supra* n. 21, at 121.

<sup>25</sup> Slottemo, *supra* n. 18.

<sup>26</sup> <https://www.aftenposten.no/meninger/kronikk/i/GGKaBB/periferiens-broel-ga-oss-valgresultatet-jostein-vik-og-reidar-almaas> (accessed 4 Oct. 2022).

<sup>27</sup> <https://www.nrk.no/valg/2021/resultat/> (accessed 23 Jan. 2023) However, their support fell sharply in 2022 according to opinion polls, which is said to be related to increased electricity prices and price increases in general, *see i.e.*, <https://www.vl.no/nyheter/2022/11/27/kritisk-darlige-tall-for-regjering-spartiene/> (accessed 11 Dec. 2022).

<sup>28</sup> Stein S. Eriksen et al., *Den nye populismen*, Agora, 7 (2020).

<sup>29</sup> Bjørklund, *supra* n. 13.

<sup>30</sup> *Ibid.*, at 412–413.

people', while his party dared, as he put it, 'to say what the people think', thus gaining parliamentary seats the same year.<sup>31</sup> Various factors explain this unexpected success: growing anti-tax sentiment among the public, the charismatic leader himself, his use of television broadcasting as an effective medium and the fact that the party was launched in the aftermath of the polarized EEC-debate which the establishment, in particular the Labour Party, had 'lost'.<sup>32</sup>

In 1978, the party changed its name to the Progress Party, and appointed Carl I. Hagen party leader, but the real breakthrough came in 1987. The Progress Party was the only party in the 1980s that focused on immigration, and Hagen criticized the increase in the number of asylum seekers.<sup>33</sup> The party also changed its welfare policies: Lange's critique of the welfare state was transformed into a demand for a strong welfare state, but only for 'our own' (welfare chauvinism),<sup>34</sup> in combination with tax reductions, all facilitated by increased spending of the state's ever-increasing revenues from the petroleum industry. Muslims in particular were labelled as antagonists. Hagen and subsequent party leaders made several statements over the years that are characteristic of 'exclusionary populism'.<sup>35</sup> On several occasions Hagen made the inflammatory and mendacious claim that '[n]ot all Muslims are terrorists – but all terrorists are Muslims'.<sup>36</sup>

The widely held opinion among scholars seems to be that the party can be characterized as populist, although it is more moderate than other right-wing populist parties in Europe.<sup>37</sup> It is often classified as 'neoliberal populist'.<sup>38</sup> Jupskås et al. point out that the party also fits into the category of 'complete populism' used by Reinemann et al. to describe a populist party that shares the three core elements of populism: reference to/construction of 'the people', anti-elitism and exclusion of out-groups.<sup>39</sup>

Since the 1990s, the Progress Party has been strongly market-liberal, and while advocating increased public spending in some areas (healthcare, infrastructure), the party has often criticized bureaucracy and promoted privatization and downsizing of the public sector. The party has advocated liberalization of labour legislation for several years, and a recurring formulation in their political programmes has been

<sup>31</sup> *Ibid.*, at 415.

<sup>32</sup> Tor Bjørklund, *Om Anders Lange og ideen om et nytt parti*, *Historisk Tidsskrift*, 435–456 (2000).

<sup>33</sup> *Ibid.*

<sup>34</sup> D. A. Bell, M. Valenta & Z. Strabac, *Nordic Welfare Chauvinism: A Comparative Study of Welfare Chauvinism in Sweden, Norway and Finland*, *International Social Work* (2022) (online first).

<sup>35</sup> Carsten Reinemann et al., *Populist Political Communication. Towards a Model of Its Causes, Forms, and Effects*, in *Populist Political Communication in Europe* 15 (Aalberg et al. eds 2017).

<sup>36</sup> Anders Todal Jenssen, *Norsk høyrepopulisme ved veis ende?* *Nytt Norsk Tidsskrift* 232 (2017).

<sup>37</sup> Anders R. Jupskås et al., *Norway. Populism from Anti-tax Movement to Government Party*, in Aalberg et al. eds, *supra* n. 35, at 54–58.

<sup>38</sup> *Ibid.*, at 57.

<sup>39</sup> *Ibid.*



that the party will ‘oppose public regulation that undermines the work ethic and efficiency’ and that ‘[l]egislation should, in addition to purely safety and health issues, not contain restrictions on the individual citizen’s right to enter into employment contracts on the terms the parties themselves want’.<sup>40</sup> Historically, the party has also advocated more restraints on the right to strike.<sup>41</sup>

The relationship of the party with the Confederation of Trade Unions (LO) has been strained. Progress Party politicians have adopted a clear populist rhetoric, accusing the ‘LO elite’ of not caring about ‘the ordinary people’.<sup>42</sup> It has also attacked the close cooperation between the LO and the Labour Party and claimed that LO’s financial support of the Labour Party’s election campaign is ‘political corruption’.<sup>43</sup> In 2012, it was the only party in Parliament that refused to agree on a statement in a parliamentary document that stressed the importance of achieving higher union density.

The following year, the party formed a government and appointed one of its members as Minister of Labour and Social Affairs. This was the first time a right-wing populist party had been entrusted with responsibility for the government’s labour policies. In section 5.2, we investigate whether this led to changes in employment protection legislation.

### 2.3 POPULISM IN SWEDEN

The development of populism in Swedish occurred slightly later, with a three-year parliamentary term by the soon-to-implode populist party *Ny Demokrati* between 1991 and 1994, followed on a more stable basis by the Sweden Democrats (*Sverigedemokraterna*) since 2010. Common denominators are overall concerns with migration, globalization, cultural heritage, anti-EU rhetoric and similar issues. The narrative sometimes refers to an historic past when conditions were more favourable, and when social security was (supposedly) even better, prior to the expansion of the EU and globalization.<sup>44</sup>

The Sweden Democrats, now solidly positioned in the Swedish Parliament, emerged in the 1980s and 90s from racist and highly nationalistic organizations, and were initially associated with individuals espousing neo-Nazi or explicitly

<sup>40</sup> See i.e., *Prinsipp og handlingsprogram 2005–2009*.

<sup>41</sup> See i.e., *Handlingsprogram for perioden 2001–2005*.

<sup>42</sup> <https://frifagbevegelse.no/article-6.158.1785.117e29753d> (accessed 21 Feb. 2022).

<sup>43</sup> <https://www.vg.no/nyheter/innenriks/i/gWooEJ/kaller-millionene-fra-lo-til-ap-for-politisk-korrupsjon> (accessed 21 Feb. 2022).

<sup>44</sup> The Party Programme for Sweden Democrats relates to ‘social conservatism’, with an explicit connection to Social Democratic ideas from the mid-1900s, <http://partiprogram.se/sverigedemokraterna#sverigedemokraterna-och-socialkonservatism> (accessed 4 Dec. 2022). Also *Rapport 2018:1 Populismens verkliga orsaker*. Futurium 2018, p. 28.



racist positions.<sup>45</sup> When the Sweden Democrats won seats in the Parliament for the first time in 2010, other political parties took a strong stand against their racist and populist policies and refused to negotiate or even coordinate on any political proposals. This strategy was again adopted after the general election in 2014 but abandoned by some of the liberal-conservative parties after the election in 2018. In the run-up to the 2022 election, a conservative-nationalist alliance was formed, with joint legislative proposals between Sweden Democrats and the leading liberal-conservative parties and the election result offered this loose coalition a majority in Parliament resulting in a dramatic shift in the political arena, with a new Government representing the coalition, consisting of members of the three traditional liberal-conservative parties, not the populist Sweden Democrats, but with a joint political agenda (on the *Tidöavtalet* coalition agreement, see note 5 above).

The Swedish Democrats have not engaged significantly with labour law and have embraced the maintenance of social policies such as unemployment benefits and social security, since long implemented by other political movements. Primarily they have instead focused on stricter migration and crime.<sup>46</sup> This narrative must be described as successful. In the aftermath of the refugee situation in 2015 when Sweden received more than 150,000 asylum seekers in a few months, almost all the traditional political parties moved to embrace positions on restrictions of migration policy previously associated with the Sweden Democrats.<sup>47</sup> This shift included both Social Democrats and the conservative *Moderaterna* and coalition partner, the Christian Democrats. All major parties now emphasize the importance of limiting migration, primarily in line with other EU Member States and other countries in the region.<sup>48</sup>

Relations between the Sweden Democrats, the trade unions and the employer federations have been strained. Major trade unions even acted to set aside worker representatives who are also active politically for the nationalist party and the Metalworkers' Union (*IF Metall*) early in December 2022 clarified the union's position that a political candidacy for the Sweden Democrats would not be in accordance with the union's articles of association.<sup>49</sup> The Sweden Democrats

<sup>45</sup> The examples are plenty. The Party announced in 2022 the initiation of a White Paper for the assessment of the historic origin of the party. Expo 2:2014 for a televised interview with party leader Jimmie Åkesson, SVT Nov. 2021, <https://www.svtplay.se/video/33244050/30-minuter/30-minuter-sasong-2-avsnitt-11?position=1030&id=8yEoLXW>.

<sup>46</sup> Danielle Lee Tomson, *The Rise of Sweden Democrats: Islam Populism and the End of Swedish Exceptionalism* (Brookings 2020), <https://www.brookings.edu/research/the-rise-of-sweden-democrats-and-the-end-of-swedish-exceptionalism/> (accessed 29 Sep. 2022).

<sup>47</sup> Anne Skevik Grødem, *Scandinavian Social Democrats Facing the 'Progressive Dilemma': Immigration and Welfare States in Left-of-Centre Party Programs*, 12(2) Nordic J. Migration Res. (2022) 223–239.

<sup>48</sup> <https://www.socialdemokraterna.se/var-politik/a-till-o/migration-asyl-och-flyktingpolitik>, <https://moderaterna.se/var-politik/migrationspolitik/>, <https://kristdemokraterna.se/var-politik/politikomraden/migration-och-integration> (accessed 29 Sep. 2022).

<sup>49</sup> *Stockholms tingsrätt* (Stockholm District Court), judgment 4 Mar. 2021 Case No T 15871-19. Also Niklas Selberg, *Associationsrättsliga principer och mänskliga rättigheter. Uteslutning ur ideell förening som är*

pointed to the Social Democrats, closely related to the trade union movement, as their main opponents during the election cycle 2022, but embraced their social policy such as restrictions on labour migration and generous (and broader) unemployment benefit and pension schemes for low-income groups, highlighting the delicacy of balancing the worker's political votes and the rise in the support for populist policies.<sup>50</sup>

### 3 THE SCANDINAVIAN INDUSTRIAL RELATIONS AND LABOUR LAW MODELS AND WHY THEY SHOW RESILIENCE TO POPULISM

The overall economic situation in Norway and Sweden is favourable. Both countries are characterized by highly developed welfare systems with high levels of taxation,<sup>51</sup> though they remain competitive in the globalized economy.<sup>52</sup> Both Norway and Sweden weathered the 2008–2010 financial crises comparatively well, with only limited long-term consequences for the national financial situation.<sup>53</sup> The two countries are ranked among the top 20 in GDP per capita in the world.<sup>54</sup> That said, it is acknowledged that unemployment in Sweden increased during the 1990s and 2000s and is currently at a historic high of 7.5%.<sup>55</sup> Norway has continuously managed to keep unemployment at an even lower rate – 3.5% in the last quarter of 2021 – which is about the same as the average over the last twenty-five years.<sup>56</sup>

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*fackförening, arbetstagarers föreningsrätt och fackföreningars oberoende*, 2021/22(1) Juridisk Tidskrift 159–191 (2021). The recent changes to the articles of association in IF Metall are reported in <https://arbetet.se/2022/12/02/if-metall-andrar-stadgar-for-att-stoppa-sd-fran-fortroendeposter/> (accessed 4 Dec. 2022).

<sup>50</sup> Motion till Riksdagen, *Nu är det dags för Sverige-Sverigedemokraternas förslag till statsbudget 2022 3938* (2021/22), [https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/nu-ar-det-dags-for-sverige-sverigedemokraternas\\_H9023938/html](https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/nu-ar-det-dags-for-sverige-sverigedemokraternas_H9023938/html) (accessed 3 Oct. 2022), also <https://arbetet.se/2022/10/07/vad-hander-egentligen-mellan-lo-och-sd/> (accessed 4 Dec. 2022) and <https://www.dagensarena.se/innehall/s-och-sd-jamnstora-bland-lo-medlemmar/> (accessed 4 Dec. 2022).

<sup>51</sup> See G. Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Cambridge: Polity Press 1990).

<sup>52</sup> NOU 2009: 10. *Fordelingsutvalget. Utredning fra et utvalg oppnevnt av Finansdepartementet 25. april 2008* and NOU 2021: 9 *Den norske modellen og fremtidens arbeidsliv. Utredning om tilknytningsformer og virksomhetsoverorganisering*, Ch. 3.

<sup>53</sup> NOU 2011: 1 *Bedre rustet mot finanskriser. Finanskriseutvalgets utredning*, where the consequences for the Norwegian economy at this time are analysed.

<sup>54</sup> [https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2020&locations=NO-SE&name\\_desc=false&start=1960&view=chart](https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2020&locations=NO-SE&name_desc=false&start=1960&view=chart) (accessed 4 Oct. 2022).

<sup>55</sup> Age 15 to 74, source: SCB (Statistics Sweden), <https://www.scb.se/hitta-statistik/statistik-efter-amne/arbetsmarknad/arbetskraftsundersokningar/arbetskraftsundersokningarna-aku/pong/statistiknyhet/arbetskraftsundersokningarna-aku-fjarde-kvartalet-2021/> (accessed 9 Oct. 2022).

<sup>56</sup> Age 15 to 71 (Statistics Norway), <https://www.ssb.no/arbeid-og-lonn/sysselsetting/statistikk/arbeidskraftundersokelsen/artikler/antall-langtidsledige-pa-samme-niva-som-for-pandemien> (accessed 18 Feb. 2022).

Even though trade union density has decreased in the past twenty years, 68% of employees in the Swedish labour market,<sup>57</sup> and 50% in the Norwegian labour market,<sup>58</sup> are unionized, compared to the OECD average of 16%.<sup>59</sup> Due to the particularly high number of employers who belong to employer federations – combined with the vast reach of collective agreements – approximately 90% of Swedish employees,<sup>60</sup> and 70% of Norwegian employees,<sup>61</sup> are covered by a collective agreement.

The social model consists of a range of labour provisions, collective agreements and social benefits related to employment, but at its core is the industrial relations model. Both Norway and Sweden have single-channel models with local trade union workers' representation and no (continental style) works councils.<sup>62</sup> These models clearly favour the majority trade union and ensure a strong position for these traditional and well-established bodies.<sup>63</sup> The correspondingly well-positioned employer federations are key to understanding the Scandinavian labour market model. The most striking features here are partially centralized negotiations, especially the centralized setting of wages, which have resulted in low levels of industrial action combined with significant improvement in real wages over the past twenty-five years.

Labour market regulation has a clear parallel in social security. The more extensive social benefits consist of a combination of statutory provisions and arrangements under collective agreements. There is a common understanding about the general outlines and a relatively high level of trust in the social security system,<sup>64</sup> even if the details are subject to both political and public discourses.<sup>65</sup> Migration, both EU/EEA and from third countries, as well as the potential relationship between migrants and social benefits, has repeatedly affected the discourse on the social security system<sup>66</sup> and has been part of a populist narrative relating to all forms of migration originating outside of Western countries.

<sup>57</sup> AVTALSRÖRELSEN OCH LÖNEBILDNINGEN ÅR 2019. MEDLINGSINSTITUTETS ÅRSRAPPORT, at 168–170.

<sup>58</sup> See Kristine Nergaard, *Organisasjonsgrader, tariffavtaledekning og arbeidskonflikter 2018/2019*, 12 Fafo-notat (2020).

<sup>59</sup> <https://stats.oecd.org/Index.aspx?DataSetCode=TUD> (accessed 4 Oct. 2022).

<sup>60</sup> AVTALSRÖRELSEN, *supra* n. 57, at 168.

<sup>61</sup> Nergaard, *supra* n. 58.

<sup>62</sup> Andrea Iossa, *Workers' Representation and the Welfare State: The Swedish Model of Industrial Citizenship*, in *Labour Law and the Welfare State: (Arbetsrätt och välfärdsstaten)* 51–72 (Laura Carlsson, Petra Herzfeld Olsson & Vincenzo Pietrogiovanni eds, Iustus 2019).

<sup>63</sup> Swedish Co-determination Act, paras 11–14, 19 and 38–39 *also* Jonas Malmberg (et al.) *Medbestämmandelagen, En kommentar*, Del 1. Norstedts Juridik, 136–138 (2018).

<sup>64</sup> See <https://www.forsakringskassan.se/wps/wcm/connect/74e954df-5cae-4a3f-bed9-dadca0bf0c42/fortroende-korta-analyser-2015-2.pdf?MOD=AJPERES&CVID=> (accessed 4 Oct. 2022).

<sup>65</sup> See <https://www.regeringen.se/regeringens-politik/hallbara-pensioner/pensionsgruppen/> (accessed 22 Mar. 2022).

<sup>66</sup> Lisa Laun, Linus Liljeberg & Olof Åslund, *Utrikes födda och välfärdssystemen*, IFAU Rapport 2020:15, 17–18 and 38–39 (2020).

This structure, and the strong dependency on and autonomy of the collective partners in the regulation of the labour market in both countries, though associated with the stronger influence from statutory regulations in Norway, has nurtured a delicate and balanced labour market and industrial relations model.<sup>67</sup> In general, publicly funded social policies targeted at broad groups of the population have been popular for many decades, giving rise to limited criticism from liberals and conservatives. Most of the welfare and labour law reforms initiated in Norway and Sweden starting from the beginning of the twentieth century were intended to support broad swathes of the population, the working and middle classes, while mainly accepting the balance between regulation and market economy and property rights. To understand the development, it is important to appreciate the difference between ‘popular’ and ‘populist’.

### 3.1 THE IMPACT OF POPULISM ON NORWEGIAN LABOUR LAW

#### 3.1[a] *Worker Protection Legislation Reforms*

The late 1970s marked the beginning of the return to the market, a period of almost three decades where market-oriented reforms were carried out in Norwegian society, including deregulation, or reregulation of different sectors (credit policy, financial sector, broadcasting, the housing and energy markets, and so on) and privatization (wholly or partially). However, at the same time the 1970s saw a paradigm shift in the opposite direction for labour law. The Working Environment Act of 1977, superseding the 1956 Workers’ Protection Act, strengthened worker protection significantly. This applied, inter alia, to dismissal protection, where a set of new rules was implemented, and legal restrictions were placed on temporary employment. Nevertheless, the need for greater labour market flexibility gradually became part of the political discourse. In the academic debate, the concept of ‘flexicurity’, with reference to the Danish labour market, was used as a reference point.<sup>68</sup>

Apart from abolishing the public monopoly on employment services in 2000, no liberalization or flexibilization of labour law worth mentioning occurred. Developments during the 1990s mainly concerned implementation of EU/EEA legislation, which enhanced worker protection in several fields. An attempt at liberalization was made by the centre-right Bondevik government (2001–2005) in

<sup>67</sup> Marianne Jennum Hotvedt et al., *The Future of Nordic Labour Law. Facing the Challenges of Changing Labour Relations* 24 ff. (Nordic Council of Ministers 2020).

<sup>68</sup> Stein Evju, *A European Social Model? Experiences from the Scandinavian Countries*, *Arbeidsrett* 250 (2010).

their proposal for the Working Environment Act of 2005. This liberalization, which was justified using classic flexibility arguments, mainly concerned working time regulation and the rules on temporary employment.<sup>69</sup> The act passed in Parliament, but all the changes were reversed by the new left-green Stoltenberg-government that took office the same year.<sup>70</sup>

As mentioned in section 2, for decades the Progress Party had strongly advocated the liberalization of labour market regulation. As a result, there was a certain amount of anxiety in the labour movement when the Progress Party became a governing party for the first time in 2013 and was entrusted with the Ministry of Labour. During the elections, the party promised that there would be ‘no revolution of the labour market’.<sup>71</sup> Nevertheless, liberalization of the Working Environment Act was brought forward, impacting, *inter alia*, working time regulation and regulation on temporary employment. The new regulation, enacted in 2015, provided general access to temporary employment for a maximum period of twelve months, with some limitations. This led to strong protests by the labour movement and the calling of a general political strike.

Hence, liberalization of worker protection legislation was implemented when the Progress Party was in government (by the Solberg government). Although the labour movement reacted strongly, the liberalization should be characterized as moderate overall. It was far from the liberalization that the Progress Party had advocated earlier. In fact, liberalization of the rules on temporary employment did not go as far as the changes made by the Bondevik government in 2005. Interestingly, the Solberg government’s case for liberalization in 2015 concentrated more on ‘access to justice’ than flexibility for employers.<sup>72</sup> All in all, this government’s labour market policies cannot be characterized simply in terms of liberalization. Other rules enhancing worker protection were implemented in this period. Furthermore, liberalization of the rules on temporary employment did not lead to a major increase in recourse to such employment.

In 2021, the Labour Party and the Centre Party formed a government. The Labour Party, in cooperation with the Norwegian Confederation of Trade Unions (LO), promised, in reference to the liberalization enacted by the Solberg government, ‘a major clean-up of the labour market’.<sup>73</sup> Under the slogan, ‘Now it is time to put regular people first’, the Labour Party promised to reverse the liberalization of the Working Environment Act and strengthen worker protection; several

<sup>69</sup> Ot.prp. No. 49 (2004–2005).

<sup>70</sup> Ot.prp. No. 24 (2005–2006).

<sup>71</sup> <https://frifagbevegelse.no/article-6.158.24174.69f1158e34> (accessed 4 Oct. 2022).

<sup>72</sup> Prop. 39 L (2014–2015), Ch. 5.

<sup>73</sup> <https://frifagbevegelse.no/nyheter/ap-og-lo-lover-storregjoring-i-arbeidslivet-6.158.780937.913c2af142> (accessed 4 Oct. 2022).

changes have already been implemented, including reversing the liberalization of the rules on temporary employment.<sup>74</sup>

In summary, the Progress Party's populist elements and neoliberal labour policies had limited effects on worker protection legislation, including the period when the party was in government from 2013–2020. The party seems to have moderated its policies, and the liberalization that was carried out was reversed some years later. It has been argued that the Progress Party in general has become more similar to the Conservative Party during its time of governance, and that the Progress Party can no longer be characterized as a right-wing populist party.<sup>75</sup> After leaving the government and over the course of different 'crises' that dominated political debate in 2021 and in the winter of 2022 (the pandemic and the energy crisis), it abruptly reversed its positions, for example advocating an increase in unemployment benefits, and stronger regulation of the energy market. This fits well with the observation that populism has a chameleon-like character.

### 3.1[b] *Globalization and the EU/EEA*

The political and academic debate on the Norwegian labour market model is mainly focused on how to secure the model in changing times.<sup>76</sup> The consequences of globalization are part of this discussion, first and foremost the consequences of the EEA agreement and EEA law. The Conservative Party and the Labour Party, traditionally the two biggest political parties, advocated EU membership both in 1972 and 1994, and are strong supporters of the EEA agreement. The Confederation of Trade Unions (LO), closely linked to the Labour Party, also supports the agreement, emphasizing its positive effects on Norwegian business and industry, as well as in strengthening labour rights, i.e., anti-discrimination law. However, opposition to the EEA agreement has, as mentioned, increased among the parties in Parliament and within the LO over the last decade. In 2018, the biggest department in the LO union, *Fellesforbundet*, which traditionally has been a strong defender of the EEA agreement, adopted a resolution to terminate the agreement. Increased opposition within different parts of the LO has given rise to fear in the Labour Party that the LO will change its view on the EEA question.

The Centre Party is strongly opposed to the agreement, and its rhetoric towards the EU/EEA features populist elements. Unlike the Labour Party, the Centre Party strongly addresses the supposed conflict between the rights of 'Norwegian workers' and EU/EEA regulation. According to the party, the EEA

<sup>74</sup> Prop. 35 L (2021–2022).

<sup>75</sup> Jenssen, *supra* n. 36.

<sup>76</sup> NOU 2021: 9, Ch. 3.

agreement ‘destroys the labour market’ as ‘more and more workers experience the negative sides of free movement of workers from outside the Nordic countries’.<sup>77</sup> The question is how this alleged conflict has been addressed by the party when in government.

One factor behind increased opposition in the labour movement to the EU/EEA concerns the legal cases in recent years that have highlighted the tension between collective rights and the principles of market freedom in the EU/EEA.<sup>78</sup>

A certain tension can be traced back to the famous *Viking* and *Laval* cases in 2008.<sup>79</sup> However, in practice these rulings have had less impact on the Norwegian labour movement than in other countries.<sup>80</sup> The extension of collective agreements, providing for the general application of the terms of wages and employment in nationwide collective agreements as statutory provisions within an industry, has contributed to counteracting the negative consequences of an open labour market.<sup>81</sup> The 1993 Act on the general application of collective agreements ensures that the wages and employment terms of foreign employees are equivalent to those of Norwegian employees, and prevents distortion of competition that is detrimental to the Norwegian labour market. It was implemented in 1993 in connection with accession to the EEA agreement, but not used until the EU’s enlargement in 2004 and the subsequent increase of immigration from Eastern European countries. Today, collective agreements are given general application within several industries and branches.

The tension has become much clearer in two cases in recent years. One is the *STX* case, a long-running conflict over whether the Posting of Workers Directive allows for provisions in collective agreements on compensation for travel, board and lodging expenses to be given general application. In 2013, the Norwegian Supreme Court ruled that this was *not* contrary to the EEA agreement.<sup>82</sup> The Confederation of Norwegian Enterprises (NHO) lodged a complaint with the EFTA Surveillance Authority (ESA), which reached the opposite conclusion, and the Tariff Board (*Tariffnemnda*), which decides on general application of terms in collective agreements, modified its conclusion on which provisions related to compensation for travel, board and lodging expenses that could legally be given general application.<sup>83</sup> This led the biggest department in *Fellesforbundet*, as

<sup>77</sup> <https://www.senterpartiet.no/aktuelt/eos-avtalen-odelegger-arbeidslivet> (accessed 21 Feb. 2022).

<sup>78</sup> <https://frifagbevegelse.no/aktuelt/eoskepsisen-i-fagbevegelsen-bekymrer-lolederen-6.158.596714.f11d0c4305> (accessed 21 Feb. 2022).

<sup>79</sup> Case C-438/05 *Viking Line Eesti*, EU:C:2007: 772 and case C-341/05 *Laval un Partneri* ECLI:EU:C:2007:809.

<sup>80</sup> Stein Evju, *Norway*, in *Viking, Laval and Beyond* 211–228 (Mark Freedland & Jeremias Prassl eds 2014).

<sup>81</sup> Act of 4 Jun. 1993 No. 58 relating to general application of collective agreements.

<sup>82</sup> Rt. 2013, at 258.

<sup>83</sup> Decision of 11 Oct. 2018 by the Tariff Board.



mentioned above, to change its view on the EEA agreement, and the then leader of the LO stated that NHO had ‘placed a bomb under the EEA agreement’.<sup>84</sup>

The other is the *Holship* case.<sup>85</sup> In this case, a majority of the Supreme Court ruled that a notified boycott of a user of a port in Norway to enter into a collective agreement was an unacceptable restriction on the right of establishment under Article 31 of the EEA agreement. The LO and the transportation workers union, NTF, later lodged a complaint against Norway with the European Court of Human Rights (ECtHR). The ECtHR ruled in 2021 that there was no violation of Article 11 of the European Convention on Human Rights.<sup>86</sup> However, according to the ECtHR, the balance test that the Supreme Court had applied, according to which ‘one must try to strike a fair balance between the rights in questions’,<sup>87</sup> was not a correct approach.<sup>88</sup> The Court pointed out that freedom of association under Article 11 and freedom of establishment under the EEA agreement were not fundamental rights on an equal level.

The Centre Party’s criticism of supranational bodies and courts applies first and foremost to EU and EEA institutions, not the ECtHR. It claims that the EU is an elite body and a threat to democracy,<sup>89</sup> and as already mentioned, that the EEA agreement ‘destroys the labour market’.<sup>90</sup> With reference to *STX* and *Holship*, the party argues that the EEA agreement overrules the Parliament and the Supreme Court in questions related to the labour market.<sup>91</sup> The Centre Party intends to replace the EEA agreement with trade agreements, and states, in its political programme, that it will ensure that ‘Norwegian legislation, collective agreements and the ILO conventions’ prevail in cases of conflict with EU/EEA law.<sup>92</sup>

In 2021, a compromise was reached between the Centre Party and the Labour Party: The EEA agreement will still form the basis for Norway’s relations with Europe, but the government will work more actively to promote Norway’s interests within the framework of the agreement and more actively use ‘room for manoeuvre’ within the agreement to ensure national control.<sup>93</sup> However, the Centre Party won a small victory: a public assessment of experiences from EEA

<sup>84</sup> <https://www.vg.no/nyheter/innenriks/i/L0RMO1/lo-sjefen-nho-har-plassert-en-bombe-under-eos-avtalen> (accessed 21 Feb. 2022).

<sup>85</sup> HR-2016-2554-P.

<sup>86</sup> Judgment of the ECtHR of 10 Jun. 2021 in the case *Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers’ Union (NTF) v. Norway*.

<sup>87</sup> HR-2016-2554-P s. 86.

<sup>88</sup> Judgment of the ECtHR, *supra* n. 86 s. 118.

<sup>89</sup> <https://www.senterpartiet.no/politikk/A-%C3%85/politisk-sak/demokrati> (accessed 4 Oct. 2022).

<sup>90</sup> <https://www.senterpartiet.no/aktuelt/eos-avtalen-odelegger-arbeidslivet> (accessed 21 Feb. 2022).

<sup>91</sup> <https://www.senterpartiet.no/aktuelt/stortinget-ma-styre-arbeidsmarkedet> (accessed 4 Oct. 2022).

<sup>92</sup> Vi tror på hele Norge, *supra* n. 21, at 80.

<sup>93</sup> ‘Hurdalsplattformen. For en regjering utgått fra Arbeiderpartiet og Senterpartiet 2021–2025’, at 79.

cooperation over the last ten years will be initiated. The government has stressed that this work will not include a study of alternatives to the EEA agreement.<sup>94</sup>

Furthermore, the government platform states that ILO core conventions will be incorporated into the Human Rights Act.<sup>95</sup> This will strengthen their status. The conventions will be given the force of Norwegian law and provisions of the conventions will take precedence over any other legislative provisions that conflict with them. The conventions will, in principle, be given legislative status equal to EEA law. This is a measure that both the LO and the Labour Party have proposed and been working for.

### 3.2 THE IMPACT OF POPULISM ON SWEDISH LABOUR LAW

#### 3.2[a] *Globalization and the EU*

Swedish industry has adapted to the globalized market, with only limited domestic protests. Even major restructuring and the relocation of significant parts of the manufacturing sectors have not encountered any major challenges from trade unions or political parties. Leading companies, such as Volvo, Ericsson and H&M, have operated in a global environment for a long time, applying local labour rights under collective agreements relating to foreign and Swedish labour markets.<sup>96</sup> Despite global and EU exposure, there has always been a vocal anti-EU (minority) sentiment in Sweden, not least in relation to labour market reforms. In recent years, this position has primarily been expressed by the populist Sweden Democrats, since supporters of the Left Party and the Green Party have shifted towards a less anti-EU stance.<sup>97</sup> Prior to joining the EC/EU in 1995, Sweden was split, with a small margin in the referendum in favour of joining the EU. Swedish trade unions have continuously signalled issues with EU migration, culminating in the Court of Justice of the European Union (CJEU) ruling in *Laval* on the posting of workers and collection action.<sup>98</sup> Trade unions and employer federations, as well as almost all political parties, have recently questioned the adoption of the EU Minimum Wage Directive.<sup>99</sup>

<sup>94</sup> <https://www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=86192> (accessed 4 Oct. 2022).

<sup>95</sup> Act of 21 May 1999 No. 30 relating to the strengthening of the status of human rights in Norwegian law.

<sup>96</sup> PM 2019:04 *Sveriges exportberoende – sårbarhet för fluktuationer i internationell efterfrågan*. Myndigheten för tillväxtpolitiska utvärderingar och analyser. 2019/026.

<sup>97</sup> <https://www.scb.se/hitta-statistik/statistik-efter-amne/demokrati/partisympatier/partisymptiundersokningen-psu/pong/tabell-och-diagram/eu-emu-sympatier/eu-sympatier-efter-partisymptati/> (accessed 14 Feb. 2022).

<sup>98</sup> Case C-341/05, *supra* n. 79. See Prop. 2016/17:107 *Nya utstationeringsregler*, SOU 2008:123, *Förslag till åtgärder med anledning av Lavaldomen*, Prop. 2009/10:48 *Åtgärder med anledning av Lavaldomen*.

<sup>99</sup> <https://www.europaportalen.se/2021/04/svensk-oro-och-irritation-over-forslag-om-minimilohn> (accessed 14 Feb. 2022).

These critiques among trade unions and partially employer federations have emerged from an understanding of the domestic labour market with limited legislative interference, strong industrial partners and a comparatively well-organized, well-functioning labour market with strong real wage development over many years. While trade unions, and specifically blue-collar workers' organizations, were and still are part of the Social Democrat sphere, members of these trade unions, especially male workers, have to a large extent abandoned their traditional political party, the Social Democrats, in parliamentary elections, which obviously constitutes a significant setback for the trade unions and the Social Democrats. This has given rise to uncertainty about the extent to which the representation of the workers will always be identified with the traditional trade unions (LO) and the Social Democrats.<sup>100</sup>

### 3.2[b] *Regulating Labour Migration*

An issue closely related to both the EU and globalization is labour migration. After a period of limited labour migration originating outside the neighbouring Scandinavian countries, EU migration and third-country labour migration has increased significantly since 1995, predominantly following the expansion of the EU in 2004 and the liberalization of third-country labour migration in 2008.

The enlarged EU changed the service sector, starting with construction and transportation. EU migrant workers with significantly lower levels of pay and social security were engaged and employed as posted workers, challenging the national labour law regimes by replacing local workers and enterprises. The downfall of these new structures was exposed in a dramatic way in *Laval*. The consequences of membership and the enlargement of the EU in 2004 were discussed at the time, and subsequently during and after *Laval*,<sup>101</sup> and some sectors in particular have been monitored in relation to the EU posting of workers and lack of control. There have been more populist remarks in the discourse on EU migration, which tend to relate to national origin and ethnicity (the 'Polish Plumber' trope is cited also in Sweden), but legislative efforts struggled to comply with the outcome of *Laval* and the Posting of Workers Directives, while maintaining solid respect for the industrial model of Sweden.<sup>102</sup>

<sup>100</sup> The LO federation announced support to Social Democrats with SEK 30 million (EUR 3 million) in the 2022 election, see also further references on the identity crises of the trade unions in n. 50.

<sup>101</sup> SOU 2008:123, *supra* n. 98, Prop. 2009/10:48, *supra* n. 98.

<sup>102</sup> Kerstin Ahlberg, *Regulating Temporary Agency Work: On the Interplay Between EU-Level, National Level and Different Industrial Relations Traditions*, in *EU Industrial Relations v. National Industrial Relations* (Rönnmär ed. 2008).

Third-country labour migration has attracted significant attention since the Liberal-Conservative Government in 2008 introduced the most welcoming provisions for work permits. In contrast to the previous situation, when trade unions were informed and considered to fill domestic labour shortages prior to the issuance of work permits to third-country nationals, the new provisions offer labour migrants the possibility to apply for work permits as long as they can show that they have a valid job offer and can support themselves in Sweden based on their salary.<sup>103</sup> The system, sometimes referred to as the most generous in the industrialized world, has attracted in the range of 20,000 workers annually. The political aim of the reform was to improve the possibilities for employers to recruit suitable workers also from outside the EU, better and faster than before.<sup>104</sup> The liberal labour migration system has been heavily criticized by both the left and the far-right, as well as the trade unions. Research has examined the system exposing some of the difficulties to implement labour standards if union representation and coverage of collective agreements are limited and political reform has been discussed, and the policies have somewhat narrowed the scope of labour migration, at least when it comes to the details.<sup>105</sup> However, the Swedish trade union movement has also historically been reluctant to accept labour migration and struggled with the inclusion of incoming workers who might compete with or undercut the domestic labour force. Furthermore, the trade unions have argued against the relative transition of power from trade unions to employers that came as a result of the particular labour migration reform when the ‘union veto’ on work permits was abandoned.<sup>106</sup> The Swedish provisions on labour migration are far more generous than the corresponding EU Blue Card Directive,<sup>107</sup> which, transposed into Swedish law, stipulates an income level of close to EUR 5,000 per month and a higher education qualification (at least to undergraduate level).<sup>108</sup>

The political platform of the populist Sweden Democrats advocates the prohibition of all labour migration that is not related to ‘qualified labour’ with a clear demand on the Swedish labour market. While clearly deviating from current Swedish legislation, such a proposal would be more in line with the EU Blue Card Directive and with legislation in many other countries. The agenda of the Sweden

<sup>103</sup> The minimum monthly income amounts to SEK 13,000 (EUR 1,300).

<sup>104</sup> Chapter 6 Aliens’ Act (*Utlänningslagen*), Ch. 5 Aliens’ Ordinance (*Utlänningsförfordningen*), also Prop. 2007/08:147, at 26.

<sup>105</sup> *Arbetskraft från hela världen – hur blev det med 2008 års reform?*, Delegationen för migrationsstudier (Catharina Calleman & Petra Herzfeld Olsson eds 2015).

<sup>106</sup> Anders Neergaard, in *ibid.*, at 207–209.

<sup>107</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0050> [please complete the reference].

<sup>108</sup> The Blue Card Directive 2009/50/EC transposed through the Aliens’ Act (*Utlänningslagen*) Ch. 5 and Ch. 5 a, see also Petra Herzfeld Olsson, *EU:s framväxande regelverk om arbetskraftsmigration, Arbetslöshet, migrationspolitik och nationalism* 79–111 (Antonina Bakardjieva Engelbrekt et al. eds 2012).

Democrats does not propose transferring power back to the trade unions, but to structure assessments of labour shortages by migration authorities, and it is furthermore worth noting that the agreement forming the foundation for the parliamentary support for the new government proposes an income threshold of at the ‘median income level’, significantly higher than the current SEK 13,000, but far below the Blue Card-level.<sup>109</sup>

In relation to undocumented labour migration, which includes refugees overstaying once their application for asylum is rejected, the political narrative is less diverse. While Sweden has implemented the EU Sanctions Directive (2009/52/EC), and imposed sanctions on employers who hire undocumented migrants, the general political consensus from the Social Democrats to the populist Sweden Democrats is that labour market opportunities must only be available for those who make an application based on the (still generous) rules, and earlier calls for regularizations or amnesties of undocumented workers seem to have gone out of fashion.<sup>110</sup> Unlike many other countries, Sweden never had any such regularizations.<sup>111</sup>

### 3.2[c] *Trade Unions and the ‘Elites’*

The significance of the industrial partners has been underlined throughout this article. A collective *laissez faire*-like Swedish model clearly requires strong and responsible trade unions and employer federations.<sup>112</sup> However, the strength of the collective partners also exposes them to criticism as positioned with or members of the ‘elite’ with a negative connotation easily exploited by populist movements. In Scandinavia, where there is an extraordinarily strong relationship between the major trade unions, the LO, and the Social Democratic parties, which have been in government for most of the years since the introduction of democracy, this is highly relevant. Numerous trade union leaders have been appointed as ministers in Social Democrat governments and the 2014–2021 Swedish Prime Minister, Stefan Löfven, was recruited to lead the Social Democrats from his position as general secretary of the Metalworkers’ Union, and had, at the time, no seats in Parliament. Trade unions are a powerful actor in society, occupying a significant position with

<sup>109</sup> <https://sd.se/our-politics/arbetskraftsinvandring/> (accessed 14 Feb. 2022), Tidöavtalet, at 35, tidöavtalet.se (accessed 4 Dec. 2022).

<sup>110</sup> Motion 2009/10:Sf319 *Papperslösa*, <https://data.riksdagen.se/fil/DA3EB0A8-7101-41E8-937E-7C074BDC235D>.

<sup>111</sup> Andreas Inghammar, *The Employment Contract Revisited. Undocumented Migrant Workers and the Intersection between International Standards, Immigration Policy and Employment Law*, 12(2) Eur. J. Migration & L. 193–214 (2010).

<sup>112</sup> Otto Kahn-Freund, *Labour Law*, in *Law and Opinion in England in the 20th Century* 215–263 (Morris Ginsberg ed., University of California Press 1959).

far-reaching effects on workers' lives, thus also representing societal power. As the traditional trade unions constitute a strong social actor, with extensive powers to agree with employers on setting even basic labour provisions aside, their attitude towards members who are also active in the Sweden Democrats must be scrutinized. Two recent Swedish cases, in which trade union members have been expelled from the trade union or replaced as ombudsmen due to their political affiliation with the far-right Sweden Democrats party, expose this tension and the importance of majority trade union membership for the exercise of labour rights.<sup>113</sup> In the case before the Stockholm District Court, a case which is currently on appeal to the Court of Appeal (*Svea Hovrätt*), the Transport Workers' Union (*Transportarbetarförbundet*, LO) representatives for the trade union argued that the political positions of the Sweden Democrats were incompatible with the core values of the trade union and that the political affiliation formed the basis for expelling the union member under the trade union's articles of association. In a similar situation, another trade union (*If Metall*, also LO) replaced an ombudsman following his election for the Sweden Democrats in a municipality council. These cases have been the subject of intense debate.<sup>114</sup> The District Court concluded that the trade union did not make its case for expelling the member and overturned the ruling.

In parallel, a left-wing trade union critique has emerged, not least in relation to the industrial conflict in Gothenburg harbour. While not directly related to a populist narrative, it represents an outside and highly critical perspective on the monolithic traditional trade unions as part of the establishment, deemed to be an elite. The conflict, leading to some legal reforms and increasing the strength of the traditional (LO) trade unions, reflects an increasing gap between these trade unions and other forms of employee representation, separate from the established forms of industrial relations.<sup>115</sup>

### 3.2[d] *Pension Schemes and Social Benefits*

A political debate on increased financial support through the old age pension scheme has emerged in Sweden in recent years, primarily fuelled by the Left Party (former communists) and the Sweden Democrats, but with recent support

<sup>113</sup> *Stockholms tingsrätt* (Stockholm District Court), judgment 4 Mar. 2021 Case No T 15871-19, and the nationally reported situation where an ombudsman was replaced (but not expelled from the trade union) based on his political affiliation, <https://da.se/2022/01/if-metall-petar-sd-politiker/>.

<sup>114</sup> Selberg, *supra* n. 49.

<sup>115</sup> AD 2020 no 66, SOU 2018:40 *Vissa fredspliktsfrågor*, Prop. 2018/19:105 *Utökad fredsplikt på arbetsplatser där det finns kollektivavtal och vid rättstvister*, <http://hamn.nu/article/2714/Har-ar-Hamnarbetarforbundets-kollektivavtal.html> (accessed 15 Feb. 2022).

from other parties.<sup>116</sup> These extra financial benefits for retirees have been accused of being populist,<sup>117</sup> especially as they are paid outside of the ordinary pension scheme and compete with the incentives of the otherwise primarily contribution-based pension scheme.<sup>118</sup> The Left Party, which made the necessary changes to ensure acceptance from the then Social Democrat government, argued that these benefits were necessary to support the financial status of low-income retirees, a position later echoed by that government. Since 1994 the Social Democrats, together with the liberal-conservative opposition parties in Parliament, have set up a cross-party working group for the development and maintenance of the current pension scheme, a group that has continuously operated with the exclusion only of the far-left and the far-right parties.<sup>119</sup> The idea has been to distance the important and long-term pension scheme from short-term policies and populist modelling. The major parties have agreed not to use the pension scheme for short-term political gains. Once this nevertheless happened in 2021, the Social Democrats were heavily criticized for breaking with the established line by accepting the extra benefits without processing them through this Pension Group, paving the way for further populist changes to this strategic pillar of the welfare state.<sup>120</sup>

#### 4 CONCLUSION. STRONG INDUSTRIAL RELATIONS INSTITUTIONS AS A COUNTERVAILING FORCE TO POPULISM

Populism in Norway and Sweden has not developed politically in the same way as in other European or American countries. There are no signs of a genuine appetite for ‘strongmen’ like Bolsonaro, Orban, Erdogan or Trump in Scandinavian politics. However, in both countries populist parties are represented in Parliament and the rhetoric against migrants, the EU/EEA and the ‘social and financial elites’ has gained more ground, not least among workers. However, an analysis of this shift shows a limited impact on labour law in practical terms, if any, so far even with respect to labour migration, despite this being a particular focus of right-wing

<sup>116</sup> <https://www.pensionsmyndigheten.se/nyheter-och-press/nyheter/forslaget-om-garantitillagg> (accessed 18 Feb. 2022).

<sup>117</sup> See Swedish Employer Federation (*Svenskt Näringsliv*), [https://www.svensktnaringsliv.se/sakomraden/pension-och-forsakring/ekonomen-ju-mer-du-jobbar-desto-lagre-pension-far-du\\_1181275.html](https://www.svensktnaringsliv.se/sakomraden/pension-och-forsakring/ekonomen-ju-mer-du-jobbar-desto-lagre-pension-far-du_1181275.html) (accessed 4 Oct. 2022).

<sup>118</sup> Andreas Inghammar et al., *Prolonged Working Life and Flexible Retirement in Public and Occupational Pension Schemes*, in *Elder Law: Evolving European Perspective* 229–256 (Numhauser-Henning ed., Cheltenham & Northampton, Edward Elgar Publishing), <https://www.pensionsmyndigheten.se/other-languages/english-engelska/english-engelska/publications0> (accessed 17 Feb. 2022).

<sup>119</sup> Ds 2009:53 *Detta är pensionsöverenskommelsen*, <https://www.regeringen.se/49bbbf/contentassets/eca-d37e66e7942aba96bdfad4b0c8e6/detta-ar-pensionsoverenskommelsen-ds-200953> (accessed 3 Oct. 2022).

<sup>120</sup> [https://www.svensktnaringsliv.se/sakomraden/pension-och-forsakring/kritik-mot-regeringens-budget-och-pensionsforslag\\_1178240.html](https://www.svensktnaringsliv.se/sakomraden/pension-och-forsakring/kritik-mot-regeringens-budget-och-pensionsforslag_1178240.html) (accessed 17 Feb. 2022).



populist movements. This is likely to change in Sweden, as indicated above, as the provisions on work permits are proposed to be less inclusive.

It is particularly relevant to clarify the nature of the industrial relations models of the Scandinavian countries, in which the core of labour market regulation rests with the industrial partners. Trade union density is comparatively high, as is the coverage of collective agreements, based to a large extent on significant employer federation density. The industrial partners, such as those in Norway and Sweden, have successfully ensured the success of longer, sustainable perspectives not only on real wages, but also on other work-related issues, such as occupational pension schemes, globalization, and perhaps more controversially, freedom of movement within the EU/EEA.

The Scandinavian welfare states prioritize work over subsidies, but establish comparatively strong protection mechanisms, especially for the working and middle classes. Real wages have increased continuously over the past twenty-five years, in Sweden almost without any strikes or lockouts, and in Norway with only limited industrial action. Income from most social benefits and pension schemes has also grown, even if some of the benefits have not increased in line with real wages, giving rise to a growing difference between wage earners and those benefitting from social security and pensions. The scope for strong criticism is likely more limited than in many other countries where growth and the increase in GDP have stalled, or been less equally distributed. A tribute must be paid to the industrial relations model in terms of this outcome. It is a major achievement to contribute to the improvement of the situation of almost all working groups over a period of twenty-five years, and the room for aggressive labour market populism has been limited. More vocal criticism of globalization and the EU market is challenged by these facts, and the trade unions and employer federations have manoeuvred the landscape skilfully.

However, while both Norway and Sweden initially appear to be outliers in terms of labour relations, this picture does not provide the complete story. Both countries are struggling with the forces of populism, even though this struggle has not (yet) had the same consequences as in other jurisdictions. As already mentioned, one area to which the discourse has turned over the past decades is migration, and that this has had a limited impact on labour law reform or changes in labour-related social policy. The refugee crisis in 2015, as the most prominent example, resulted in a dramatic shift in Swedish migration policy, and what 'could' and 'could not' be expressed in the public domain. It is difficult to ascertain to what extent this is a result of the influence of the right-wing populist Sweden Democrats or whether it might have taken place anyway in the aftermath of the dramatic refugee crisis in 2015, but whatever the case it was not reflected in labour law reform, either at the time or later. Although the refugee crisis was an important

issue in the public debate also in Norway, there was no dramatic shift in immigration policy: there has been a broad political consensus on a strict immigration policy for a long time, with the Progress Party always advocating stricter policies.

In other areas, such as retirement schemes, the call for increased pensions in proportion to or in relation to the significant increase in wages might be popular among older people, but does not necessarily represent truly populist sentiment even if the arguments might contain populist elements. Popular (within certain groups of the population) does not equate to populism. The setting aside of the long-established Swedish Pension Group, for short-term political causes in relation to pensions for low-income groups, shows a lack of long-term commitment, pitting various categories against each other, a tactic not seldom exercised in populist policies.

Overall, Norway and Sweden show that although the political situation in Parliament and public discourse has clearly been influenced by far-right populist political parties over the past decades, especially in some fields of policy such as migration, labour law has remained largely unaffected. Only a limited liberalization of the worker protection legislation was carried out when the Progress Party was in government from 2013–2020 in Norway, and the party seems to have moderated its labour market policy.

The less politicized labour regimes, based on strong, long-term relations between the trade unions and employer federations, show less volatility and sensitivity to populist political development. It remains to be seen to what extent these observations will prove valid also for the future.

