Counterbalancing the Legislative Precariousness of Domestic Carework

Reflections on Swiss ratification of ILO-Convention No. 189 on Domestic Workers

Institutional Change and Experimentation – Shaping the Future of Work and Employment
CRIMT Conference May 2015
Swiss ratification of ILO-Convention No. 189 on Domestic Workers

• Ratification of ILO-Convention No. 189 on Domestic Workers; entering into force in late 2015
• In line with Switzerland’s policy on ratification of ILO instruments?
  ⇒ no changes needed to the current regulatory framework?
  ⇒ notably elaborated system regulating domestic work, but...
Extracts: ILO-Convention No. 189

Article 10
1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.
2. Weekly rest shall be at least 24 consecutive hours.
3. [...]

Article 11
Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.
Extracts: ILO-Convention No. 189

Article 13
1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.

2. […]

Article 14
1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.
Employment Law and Social Security Regulations

In Switzerland...

• ... civil employment law code and social security regulations are applicable to domestic workers, *but*...

• ... domestic workers are excluded from public, state-enforced labour regulation
  \[ \Rightarrow \text{no mandatory maximum hours of work; no protective measures for pregnant employees; and no labour inspection framework} \]

• ... subsidiary protection on cantonal level has been enacted, *but*...

• ... minimum wages have been introduced, *but*...

CRIMT Conference - May 2015
Regulatory framework for intermediaries

Article 15 of Convention No. 189 requires the protection of domestic workers, recruited or placed by private employment agencies, against abusive practices, ensuring several conditions. Switzerland...

• strongly regulates their activities, but....
  ⇒ possibility to deduct fees from salaries for different services?
  ⇒ preventing abusive practices of foreign service providers, but...
  encouraging precarious triangular employment relationships
  ⇒ actual implementation of the framework?
Migratory framework

Articles 7 and 8 of Convention No. 189 state specific protective measures for migrant domestic workers. Switzerland’s migratory framework foresees...

• Free movement of persons for EU/EFTA- citizens, *but*...

• special regime for domestic workers of diplomats and members of international organizations, *but*...
Conclusion: Consequences of Swiss ratification?

• Significant, minimal protection, *but...*

  ⇒ underinclusive in fundamental aspects
  ⇒ regulatory encouragement of consecutive short time contracts
  ⇒ effects and implementation of special regulatory solutions?

• ratification may not be in line with Switzerland’s policy on ratification of ILO instruments, *but...*