Criminalisation as a response to low wages and labour market exploitation in Sweden

Erik Sjödin
Stockholms Universitet, County Stockholm, Stockholm, Sweden

Abstract
It is hard to determine when adverse labour conditions become exploitation. As of July 1, 2018, ‘human exploitation’ is criminalised in Sweden, with penalties up to ten years prison. The crime of ‘human exploitation’ occurs when someone, through unlawful coercion, misleads, exploits another person’s position of dependence, lack of protection, or difficult situation, or exploits another person in forced labour, work under obviously unreasonable conditions or begging. This article describes how disputes concerning low wages are to be handled within the Swedish model for labour market regulation, and contrasts this with the novel crime that adds a criminal law element to this otherwise civil law-oriented model.

Keywords
Exploitation at work, modern slavery, enforcement of labour law, criminality at work, migrants at work, Swedish model of labour market regulation, minimum wage

[... you look at what’s happening last night in Sweden. Sweden, who would believe this. Sweden.]

Introduction
Many Swedes were surprised by President Trump’s words suggesting something had happened in Sweden during the night of February 16 2017. It was an ordinary Friday night when most Swedes...
gathered to watch the try-outs for the Eurovision song contest after having had Taco dinner from a plate from Ikea. However, something had indeed happened on the Swedish labour market.

The use, and even abuse, of workers is, of course, not news, especially not for labour lawyers. Counteracting the imbalance between worker and employer is one of the original motives behind labour law. However, the occurrence of ruthlessness, which the Swedish model for labour market regulation is unable to handle, is news. The legislator has introduced a criminal law element into the Swedish model of labour market regulation. In the summer of 2018, the novel crime of human exploitation (människoexploatering) was introduced into the Penal Code (Brottsbalken SFS 1962:700). It is considered a serious crime by Swedish standards, which can result in up to ten years in prison for the person who is convicted.

The Swedish labour market used to be homogenous with low degrees of wage differentiation. The OECD has recently identified a growing income inequality due to ageing, structural factors and immigration. The introduction of the crime of human exploitation may be perceived as a reaction to increased stratification on the labour market rendering the usual elements of private law insufficient to counteract the unscrupulous abuse of workers in the lower strata of this labour market.

General theories on the exploitation of workers indicate that it affects people who do not have opportunities to avail of, other than accepting the offer of the exploitative job. It is thus ‘voluntary’, since the alternative to exploitation is even worse. In a welfare state like Sweden, it can be assumed that exploitation is a ‘voluntary’ choice for those who, for various reasons, do not receive the protection and assistance that the public and private (e.g. trade unions) welfare institutions otherwise provide. One result of migration in different forms is an increased supply of workers ‘willing’ to accept terms and conditions far lower than what is commonly considered acceptable and found in sectoral collective agreements.

The article is structured in the following way. First, some fundamental elements of Swedish labour law will be introduced. Following this general presentation, I provide examples of when the model operates as it is supposed to, and when it is insufficient, so as to illustrate the need for the new crime. The crime of ‘human exploitation’ will then be described and analysed, and finally,

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2. In the year 2000, Professor Ronnie Eklund wrote (my translation) ‘Low-wage competition is an unknown phenomenon in Swedish working life. The monitoring of foreign entrepreneurs is so effective that social dumping does not occur’. Eklund, R. (2000). Utstationering av arbetstagarer. Svensk Juristidning (3), pp. 260-269. The quote is found on p. 265.
3. OECD Economic Surveys: Sweden. (2019) p. 14 f.
4. Compare the notion of a dual labour market, where migrants are often active and more vulnerable on the secondary and not the primary labour market, see Ollus, N. (2016). From Forced Flexibility to Forced Labour: The Exploitation of Migrant Workers in Finland University of Turku. Helsinki, p. 45 ff.
5. Wolff, J. (2018). Structures of Exploitation In H. Collins, G. Lester, & V. Mantouvalou (Eds.), Philosophical Foundations of Labour Law. Oxford University Press.
6. Cf Rijken, C. (2018). When bad labour conditions become exploitation lessons learnt from the Chowdury Case. In C. Rijken & T. d. Lange (Eds.), Towards a decent labour market for low-waged migrant workers. Amsterdam University Press.
7. According to chapter 5, section 15 a of the Aliens Act (Utlänningslagen SFS 2005:716), a person who is not granted the right to stay as a refugee may be given a temporary permit if he or she has had an employment for a certain period of time and under certain conditions of employment. In April 2008, the Mayor of Södertälje (a small town south of Stockholm), Anders Lago, was praised by members of the US Congress. At that time, Södertälje, a small town with 80,000 inhabitants, had welcomed more refugees from Iraq than the US and Canada combined. In 2015, 162,877 people applied for asylum in Sweden; see https://www.migrationsinfo.se/migration/sverige/asylsokande-i-sverige/. The fourth biggest city in Sweden, Uppsala, has 160,000 inhabitants. According to the official statistics for the year 2019, about 20,000 workers are posted to Sweden each month, https://www.av.se/globalassets/filer/arbetsmiljoarbete-och-inspektioner/utlandskarbetskraft-i-sverige/utstationeringsstatistik/utstationering_manadsstatistik_oktober_2019.pdf.
the article ends with some remarks on the pros and cons of adding a criminal law element into the Swedish labour market.  

The Swedish labour market regulation

To make the presentation and the comments concerning Swedish labour law more accessible, I will make some remarks on what is known as the Swedish model for labour market regulation. In this model the social partners play an important role, and their collective agreements cover nine out of ten workers in Sweden. The content of the collective agreements varies between sectors, but they all contain adaptations and complements to the statutory regulation. The Swedish system de facto presupposes that workers and employers are organised in trade unions and employers’ organisations. There is also a comprehensive statutory regulation of the Swedish labour market applicable in the absence of a collective agreement.

In order to be covered by Swedish labour law, the person who does the work must be considered as an ‘employee’. Swedish labour law does not distinguish between workers and employees. The law does not define who is considered an employee. The boundaries of labour law have been developed by different courts, primarily the Labour Court. In that sense, the Swedish concept of an employee is dynamic and adaptable to a changing working life. The following factors are considered as features indicating that a person performing work should be regarded as a worker: There is an agreement to personally perform work for remuneration; the work is conducted for someone else, and under his or her guidance and control; it is a persisting arrangement where the performer of the work carries out tasks as they are presented to him or her; and the other party to the contract provides those opportunities to work. However, an overall evaluation of all circumstances particular to each case should be made, and other factors may also be considered in this assessment.

The Swedish concept of an employee is mandatory. If, in a certain case, the performer of work is to be considered an employee, this will override any contractual labels that the parties might have given their arrangement.

Laws that contain the mandatory concept of a worker curtail the contractual freedom of the parties. Hence, the worker will be entitled to employment protection, annual leave and much more.

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8. Cf Rijken, C. (2018). When bad labour conditions become exploitation lessons learnt from the Chowdury Case In C. Rijken & T. d. Lange (Eds.), Towards a decent labour market for low-waged migrant workers. Amsterdam University Press. p. 377 ff.

9. There is no fixed definition, but the concept is regularly used, see for example, Rönmar, M. (2010). Laval returns to Sweden: The Final Judgment of the Swedish Labour Court and Swedish Legislative Reforms. Industrial Law Journal, 39(3), pp 280-287 and Woolfson, C. (2010). The Swedish model and the future of labour standards after Laval. Industrial relations journal, 41(4), pp. 333-350.

10. Sigeman, T., & Sjödin, E. (2017). Arbetsrätten. En översikt (Seventh ed.). Wolters Kluwer., p. 29, ff. and Källström, K., & Malmberg, J. (2019). Anställningsförhållandet: Inledning till den individuella arbetsrätten (Fifth ed.). Iustus. p. 25 ff.

11. For more on this, see Herzfeld Olsson, P., & Sjödin, E. (2015). The Fissured Workplace: Some Responses to Contemporary Challenges in Sweden. Comparative Labor Law & Policy Journal, 37(1), pp. 143-162.
Another distinctive feature of the Swedish labour market model is the absence of a minimum wage prescribed in legislation.\textsuperscript{12} It follows then, that even if a person is considered an employee, this does not automatically imply that s/he will be entitled to any particular level of wage.\textsuperscript{13} There is no statutory minimum wage or any system for making collective agreements generally applicable. However, some protection can be found in the general contract law rules on the possibility of adjusting unfair contracts.\textsuperscript{14}

Wage-setting is considered the prime responsibility of the social partners. Through collective agreements the social partners regulate both the minimum wage for a particular sector and the annual wage increases. In this process, the industries that export goods globally play a leading role.\textsuperscript{15} The legitimacy of collective agreements follows from the fact that they bind organised workers and employers. Some 90\% of work performed in Sweden is governed by collective agreement. The collective agreement coverage is primarily maintained by the high level of organisation among employers; about 80\% of employers are members of an employers’ federation. Trade union density is also, by international comparison, still high, at about 70\%. Trade union density varies among sectors and is considerably lower in, for example, the restaurant sector.\textsuperscript{16} This reveals cracks in the model and the unionisation levels are so low in some sectors that it is questionable whether the necessary building blocks for the model actually are in place.\textsuperscript{17}

In Sweden, there has been little discussion about living wage, that is, a minimum wage that is sufficient for workers to secure their basic needs.\textsuperscript{18} The focus of the debate about wages has instead been on whether they are too high. High minimum wages are assumed to prevent those who are not productive enough from entering the labour market.\textsuperscript{19} There has even been a discussion about introducing a statutory minimum wage with the stated goal of lowering wages set by collective agreements.\textsuperscript{20} This was suggested in order to put pressure on the social partners to agree on special arrangements for specific groups, such as migrants.

\begin{thebibliography}{99}
\bibitem{12} In Sweden, there is no distinction between wage, salary and remuneration, cf Adams, Z. (2019). ‘Wage’, ‘Salary’ and ‘Remuneration’: A Genealogical Exploration of Juridical Terms and their Significance for the Employer’s Power to Make Deductions from Wages. \textit{Industrial Law Journal}, 48(1), pp. 34-65.
\bibitem{13} There is an exception for undocumented migrants, as a result of the implementation of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30.6.2009, p. 24–32.
\bibitem{14} See section 36 of the Agreements Act (lagen (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område) and also Woolfson, C., Herzfeld Olsson, P., & Törnvist, C. (2012). Forced Labour and Migrant Berry Pickers in Sweden. \textit{International Journal of Comparative Labour Law and Industrial Relations} 28(2), 147-176.
\bibitem{15} The so-called industrial agreement, a collective agreement concluded by the trade unions and employers’ federation in the export sector, sets the level for the annual increases, and the other sectors usually follow this norm.
\bibitem{16} Information about trade union density and collective agreement coverage may be found at the website of the Swedish Mediation Institute, www.mi.se.
\bibitem{17} See Kjellberg, A. (2019). \textit{Kollektivavtalens täckningsgrad samt organisationsgrader hos arbetsgivarförbund och fackförbund}. Department of Sociology, Lund University.
\bibitem{18} Hurley, J., Vacas-Soriano, C., Marcel, M., & Lanitto, E. (2018). \textit{Concept and practice of a living wage}. Publications Office of the European Union.
\bibitem{19} See for example, Calmfors, L., Danielsson, P., Ek, S., Kolm, A.-S., Pekkarinen, T., & Skedinger, P. (2018). \textit{Hur ska fler komma in på arbetsmarknaden?} Dialogos Förlag. Compare the idea of access justice as applied to the labour market; Bruun, N. (2017). The old and new foundations of labour law, in K. Ahlberg & N. Bruun (Eds.), \textit{The new foundations of labour law} Peter Lang, p. 23 ff.
\bibitem{20} See, for example, https://www.sydsvenskan.se/2017-08-15/alliansen-vill-lagstifta-om-lagre-lon and https://www.svd.se/facken-maste-krava-sankta-ingangsloner, last visited March 16, 2021.
\end{thebibliography}
The Swedish social partners are unified in firm opposition against proposals for a European minimum wage. In the consultation procedure, the Nordic trade unions formulated their own response to the European Commission’s initiative in which they rejected the proposal. The European Trade Union Confederation (ETUC) on its part, agreed to bargain within the social dialogue on a European minimum wage. In October 2020 the European Commission proposed a Directive on adequate minimum wages in the European Union.

Trade unions and employers and their federations have a far reaching constitutionally protected right to take collective action with the purpose of concluding collective agreements. There is no public monitoring of compliance with collective agreements. The Swedish way of enforcing collective agreements and labour law has been labelled the *industrial relations model*. Enforcement of labour law is entrusted to trade unions.

Swedish labour law builds on workers organising and claiming their rights. If they do so, there are strong statutory protections as well as wealthy and robust trade unions to support them. But if no claims are brought, the government will not intervene, at least not in respect of the terms and conditions of employment.

The sanction for not complying with labour law and collective agreements is the payment of damages. This may include reimbursement for economic loss as well as punitive damages that shall prevent violations of law and collective agreements from taking place. According to the attorneys of the trade union movement, trade unions and their members are annually awarded between 200 and 250 million Swedish crowns (SEK) in damages.

According to the Swedish doctrine of legal sources, great importance is attributed to the preparatory work (*travaux préparatoires*), which motivates the adopted legislation.

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21. The trade unions and employers’ federation published a joint article entitled, ‘The Government must stop the EU-proposal on minimum wage’, in which it was stated that they would use all means necessary to protect and preserve the Swedish model; see https://www.dn.se/debatt/regeringen-maste-stoppa-eu-forslaget-om-minimilon/. On the 14 September 2020, Ursula von der Leyen published an article in the same newspaper with the headline that the EU will not force Sweden to introduce minimum wage, see https://www.dn.se/debatt/eu-kommer-inte-att-tvinga-sverige-att-infora-minimiloner/ accessed September 16, 2020.

22. See SWD (2020) 105 final Second phase consultation of Social Partners under 154 TFEU on a possible action addressing the challenges related to fair minimum wages, 03.06.2020.

23. COM(2020) 682 final.

24. Malmberg, J. (2009). Enforcement of Labour law. In Hepple B. & Venenziano B. (Eds.), *The transformation of labour law in Europe: a comparative study of 15 countries 1945-2004*, Hart.

25. Cf, for a discussion on industrial citizenship, Iossa, A. (2019). Worker representation and the Welfare State: The Swedish model of industrial citizen-ship. In L. Carlson, P. Herzfeld. Olsson, & V. Pietrogianni. (Eds.), *Labour law and the welfare state*. Iustus, and Mundlak, G. (2007). Industrial Citizenship, Social Citizenship, Corporate Citizenship: I Just Want my Wages. *Theoretical Inquiries in Law*, 8(2), pp. 719-748.

26. Sigeman, T. (1985). Damages and Bot: Remedies for Breach of Collective Agreements in Nordic Law. In A. Victorin (Ed.), *Scandinavian Studies in Law*, pp. 185-212.

27. See the website for the trade union attorneys, LO-TCO rättskydd, www.fackjuridik.se last accessed February 23, 2021.

28. See for example, Julen Votinius, J. (2020). Sources of Labour Law in Sweden. In T. Gyuulavéri & E. Menegatti (Eds.), *The Sources of Labour Law* pp. 335-349. Kluwer Law International BV, and Rönnum, M. (2019). Fundamental Rights and Swedish Labour Law. In J. R. Bellace & B. t. Haar (Eds.), *Research handbook on labour, business and human rights law*. Edward Elgar Publishing. The value of preparatory work is affected by if they implement EU-law, in such cases the preparatory work is considered as less important.
Two examples from the lower end of the Swedish labour market

Labour law in the Swedish courts

The Labour Court adjudicates disputes between workers and employers. If the disputing parties are organised in trade unions, employer federations, the Labour Court is at the same time both the court of first and final instance. The Labour Court also adjudicates disputes concerning the interpretation of collective agreements and the lawfulness of collective actions at first and final instance.

If the dispute concerns an individual employee who is not organised in a trade union or if the employer is not bound by a collective agreement, the claims shall be filed with the local District Court (tingsrätt). The judgment from the District Court may then be appealed to the Labour Court. The Labour Court will then hear the appeal, and the judgment of the Labour Court cannot be appealed.

The Labour Court is not authorised to rule on criminal charges made by the public prosecutor. Local district courts decide criminal cases. These judgments can be appealed to the Courts of Appeal, and their judgments, to the Swedish Supreme Court. The question of criminal liability due to different forms of abuse on the labour market has recently been ruled on by district courts.

I will present two judgments concerning similar factual circumstances, i.e. workers who have been paid excessively low wages. The first judgment is from the Labour Court and concerns punitive damages for breach of several provisions of a collective agreement. The second judgment concerns two persons charged with having committed the crime of ‘ocker’ (usury or loan-sharking), with respect to three undocumented migrants in the northernmost part of Sweden.

The Latvian construction workers in Linköping

A Latvian construction company (the company) voluntarily signed – i.e. without the occurrence of collective action – a collective agreement with the Swedish Construction Workers’ Union (Byggnads). The company, acting as a subcontractor, carried out construction work in a project in Linköping, a city in the southern part of Sweden, during the spring of 2016. The company posted several workers from Latvia to a construction site in Sweden. None of the posted Latvian workers were members of Byggnads, and the individual workers had no part in this dispute before the Labour Court.

After an investigation, Byggnads filed a lawsuit with the Labour Court and claimed that the company should pay approximately 1.5 million SEK in damages for breaches of a number of provisions of the collective agreement: primarily not paying either the hourly wage, additional

29. See The Labour Disputes Act (lagen (SFS 1974:371) om rättegången i arbetstvister). The Labour Court also takes part in the dialogue with the European Court of Justice through preliminary rulings, see Davies, P. (2001). Part I Preliminary Remarks In S. Sciarra (Ed.), labour law in the courts: national judges and the European Court of Justice. Hart.
30. According to Swedish procedural law, leave to appeal is required for the case to be heard by the Labour Court; see Chapter 49 of the Swedish code of Judicial Procedure (Rättegångsbalken SFS 1942:740).
31. According to the Swedish law on the posting of workers, the content of the collective agreement differs depending on whether it is concluded with or without the threat of collective action; see sections 15 and 16 Posting of Workers Act (lagen (1999:678) om utstationering av arbetstagare). See also C-341/05 Laval un partneri EU: C:2007:809, p. 81.
32. The situation is, to some extent, similar to the famous Laval case, C-341/05 Laval un partneri EU: C:2007:809. The difference is that the construction company in this case concluded the collective agreement voluntary.
allowance for inconvenient working hours or overtime compensation, and not respecting clauses regarding working time.

The Labour Court heard the case and delivered its judgment, AD 2018 no 78, in December 2018.\textsuperscript{33} The Court concluded that the company had not applied the collective agreement’s rules on piecework as the primary form of remuneration and that the company had not initiated local negotiations in the manner prescribed by the agreement. Specifically, it was shown that the company had not followed the regulation of working time in the collective agreement.

The most substantial part of Byggnads’ claim for damages was attributable to whether the company had paid wages in accordance with the collective agreement. The wage set by the collective agreement, for situations in which an agreement on piecework had not been concluded, was (according to the trade union) 179 SEK per hour.\textsuperscript{34} A document provided by the company indicated that it had paid hourly wages between 51-145 SEK.\textsuperscript{35}

The Labour Court found that the company had paid lower wages than was stipulated in the collective agreement and that the company had violated the collective agreement in various ways, as stated above. The next issue was to determine if the employer was to be sanctioned. According to the Court, employers in the Swedish labour market should, in practice, apply collective agreements in the same way, regardless of whether or not the workers are organised in the trade union that has concluded the collective agreement. Posted workers have the right to terms provided for by the collective agreement as relates to the ‘hard core’ of the Posting of Workers Directive (i.e. section 21 of the Posting of Workers Act), regardless of whether or not the worker is bound by the collective agreement during the period of posting. The Labour Court established that the company, by not applying the collective agreement to the posted workers, had violated the agreement and thus was liable to pay damages.

When determining the size of the damages, the Labour Court stated that the function of punitive damages (allmänt skadestånd) is to effectively deter breaches of the law and collective agreements. Punitive damages are calculated based on the profit made by the employer from not applying the collective agreement. Even in situations where the employer has made a profit from not applying the agreement, an overall assessment must be made considering all circumstances. In this case it was, according to the Labour Court, clear that Byggnads had an interest in the company fully complying with the agreement.

The Labour Court then calculated how much profit the company had made by paying lower wages and confirmed it to be 680,000 SEK. With this as a starting point, the general compensation for the violation that related to wage levels was set at 750,000 SEK.

For the other violations of the collective agreement, the Labour Court set the punitive damages at a total of 100,000 SEK. The company was ordered to pay Byggnads 850,000 SEK (approximately 80,000 Euro) in damages. Since the Latvian posted workers were not parties to the dispute, they were not personally awarded any damages.

\textsuperscript{33} The judgment can be accessed at the webpage of the Labour Court: http://www.arbetsdomstolen.se/pages/page.asp?lngID=4&lngNewsID=1712&lngLangID=1

\textsuperscript{34} 100 SEK was about 9 Euro in September 2020.

\textsuperscript{35} It may be noted that the wages are higher than the statutory minimum wage in Latvia, which was 380 Euro a month in 2017.
An archetypical example of how enforcement should work

The judgment from the Labour Court is as an archetypal example of how the Swedish model is intended to function. It is the so-called industrial relations model of enforcement of labour law at work. Furthermore, it is clear that the Labour Court regards the monitoring of compliance with collective agreements as a task for the trade unions, regardless of whether or not they have members at the workplace. If it is discovered that an employer does not comply with the collective agreement, then the trade unions shall initiate negotiations and ultimately bring an action before the Court claiming punitive damages. At systemic level, wages are upheld even when the individual worker does not receive the compensation to which s/he may be entitled.

As a result of the implementation of the Enforcement Directive, the posted workers can invoke collective agreements, regardless of whether or not they are members of the trade union that has concluded the collective agreement. That implementation entered into force after the factual circumstances in the case had occurred. To date, we have not seen such disputes arise before Swedish courts.

When the individual workers do not take an active part in the dispute, the damages are awarded to the trade union instead of the individual employees. If there are employees who are members that have been paid too little, the damages are usually awarded to them. The trade unions, in such cases, receive punitive damages set by the Court at a more symbolic level.

The Nicaraguans working at a restaurant in Arjeplog, above the Arctic Circle

In November 2018, a District Court in the northmost part of Sweden acquitted two persons of criminal charges of ‘ocker’, which, according to the Penal Code, occurs when a person, who, in connection with a contract or other legal transaction, takes advantage of someone’s distress, innocence, thoughtlessness or dependent relationship with him/her in order to obtain a benefit which is clearly disproportionate to the consideration afforded, or for which no consideration will be provided. At the same time, the Court also dismissed claims made by the alleged victims (workers) for damages of about 1 million SEK, attributable to salaries of three persons. Clearly,

36. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’) Text with EEA relevance, OJ L 159, 28.5.2014, p. 11–31.
37. See Section 21 of the Posting of Workers Act and Government Bill 2016/17:107, p. 128 ff.
38. See for instance, Judgement from the Labour Court AD 2019 no 16, in which a company was obligated to pay approximately 200,000 SEK to five workers and 75,000 SEK to the trade union for non-compliance with the collective agreement.
39. Judgment of the District Court of Luleå delivered on the 30 November 2018 no B 2638-17.
40. According to the dictionary, ‘ocker’ means ‘the practice of loaning money at high interest’ and could thus be translated to usury. However, the crime is ascribed a certain other meaning in the Swedish Penal Code, which is different from the definition in the dictionary. According to Chapter 9, Section 5 of the Penal Code, the crime ‘ocker’ is defined as: A person, who, in connection with a contract or other legal transaction, takes advantage of someone’s distress, innocence, thoughtlessness or dependent relationship to him/her in order to obtain a benefit which is clearly disproportionate to the consideration afforded or for which no consideration will be provided, shall be sentenced for ‘ocker’ to a fine or imprisonment for, at most, two years.
41. The case also concerned threats and fraud, which, albeit related to the workplace, will not be dealt with here.
this judgement shines light on the ‘dark side’ of the Swedish labour market, where compliance with labour law is taken lightly and taxes are not paid.

The factual circumstances of the case concerned three persons, who were undocumented migrants and did not have the right to work in Sweden. They were originally from Nicaragua and worked at a restaurant, a pizzeria, in a small town called Arjeplog situated above the Arctic Circle – a town nowadays is a mecca for the winter testing of cars. During spring and summer, they had concluded an employment contract with the restaurant. The restaurant had concluded a collective agreement with the Hotel and Restaurant Workers Union.

Two persons were prosecuted: the owner and a manager. The prosecutor argued that the crime committed was that the owner and the manager, on behalf of their companies, had concluded agreements, which meant that the three employees undertook to work more than regular working hours for a meagre remuneration. The owner and the manager took advantage of the respective victims’ precarious situation to make them conclude the contracts of employment.

The three plaintiffs (workers) also claimed damages from both the owner, the manager and the restaurant. In total, they claimed 260,000 SEK each. It is somewhat unclear what the legal argument was for the claim. Regarding the claim for 20,000 SEK, it is clear that it related to a violation of the integrity (kränkningersättning) of the worker, according to the Tort Liability Act. The remaining amount concerned wages they had not received.

The three plaintiffs’ stories about the working conditions at the restaurant in Arjeplog testify to a work situation far from the ordinary, at least from a Swedish perspective. The District Court stated that there was reason to question the credibility of their stories, since the employees had an incentive to exaggerate their vulnerability. This was because they risked being deported from Sweden and being punished, since they had worked without permission. Furthermore, they had a lot to gain if their claims for damages were approved.

The District Court dismissed the prosecution’s case because the burden of proof was not met regarding the amount of work performed by the three workers. Furthermore, there was a lack of evidence as to the distress of the workers and as to whether any distress was related to the conclusion of the employment contract. The District Court argued that the prosecutor had failed to prove that the companies or the owner had received any profit. The prerequisites for criminal liability for ‘ocker’ were thus not met, and the criminal charges were dismissed.

The District Court’s explanation in relation to the three employees’ claims for damages was sparse, in comparison with how disputes of about 1 million SEK are usually dealt with by such courts. The judgment stated that the victims’ (workers) grounds for damages were that they had been subjected to criminal acts, and that, as a result of the criminal acts, they had not received the salary they were entitled to and that they were subjected to a severe violation of their personal integrity. As a result of the acquittal of the accused, which implied that the plaintiffs had not been the victims of a crime, there was no reason to award the workers any damages.

An archetypical example of how enforcement should not operate

Evidently, the three workers drew the shortest straw in this judgment. The accused were acquitted, and the workers’ claims for damages were dismissed. Procedural law (res judicata) prevents them

42. See Chapter 2, Section 2 of the Tort Liability Act (Skadeståndslagen) 1972:207.
from putting forward claims for damages within a civil procedure. The situation may be perceived as being a result of the fact that the trade union with the collective agreement had not taken the steps necessary to enforce the collective agreement.

Swedish labour law is private law, implying that criminal procedures concerning terms and conditions of employment are rare. I will not comment on the outcome regarding the issue of criminal liability. However, I will make some remarks on the dismissed claims for damages.

How the workers had calculated the amounts claimed was not analysed by the District Court in the judgment. The claim was broken down in two parts: The first concerned the violation of the integrity and was based on the Tort Liability Act. The second concerned wages not received, and was directed towards both the owner and the restaurant. Furthermore, it is unclear on which basis the restaurant should be obliged to pay damages. As far as the damages were concerned, it was stated that it was only the criminal act that was the legal basis for seeking damages. The basis on which the restaurant was liable to pay damages in connection with the crime remains unclear to me, since a legal (as opposed to a natural) person, according to Swedish law, cannot be convicted of a crime.

It can, however, be questioned whether the claims instead were to be understood as based on the contract of employment. The employer did not fulfil what it was obliged to do, according to the employment contract. The terms of the employment contract were not clear. It was also unclear how many hours the three persons had actually worked.

It is apparent from the judgment that the District Court assumed that the employees ‘may be considered to have worked 60 hours a week’, and for that they received a sum ‘equivalent to 16 000 SEK under the table per month and, for some time a sum equivalent to 8 000 SEK under the table’.44

If the employer has concluded a collective agreement, the employment contract gets its content from the collective agreement. Non-organised workers, however, are not entitled to make claims based on collective agreements in disputes with employers.45 The enforcement of the collective agreement is entrusted to the trade unions, and there is an assumption that they monitor the compliance of the collective agreements. If the employer does not comply with the collective agreement, the Labour Court can award the trade union and the individual workers damages calculated on the profit made by the employer from not properly applying the collective agreement.46

Undocumented migrants – workers who lack the right to work and reside in Sweden – however, are covered by specific regulation, stemming from the implementation of the so-called Sanctions Directive.47 The law implementing this Directive states that employees who have performed work without a permit are entitled to wages and other remuneration from their employer (section 4 of the Act (2013: 644) on the right to pay and other compensation for work performed by an

43. See the judgment from the Swedish Supreme Court NJA 1973 p. 239.
44. The Swedish phrasing to pay ‘off the books’, ‘under the table’ or ‘cash in hand’ refers to envelope wages labelled ‘betala svart’ which is literally translates as ‘pay black’.
45. AD 2014 no 31.
46. That happened in the case of the Latvians in Linköping (see section 3.2).
47. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30.6.2009, p. 24–32. See also Selberg, N. (2014) The Laws of Illegal Work and Dilemmas in Interest Representation on Segmented Labor Markets: A Propos Irregular Migrants in Sweden. Comparative Labor Law & Policy Journal, 35(2), pp. 247-288.
undocumented migrant who is not entitled to stay in Sweden). The Act contains provisions on wage disputes. If a dispute arises regarding the level of the wage, and if nothing else is proven in court, the wage shall be held to correspond to the minimum level of the collective agreement (section 5). Furthermore, according to the preparatory works, undocumented migrants who work have the right to invoke collective agreements to give content to their employment contract, regardless of whether or not they are organised in the union that has concluded the agreement.\footnote{Government Bill 2012/13:125 Genomförande av direktivet om sanktioner mot arbetsgivare (Implementation of the Sanctions Directive) p. 81.}

It is apparent that the actors involved lacked knowledge about the labour law provisions applicable to the factual circumstances of the above case. It is also evident that criminal proceedings are not suitable for handling claims for wages that are set in contracts. According to the principle of \textit{jurit novit curia}, the District Court could have applied the specific law concerning undocumented migrants to the claims for wages based on private law. Such claims do not depend on a person being convicted of a crime. The ones who were denied justice, in this case, were the workers: it appears that they were entitled to at least some redress, in the form of economic compensation.

\section*{The crime of human exploitation}

\textit{Introduction}

On July 1, 2018, the new crime of \textit{human exploitation} was introduced into the Swedish Penal Code.\footnote{As of September 2020, only three persons have been charged with the crime of human exploitation, see section 4.5.} It is to be found in Chapter 4, which covers crimes against freedom and peace. The wording in the Penal Code (my translation):

\begin{quote}
\S 1 b A person, who, through unlawful coercion or misleading another, takes advantage of a person’s dependence, vulnerability or difficult situation, and exploits that person through forced labour, work done under obviously unreasonable conditions or begging, is to be sentenced to prison for a maximum of four years for the crime of \textit{human exploitation}.
\end{quote}

According to the provision, three conditions must be met for criminal liability. The first condition is that a particular type of means must be used. The means may consist of unlawful coercion, misleading or taking advantage of someone’s dependence, vulnerability or difficult situation. The latter prerequisites can stem from the fact that someone is party to an employment contract.\footnote{Government Bill 2017/18:123 Det straffrättsliga skyddet mot människohandel och människoexploatering (The criminal law protection against trafficking and human exploitation) p. 59.} The second condition is the exploitation of a person. The third condition is that the exploitation is through forced labour, work done under obviously unreasonable conditions or begging. Forced labour was previously criminalised, and my focus here is on voluntary work. The scope of the novel crime covers large parts of the regular, as well as the irregular, labour market, and thus considerably more than forced labour.\footnote{Woolfson, C., Herzfeld Olsson, P., \& Törnqvist, C. (2012). Forced Labour and Migrant Berry Pickers in Sweden. \textit{International Journal of Comparative Labour Law and Industrial Relations} 28(2), pp. 147-176.} In the following, I will focus on how it is to be determined whether work is carried out under \textit{obviously unreasonable conditions}.

\begin{footnotesize}
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\item \footnote{Government Bill 2012/13:125 Genomförande av direktivet om sanktioner mot arbetsgivare (Implementation of the Sanctions Directive) p. 81.}
\item \footnote{As of September 2020, only three persons have been charged with the crime of human exploitation, see section 4.5.}
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\end{itemize}
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What may be considered (un-)acceptable on the Swedish labour market?

The novel element – in relation to the Swedish model for labour market regulation – in the criminalisation of human exploitation is that ‘voluntary’ work, under certain conditions, is now regarded a serious crime.

What terms and conditions should apply on the labour market and how these should be set are complex issues. There are several ways to do this; moreover, the role played by the legislator and the social partners varies between countries.52 Previously, existing minimum protection in Sweden, in areas where there are no statutory rules, implies that unreasonable agreements can be adjusted (section 36 of the Agreement Act). Certain other conditions, such as working time, is governed by mandatory laws, and violations are in some cases punishable by criminal sanction.53

In the following, I explain how it is to be determined what work done under obviously unreasonable conditions is. A very low wage, long working days, unacceptable risks in respect of health and safety, and unreasonable deductions are mentioned in the preparatory works as factors that should be considered and lead to the conclusion that the work is carried out under obviously unreasonable conditions.54

In the preparatory works, it is stated that the conditions shall be such that on the basis of ‘an overall assessment of the circumstances of the individual case, they differ strikingly and negatively from what can be considered as acceptable in the labour market’.55 Thus, an overall assessment must be made in order to conclude that the conditions under which the work was carried out are obviously unreasonable.

It follows then, that the object of comparison is what is acceptable on the labour market. In order to establish that something is obviously unreasonable, it is necessary to know with some certainty what is acceptable. Initially, I argued that the introduction of the crime of ‘human exploitation’ is a criminalisation that does not take place in a void that lacks any pre-existing standards. Labour law defines what is acceptable on the labour market. Exploitation is relative to the extent that it must be compared to norms and standards otherwise applicable, and those are not provided by criminal law. In the following section, I discuss what can be considered acceptable in the Swedish labour market and what, by way of conclusion, can be regarded as obviously unreasonable and thus exploitive. I focus on wage and working time.

What is obviously unreasonable and thus exploitive wages?

Obviously unreasonable working conditions are thus those which, following an overall assessment, deviate significantly from what is considered acceptable in the labour market. In the preparatory works, the prime example is work ‘for a particularly low salary or unpaid’.56 What may be regarded as such a salary is not specified at all. Nor is it stated in the Bill how a court should decide what is a particularly low wage, or what should be the object of comparison when determining this.

52. See, for instance, Hall, P. A., & Soskice, D. (2001). Varieties of capitalism: the institutional foundations of comparative advantage. Oxford University Press.
53. Parts of the Swedish working time act can be replaced by collective agreement. According to section 3 of the Working Time Act, terms that are less favourable for workers than the Working Time Directive are null and void.
54. Government Bill 2017/18:123, p. 59 ff.
55. Government Bill 2017/18:123, p. 44 and p. 60.
56. Government Bill 2017/18:123, p. 60.
As mentioned above (section 2), one of the most distinctive features of the Swedish model is that wages are not set in legislation. Wages are, in that sense, an issue, on which, in the absence of a collective agreement, there is almost total freedom of contract. The labour market determines the price of work, and there is no government agency that sets a minimum wage. Instead, it is the social partners who decide on this, and they also have a responsibility for wage formation, i.e. minimum wage and annual increases, etc. It is through collective agreements that the levels of pay are determined. In workplaces covered by collective agreements, the individual employment contract gets its content from the collective agreement in force at any given time. For workers who are members of the contracting trade union, this follows from sections 26 and 27 of the Co-determination Act. If the employer is party to a collective agreement, this agreement also regulates the working conditions of non-organised workers (see above, regarding the Latvian construction workers section 3.2). Even for employers not party to a collective agreement, these serves as a starting point for defining the terms and conditions of work, when assessing whether an agreement is unreasonable and therefore should be adjusted.

There are several reasons why collective agreements should be attributed importance within criminal procedures when deciding on criminal liability. Coherence is the most important reason. It is clear that even if freedom of contract applies to the terms of employment, the collective agreements ought to be the starting point when assessing what is an acceptable wage. That the wage is in accordance with the levels set in the collective agreement is a prerequisite for people migrating to Sweden from outside the EU who apply for a work permit. Also, for workers who are posted to Sweden, the assumption is that they shall be entitled to the minimum wage set by collective agreement. The crime of ‘human exploitation’ covers voluntary work, and it appears unnecessary to have courts invent some other starting point for assessing what is to be defined as acceptable wages. Another reason is that it will contribute to increased predictability, since it thereby becomes clearer from where the low wage is derived.

Many, but not all, collective agreements contain a minimum wage that is an acceptable wage level for the Swedish labour market. In the preparatory works to the legislation on the criminalisation of human exploitation, it is stated that problems with exploitation have been recognised in the construction, cleaning and restaurant sectors as well as in berry picking and agriculture. Collective agreements for these sectors contain minimum wage levels.

In order to be held responsible for the crime of ‘human exploitation’, it is not sufficient for the work to be carried out under unreasonable conditions – the conditions must be obviously unreasonable. The preparatory works define such conditions as being a ‘particularly low salary’. As mentioned initially, exploitation is understood to occur in a number of sectors, and in the respective collective agreements for those sectors, minimum wage levels are prescribed. Even if courts shall make an overall assessment, it is difficult not to ask how significant the deviation from the collective agreements’ norm should be in order for it to be regarded as obviously unreasonable.

57. Se for example, Glavå, M., & Hansson, M. (2020). Arbetsrätt (4 ed.). Studentlitteratur. p. 532. ff.
58. Lagen (SFS 1976:580) om medbestämmande i arbetslivet.
59. AD 1986 no 78 about unreasonable terms and conditions of employment.
60. See Chapter 6, section 2 of the Aliens Act (utlänningslagen) (2005:716).
61. See, for example, Sjödin, E., & Wadensjö, E. (2020). 25 år med utstationering av arbetstagare till och från Sverige – Reglering, omfattning och arbetsmarknadseffekter. Svenska institutet för europapolitiska studier (Sieps).
62. Government Bill 2017/18:123, p. 33.
For example, the minimum wage for work in a restaurant for people without professional skills is, according to the collective agreement, 134 SEK per hour. As the case of the Nicaraguans in Arjeplog shows, it might be unclear both how many hours the employee (the victim) has actually worked and how much s/he has been paid. Finally, however, some form of estimation must be made against which remuneration work has been carried out. Even what the exploited worker has received in compensation will thus be a figure. Hence, it is possible to establish a ratio between what the employee (the victim) has received and the wage set in the collective agreement, and thus what is acceptable. Not getting half of that salary is unreasonable, but is it obviously unreasonable? It is something likely to depend on the other circumstances.

What are obviously unreasonable working hours?

The second example in the preparatory works of obviously unreasonable terms is ‘unreasonably long working days’. However, there are no explanations as to what this may entail, in terms of hours per day or week. Nor do the preparatory works suggest what the object of comparison should be when determining what is acceptable on the Swedish labour market.

How many hours employees are allowed to work, and what is to be regarded as working time, are key issues of labour law regulated in the Working Time Act (1982: 673), which implements the EU Working Time Directive. As a result of the implementation of the Directive, there are now mandatory provisions regarding working time in Sweden. The regulation is of a highly technical character and stipulates that no more than a certain number of hours may be worked on average during certain periods of time. The law also contains certain absolute limits for how many hours someone is allowed to work.

The Working Time Act contains criminal sanctions and is partly monitored by the Swedish Work Environment Authority. Thus, violating certain legal rules on working time is a criminal offence. Furthermore, the Work Environment Authority may order an employer to pay penalties, calculated on the number of hours worked in violation of the legislation. When there is a collective agreement at the workplace, the criminal sanctions and penalties are replaced by the punitive damages that follow in the event of a breach of a collective agreement in accordance with section 54-55 of the Co-determination Act.

Section 5 of the Working Time Act states that ordinary working hours may not exceed 40 hours per week. Furthermore, on-call time, i.e. periods when employees are available at the workplace to perform work, may be up to 48 hours per four weeks, or 50 hours per calendar month (Section 6 of the Working Time Act). In addition to the regular working hours and on-call time, overtime is allowed. General overtime, in instances of a particular need, is allowed, up to a maximum of 48 hours per four weeks, or alternatively 50 hours per calendar month (Section 8 of the Working Hours Act). In addition to general overtime, an additional 150 hours per calendar year is allowed in special circumstances (Section 8 a of the Working Hours Act).

63. This is the wages as of April 2019. See https://www.hrf.net/lon-och-villkor/din-lon/ accessed on 3 September 2020.
64. Government Bill 2017/18:123, p. 60.
65. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, pp. 9–19.
66. Sections 20 and 23 of the Working Time Act (arbetstidslagen 1982:673).
67. Section 26 of the Working Time Act.
In addition to the above-mentioned rules, the Act contains a number of rules about the maximum amount of working time. Section 10 b of the Working Time Act states that the total working time during each period of seven days may not amount to more than 48 hours on average, during a calculation period of four months. Furthermore, all employees shall have the right to at least 11 hours of rest per 24 hours – i.e. daily rest (Section 13 of the Working Time Act). In addition, all employees have the right to weekly rest, which must consist of at least 36 hours of rest during each period of seven days (Section 14 of the Working Time Act). There are special rules for those working during the night.

The Working Time Act stipulates that workers cannot work too much for longer periods of time, but accepts that for limited periods of time, there may be a need to work more than the regular working hours. The answer to the question of how much a person is allowed to work can be found in the Act.

The Working Time Act should serve as a starting point for determining the standard for what is acceptable in the labour market. Even the above brief summary indicates that sometimes the determination of how much a person is allowed to work without violating the Working Time Act is complex. In an individual case, this assessment must be based on an examination of how much work has been done during a certain period of time. The rules on the total amount of working hours, as well as on daily and weekly rest, are easier to apply. These rules are relatively clear, and even if they specify a time period of four months, they can easily be used as a starting point for deciding what is to be considered acceptable. The reference period becomes the decisive factor in deciding whether a particular amount of work results in a breach of the Working Time Act.

In an individual case concerning criminal liability for ‘human exploitation’, it may be unclear how much a particular person has actually worked. This amount might be estimated as a number of hours over a number of days, weeks or months, compared to the provisions of the Working Time Act. Finally, it must be determined how large the deviation has been, in terms of what is unreasonable or obviously unreasonable. It is clear, in my opinion, that the period of time that someone has worked excessively must have lasted for more than a few days.

Also, with regard to working hours, I believe that there are reasons of coherence and predictability for using the rules of the Working Time Act as a starting point and object of comparison when deciding whether a certain person obviously worked an ‘unreasonably long working day’.

**The first judgments on human exploitation**

The labour market is not unregulated. In fact, there is extensive regulation of it: labour law. (see section 2). The crime of human exploitation is therefore introduced to an area where there are rules for what is considered as acceptable. Labour law regulates the labour market and the exchange of work for remuneration and sets the standard for what may be considered as acceptable. At least from my perspective, it is problematic that the Swedish legislator did not reference labour law when introducing the new crime.

The delict of human exploitation represents a new deterrent against abusive practices in the workplace. There are, of course, several differences between criminal law and private law, not least, concerning the standards of proof.

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68. See also article 6 of the Working Time Directive.
69. Cf C-55/18 CCOO EU: C:2019:402. In relation to that case, it should be noted that according to the Swedish Working Time Act there is no obligation to monitor regular working hours.
I have argued that the rules that regulate wages and working time should serve as a starting point when determining what is acceptable on the Swedish labour market. The same argument can be made *mutandis mutandis* concerning what may be considered as unacceptable health and safety risks and unreasonable wage deductions.

There are two judgments concerning human exploitation, from two different Courts of Appeal. Both concern workers in the restaurant sector. In one case, concerning an exchange student from Bangladesh and her husband, a person was convicted by the District Court and sentenced to eight months imprisonment for having the two people employed under obviously unreasonable conditions. From the judgment, it is clear that the victims received help both from social services and the police. The sentence was overturned by the Court of Appeal and the criminal liability charges made against the owner were dropped. The Court of Appeal considered that they had worked under obviously unreasonable conditions but that there was a lack of evidence regarding the workers having been misled to exploitation. The workers were awarded damages for wages they had not received. The second judgment concerned a woman from Mongolia who was invited by her boyfriend to Sweden. The prosecutor argued that she had worked for several months without pay. The Court decided that the prosecution had not met the relevant standard of proof regarding the work that had been performed under obviously unreasonable conditions. The Court concluded that she had received some compensation and because of that fact, the work was not unpaid. According to the Court, she had not carried out work under obviously unreasonable conditions.

From the two judgments it is clear that since the bar is set at ‘work under obviously unreasonable conditions’, criminal liability applies only to the most severe cases of abuse on the labour market. There are some remaining ambiguities as to what acts are actually criminalised. It remains to be seen if the Swedish Supreme Court, in the form of precedent, will clarify what terms and conditions are to be considered as ‘obviously unreasonable’ and what norms are to function as the point of reference when determining this.

**Conclusion**

Clearly the delict of ‘human exploitation’ is not founded on the Marxist idea of exploitation since – if one subscribes to it – that would cover all paid labour. The exploitation described by Marx was structural. Instead, it is another form of vulnerability that the criminalisation is supposed to counteract; namely, where the utilisation of the vulnerable, can, rather, be perceived as opportunistic. Jennifer Collins has stated that exploitation in work relations can be described as having three components: First, a worker needs to be vulnerable in relation to an employer. This is a vulnerability that may be created by law and an employer may take advantage of it, leaving the worker at risk if s/he were to complain. Second, predatory conduct or predatory working practices,
which implies that the employer uses a worker in a vulnerable position in different ways. Third, there is a gain or profit for the exploiter.\textsuperscript{74}

The preparatory works to the legislation on the crime of human exploitation state that the exploitation of a vulnerable person is unacceptable.\textsuperscript{75} The legislator’s primary motive behind the novel criminalisation is to safeguard fundamental respect for human dignity. Victims of exploitation are, due to their vulnerability, in a situation where they are not able to realise their human dignity.\textsuperscript{76}

The Swedish delict bears a clear resemblance to some theoretical views on exploitation. For criminal liability, it is not necessary that there is profit; however, mean that pecuniary claims based on breaches of employment contract and labour law are extinguished. It is possible, but not – as is shown from the case of the Nicaraguans – entirely appropriate to handle claims for damages based on labour law, together with criminal proceedings against the ‘employer’.

The crime of human exploitation and labour law overlap at different levels. The fact that someone is convicted of the crime of human exploitation does not, however, mean that pecuniary claims based on breaches of employment contract and labour law are extinguished. It is possible, but not – as is shown from the case of the Nicaraguans – entirely appropriate to handle claims for damages based on labour law, together with criminal proceedings against the ‘employer’.

To date in Sweden, the monitoring of terms and conditions of employment has been the sole responsibility of trade unions. As was shown in the case involving the Latvians in Linköping, that is still the case. The judgment concerning the Nicaraguans at the restaurant in Arjeplog is, however, hard to describe as anything other than a failure of the Swedish model for labour regulation.

The new crime of human exploitation makes terms and conditions of employment a matter for the police investigation. The conclusion that a particular standard of working is obviously unreasonable presupposes knowledge about what is acceptable on the labour market. Since wages are not set by law but rather by collective agreements, these agreements will now also play a role in criminal procedures, which has not been the case before.

The difference between labour law and the crime of human exploitation is that the latter focuses on the perpetrator and not the subject of the exploitation, i.e. the person who has performed the work. His or her situation is in many cases not bettered by the fact that someone is sentenced to imprisonment.

It remains to be seen if the Swedish police and prosecutors will focus more attention on terms and conditions of employment in Sweden. The fact that the crime may result in up to ten years’ imprisonment is a signal that the criminal justice system must prioritise it. Hopefully, in future, workers will not draw the shortest straw because the labour law that simultaneously protects them is disregarded. In any case, the new criminalisation adds a new aspect of criminal law to the Swedish model of labour market regulation.

The future will tell what consequences, if any, the introduction of criminal law elements to labour regulation will have on the industrial relations model for the enforcement of labour law and what the reactions will be on part of employers, trade unions and the legislator.

\textsuperscript{74} Collins, J. (2020). Exploitation at Work: Beyond a ‘Criminalization’ or ‘Regulatory Alternatives’ Dichotomy In A. Bogg, J. Collins, M. Freedland & J. Herring (Eds.), Criminality at Work. Oxford University Press.

\textsuperscript{75} Mantouvalou, V. (2015). The Right to Non-Exploitive Work In V. Mantouvalou (Ed.), The right to work: legal and philosophical perspectives. Hart. p. 49. See also Rodgers, L. (2016). Labour law, vulnerability and the regulation of precarious work. Edvard Elgar.

\textsuperscript{76} Government Bill 2017/18:123, p. 12, 30 and 45. See also Gilabert, P. (2018). Human Dignity and Human Rights. Oxford University Press, where he describes the ‘dignitarian approach’ in relation to labour law, p. 229 ff.
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ORCID iD

Erik Sjödin https://orcid.org/0000-0002-7902-0105