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**Hybridization of employment statuses in domestic and care work:  
comparison of European Union and Latin American strategies**

*Abstract*

In 2011 ILO adopted Convention 189 with a view to the adoption of a comprehensive standard for decent work for domestic workers. In this paper the authors compare how two different world regions, Latin America and European Union, within diverse socio-economic contexts, equality standards, labour and care cultures and policies, tackle the issue of regulation of domestic work. The authors analyse recent policy developments and their evaluations in two regions along the lines of Definition of services, Service users, Organisational forms, Employment statuses, Working conditions, Professionalization and Public costs. While many EU states have over the past decade developed specific policies to actively promote the development of the formal market of what is euphemistically called 'personal and household services' through the introduction of cash-for-care schemes, vouchers or different socio-fiscal measures in order to diminish informal economy, create new employments and support work and family balance, Latin America took a different route. Many Latin American countries amended their legislations including new incentives (such as tax exceptions, occupational hazards insurances) as well as enforcement mechanisms (such as ex-officio enrolment, and labour inspection) in order to formalize informal arrangements. In the conclusion the paper discusses pros and cons of regional strategies from the perspective of quality of employments for domestic and care workers.

Key words: domestic workers, care workers, ILO Convention no. 189, policy analysis, Latin America, European Union

## Introduction

Domestic work represents a significant share of global wage employment. ILO 2013 report estimates on the number of domestic workers across the world, totalling at least 52.6 million men and women across the world. This represents an increase of more than 19 million since the mid-1990s. Most strikingly, domestic work accounts for 7.5% of women's wage employment world-wide, and a far greater share in some regions. Although about 8.9 million men are employed by private households – typically as gardeners, chauffeurs or security guards – domestic work remains a heavily female-dominated sector: women account for 83% of all domestic workers. Given the highly feminized nature of the sector, providing domestic workers with stronger rights and recognizing them as workers would help to combat gender-based discrimination, and also discrimination on the grounds of race, ethnicity or caste that often manifests itself in the sector.

Striking differences in the number of domestic workers exist across different world regions with the smallest share in East Europe and CIS (595 000; 0.4% of paid employment and 0.5% of female employment) and in so called developed countries (3 555 000; 0.9% of paid employment, and 1.3 of female employment). On the other hand, the largest share has been reported in Asia and the Pacific (21 467 000; 3.5% of paid employment and 7.8% of female employment) followed by Latin America and Caribbean (19 593 000; 11.9% and 26.6% respectively).<sup>1</sup> More than three-quarters of all domestic workers are employed in just two regions: Asia and the Pacific, which is the largest employer of domestic workers with a share of 41% in the global total; and Latin America and the Caribbean 37%. Africa accounts for 10% of all domestic workers, while some 7% work in the developed countries (excluding EU countries in Eastern Europe). Eastern Europe and the CIS countries have few domestic workers relative to the size of the region, employing only 1% of the global total. Within Europe, the biggest employers of domestic workers are Spain, France and Italy. A common pattern among them – and other Western European countries – is the employment of migrant women, for whom domestic work is a main entry point into the labour market. In the Nordic countries it is very uncommon for private households to employ domestic staff. Denmark, Finland and Norway have a very low numbers of domestic workers, and domestic workers account for only 0.1% to 0.3% of total employment. The available data show no significant changes over recent years. This is partly due to the public provision of childcare and elderly care, tasks that are often undertaken by domestic workers in other countries. Likewise, Eastern Europe also has a very low incidence of domestic work, which usually makes up less than 1% of total employment. For instance, Poland recorded only (0.1%) and Romania some (0.3%).

In Latin America and the Caribbean, according to the ILO 2013 report, domestic work increased between 1995 and 2010, from 10 million to almost 20. This growth can be explained by different phenomenon: the rise of ageing population combined with the lack of public policies of care; the increase of middle-class women's participation in the labour market accompanied by the externalisation of domestic and care work; and the persistence of income inequality that makes domestic work the prevalent entry on labour market for women with lower formal education.

Within the region, the prevalence of domestic work is particularly high in the countries of South Cone. In Argentina, Brazil, Chile, Paraguay and Uruguay, domestic work represents around 7%<sup>2</sup> of paid employment and between 12% and 17% of female employment. In Andean countries – Colombia, Perú and Ecuador –, domestic work represents 3.5% of paid employment and around 7% of female employment. Caribbean countries show a more divers situation. In El Salvador and Honduras, domestic work represents 4% of employment and 8% of female employment, when in Panamá and Dominican

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<sup>1</sup> Domestic workers across the world, ILO 2013: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf)

<sup>2</sup> OIT, Panorama Laboral 2012.

Republic represents 5% and 11% respectively, and in Costa Rica 7.5% and 17%. In Mexico, domestic work account for 4.5% of total employment and 10% of female employment. Migration between neighbouring countries is very common in this sector because of the income difference between the countries. Internal migration is also frequent: workers coming from rural areas or small towns work as domestic workers in the cities.

The ILO studies show only a partial picture, because employments in the field of domestic work can be very heterogeneous in terms of the statuses and content of work. ILO Convention 189 defines domestic work as being employed by and providing services for a private household and captures the activities of domestic personnel such as maids, cooks, waiters, valets, butlers, laundresses, gardeners, gatekeepers, stable-lads, chauffeurs, caretakers, governesses, babysitters, tutors, secretaries etc. Such definition is pragmatic as it allows the domestic personnel employed to state the activity of their employer in censuses or studies, even though the employer is an individual. The restriction of domestic work to private households also provides a convenient way to identify domestic workers under the International Standard Industrial Classification (ISIC).

However, domestic work can come in a wide variety of employment forms: the employer can be either the immediate household or a public or private agency through which the household hires a domestic worker (a triangular employment relationship); the domestic worker can be either self-employed or works through public projects, or included in another form of casual work (mini jobs); or a family carer can acquire the hybrid status of family assistant. Due to the high proportion of informal work in this field, many domestic workers do this job without a work contract and an employment status. Domestic workers may work for several households at the same time or be employed in only one, where they may work full- or part-time, or they may be a live-in care worker with a working time that covers the full 24 hours of the day.

In the most of the countries, domestic workers remain to a large extent excluded from the scope of labour laws and hence from legal protection enjoyed by other workers. The ILO Domestic Workers Convention (No. 189) and the accompanying Recommendation (No. 201), both adopted in 2011, offer a historic opportunity to make decent work a reality for domestic workers worldwide. It provides for specific protection, basic rights and minimum standards for this work that refer to information about the employment conditions, number of working hours, payment in compliance with the regulations about the minimum wage, prohibition of payment in kind, health and safety at work, social protection including maternity rights, possibilities of collective organisation and complaint and prohibition of child labour. Moreover, it separately addresses the position of live-in and migrant women workers, and private agencies. The ILO intervention is focused on the protection of women workers and an efficient regulation of this field of work with its inclusion in the labour legislation, and the recognition of its compatibility with the employment relationship along with its specificities. However, considering a high share of unregulated domestic work, the question of how to even include this type of work within the frameworks of the legal labour market and formal employments remains the key challenge.

In Europe, the ILO Convention no.189 was ratified by only 7 states: Belgium, Germany, Italy, Switzerland, Finland, Ireland in Portugal. While in Latin America, 13 countries had ratified it: 11 countries ratified the convention during the first four years (Uruguay, Paraguay, Bolivia, Ecuador, Nicaragua, Costa Rica, Colombia, Argentina, Panamá and Dominican Republic); and 2 others in 2018 (Brazil and Peru). This particular situation can be explained by the importance of domestic workers' association in the region which promote the ratification and the transposition of the Convention 189 at the national level (Goldsmith, 2013; Poblete, 2018a); and the fact that half of them had modified their legislation before the approval of the Convention no.189 (Valiente, 2016).

The aim of this article is to comparatively review and analyse the mechanisms of the regulation of domestic work from the aspect of employment hybridisation in two world regions, Latin America and the European Union, and reflect on major differences in: (1) the extent of the incidence of domestic work, and (2) the extent of the accession to the ILO Convention no.189. Both items show significant differences between the regions, which further increase in particular between Eastern Europe and Latin America. The present article is based on the analysis of secondary sources.

## **I. European Union**

### ***1.1. Contextualization***

While in the post-war Europe, particularly in the 1960s and 1970s, the employment of domestic workers in private households almost completely disappeared due to the establishment of welfare systems – through which the previously unpaid women's family work, such as childcare, care for the elderly and the sick, and household work, was partly socialised in different ways in various European countries –, this type of employment has been very much on the rise again ever since the 1980s (Cancedda 2001, Anderson 2000). The reasons for this could be found in the co-effect of demographic, social and political processes, such as the aging of the population and geopolitical changes in Europe, including the EU enlargement, the Balkan wars and the economic crisis in the transitional Eastern European societies, along with the rise of the neoliberal policies of the shrinking of the welfare state and deregulation of social services. As researchers point out, the key factor of the revival of domestic workers in private households in Europe is the inadequate response of the state to the growing intensity of women's employment that went unaccompanied by any effective gender equality policies and the socialisation of care work. These developments were simultaneous with the change in the dynamics of modern migrations.<sup>3</sup> Neoliberal policies, which were supposed to ensure the repayment of external debts of the developing countries, contributed to the collapse of local economies, dismantling of social services, which mainly women depend on, and high unemployment and poverty rates, which push women in the countries of the Global South into the breadwinner role and establishes the conditions for global feminisation of migrations. Both developments converge in the informal employment of migrant women in private households, in particular in Western and Southern European countries. Migrant women take over care work of employed women from middle and higher classes, which in turn causes the globalisation of care work and the establishment of global care chains (GCC). According to Lutz, it is the intersections of the three policy regimes that form the core of the modern GCC phenomenon in the European Union: (1) gender equality policies in which the organisation of family and care work are gendered; (2) care work policies as part of the welfare system that in a specific way (de)regulate and delegate care responsibilities between the state, the market and the family; (3) and migration policies whose exclusion and inclusion regulations establish migrants as illegal and dependent on the employer, thus structurally enabling availability, servility and exploitation of care work of migrant women.<sup>4</sup>

Despite having had the highest female employment rate in the world<sup>5</sup> – during socialism, postsocialist countries of Eastern Europe experienced a smaller extent of the revival of domestic workers, which only started re-emerging during the transition, i.e. in the late 1990s and early 2000s. Even with huge differences between the countries of Central and Eastern Europe and the former Soviet Union, social rights were a priority in socialism, and women's equal participation in paid work and their full economic and social citizenship was given a particular emphasis through the state organised public and universally

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<sup>3</sup> Stephen Castles idr., *The Age of Migration: International Population Movements in the Modern World* (New York: Palgrave Macmillan, 2003).

<sup>4</sup> Helma Lutz, *The New Maids: Transnational Women and the Care Economy* (London, New York: Zed Books, 2011).

<sup>5</sup> Tomáš Sirovátka idr., »Failing Family Policy in Post-Communist Central Europe«, *Journal of Comparative Policy Analysis* 8, št. 2 (2006): 185–202.

accessible care services, in particular in childcare. During the transition, many postsocialist countries, also under the influence of the interventions carried out by the World Bank and other international actors promoting lean state, experienced a gradual disintegration of social care systems and the establishment of structural conditions supporting the growth of the globalisation of care.<sup>6</sup> Moreover, postsocialist countries also share a specific migration context. Namely, much more than immigration these countries have experienced mass emigration, especially after 2004, when migration between the member states was made easier through the enlargement of the European Union. Not only men, but also women, young as well as old, migrated to the global metropolises to be recruited in informal care work markets. Therefore, postsocialist societies also faced a large care deficit incurred by the feminisation of emigration and the shrinking of the welfare state, which established the structural conditions for the employment of domestic workers. However, in postsocialist countries much more than elsewhere in the European Union, due to the higher poverty rates and unemployment, working as domestic workers, nannies and caregivers in private households represented a survival strategy for local women.

### ***1.2. Definition of domestic work: personal and household services (PHS)***

European Union has started to promote regulation of domestic work before two decades, i.e. even before the ILO Convention no.189 was adopted. European Commission defines this work as 'personal and household services (PHS), encompassing a broad range of activities that contribute to well-being at home of families and individuals' (EC, 2012) and it includes a wide range of tasks: from care activities such as child care, care for the sick, elderly assistance, handicapped assistance and long-term care to housekeeping tasks such as cleaning, meal preparation, shopping, tidying, gardening; some countries include also remedial classes, home repairs and ICT support. In spite of the broadness of this definition, however, studies show that most of this work pertains to housekeeping and care for dependent family members (Tomei, 2011). Promotion of PHS sector was identified in several documents<sup>7</sup> with motives such as: 'improvement of work-life balance' with 'externalisation of daily household chores and child and elderly care', through which it would 'strengthen gender equality' and 'support production potentials of high-skilled', at the same time it would create 'new quality jobs for under-qualified' and 'restrict grey economy' (EC, 1993, 2012). It provides provisions for growth of micro businesses and self-employments in formal economy (EC, 2012). As Morel (2013) showed, EC documents identify PHS (i.e. domestic work) as potential fields for creation of new jobs for low-skilled in 'local services' for children, elderly, handicapped, long-term care and housekeeping chores. These fields are defined as the fields of 'new social needs' occurring because of intense employment of women who are thus no longer available to perform unpaid care. The documents mention also Europe's challenges with population ageing, which put an enormous pressure on public social services and costs. Further on, the documents noted market's inability to adequately respond to new social needs due to the obstacle of high costs of care work on the demand side and reluctance to take on jobs which are being perceived as degrading on the supply side. Therefore, as concluded by the EC in White paper 'the development of this sector is left to either grey economy or it is publicly financed which is expensive' (p. 19). Document called upon member states to develop incentives to promote demand: 'incentives such as income tax deductibility, or the local issuing of 'vouchers' instead of providing the social services normally provided by employers and local authorities' (p. 19). The state would get its input returned through collecting more social security

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<sup>6</sup> Burcar, Restavracija kapitalizma: repatriarhalizacija družbe; Olga Tkach idr., »Paid Domestic Work in Postsocialist Contexts: Regional Traits of a Global Phenomenon: an Introduction«, Laboratorium: Russian Review of Social Research 8, št. 3 (2016): 4–27.

<sup>7</sup> See: White Paper 'Growth, competitiveness, employment' (1993), White Paper 'European social policy – A way forward for the Union' (1994), The European Employment Strategy: recent progress and prospects for the future (1995) and 'Commission staff working document on exploiting the employment potential of the personal and household services' (2012).

contributions, decreased number of unemployment allowances and externalities such as, work-life balance and productivity growth of the high-skilled (EC, 2012).

### ***1.3. Ways of regulation: stimulating demand side and hybridization of employment statuses***

Across Europe, it is possible to identify different models of regulation of domestic work (Kvist et al., 2012). France, Belgium and Austria have implemented a voucher system. France, being a pioneer in the field with introduction of regulation even before the EC recommendations in 1987, subsidizes direct employment of domestic worker from the side of household with exemption from social security charges and additional tax deduction for hiring a nanny. Low-skilled and older unemployed women and migrant women specifically were targeted for these jobs. 2 million people are employed in this sector out of which 91% are women; 21% migrant women and only 3.8% native women work in the field in France (Morel, 2013). Evaluations critically emphasize that approximately 70% of employed work part-time, most of them small number of hours (on average 12 hours a week) while French social security system provides only for limited social security for the short part-time employed. Their wage is very low and 85% of employments are direct worker – household employments, which establishes isolation and unprotected situation for workers. Evaluations also point to the fact that care work that was performed by high-skilled workers in public sector is now being de-professionalised with this regulation (ibid.).

In Belgium, a voucher system was implemented in 1994 with the aim of creating employments for long-term unemployed. Through voucher the state subsidizes the wage of the worker; additional tax deduction for the purchase of vouchers was introduced in 2004. Evaluations showed that out of 149,827 employed in this sector 97% were women. Only 12% were full-time employed, 64% worked part-time and 24% worked very short part-time jobs (Morel, 2013). Critics emphasize that with such subsidies public means are transferred to wealthier strata that are on the side of users and not to, for instance, the worker or the employer who would also assume responsibility for ensuring quality employments (Supiot, 2001).

Nordic countries, Denmark, Finland and Sweden have introduced a model of tax deductions. In 1997, Finland started a trial scheme with similar aims, and in 2001 the scheme was implemented on national level; with tax exemptions they lowered the costs of work for 45% for care workers that were employed in public or market agencies, and for 15% in case of direct employment from the household. Beside care work scheme included also renovation and repair works. They have established that the scheme is used mainly by older, 75+ people, entrepreneurs, property owners, two-parent families and the high-skilled, and that 48% of users belong to upper class. In 2007, Sweden introduced 50% tax deduction for employment of care worker in private household, however, that is only for tax registered service providers. In evaluation it was noted that 40% of service providers are self-employed (Kvist et al., 2012).

In the 1990s Germany also introduced a tax exemption for families with two children younger than 10 years for full-time employment of a domestic worker. In 1997 they withdrew the condition of two children and later on dropped also the condition of full-time employment of a worker. To create new employments and reduce grey economy they introduced Hartz reform in 2002, with regulation of mini jobs which are not allowed to exceed a certain amount of monthly income. Such jobs are completely exempt of paying social security charges from the side of the worker as well as the employer; however, these workers also do not enjoy unemployment insurance and health and retirement benefits. One of the categories of mini jobs pertains directly on employment of care workers in private households for which the household gets a 10% tax deduction from the costs of the care worker. This means that the core of the reform is financial subsidy aimed at demand, while all the conditions for households employing care workers are removed. At the same time the state introduces a scheme according to

which households get 20% tax deduction for the costs of hiring a worker who is employed with an agency (Jaehrling, 2004).

In Slovenia the state intervened into grey economy with the 2014 Prevention of Illegal Work and Employment Act<sup>8</sup>. This Act introduced vouchers within the so called personal supplementary work (PSW), which, while including sporadic non-caring jobs, also covers 'occasional in-home childcare and help to the elderly, sick and disabled' and can be seen as a hybrid status between formal and informal work.<sup>9</sup> Within the PSW, the income earned within six months must not exceed three average monthly salaries, which leads us to believe that this type of work is a variation of the German model of mini jobs. However, a more detailed look shows that the PSW institute is much more restrictive. Namely, in Germany mini job is exempt from the payment of social contributions both on the part of the worker as well as the employer, and mini job workers are not eligible to the insurance for unemployment or health and pension insurance (Jaehrling 2004). Conversely, in Slovenia the user (such as an elderly person who needs help) is required to pay the full market price of this service, plus a symbolic sum for social contributions for the care worker (amounting to 9 EUR per month for health and pension insurance) by buying the voucher at the tax authority office. Moreover, the workers – normally these are older women with lower education – are required to register the income from their personal supplementary work every six months at their tax authority office, where they also cash in the social contribution vouchers, as well as pay the 25% income tax. This measure, seen as superficial and failed, has clearly shown that the policy makers' aim was not so much to provide for the social security and good working conditions of domestic workers, and even less so to ensure the state provision of in-home care services to those who need them, but exclusively to collect taxes from income.

The status of family assistant, introduced in some European countries to ensure a partial payment for informal family care of disabled and incapacitated elderly people, also seems to be the hybrid status between formal and informal work. Slovenia introduced this status in 2004. It represents the right of the beneficiary of institutional care to choose instead a family assistant that offers them care at home. To obtain this status, the family assistant, who is usually a close female family member living with the care receiver, has to leave the labour market. Though this status does not involve the establishment of a working relationship as regulated under the labour law, the family assistant has the right to receive a payment to the amount of the minimum wage, and the right to the social and insurance (including health, pension and unemployment insurance). However, the payment of family assistant is actually done by the care receivers with their cash-for-care transfers, while the difference is covered by the municipality, that later recovers these funds from any inheritance. Studies indicate the excessive workload of family assistants, who provide 24/7 care which makes the assistants themselves experience health problems, burnout and social isolation. The situation of family assistants is precarious in multiple ways: due to being poorly paid, which limits the family income, and can lead to the pauperisation of the family and a reduction in any inheritance; due to exemption from the labour rights, such as the right to rest, paid leave, sick leave, and replacement; due to an undefined working time, which is not limited to 40-hour work week; and due to the resulting work overload and social isolation. It is also problematic for its gender segregated nature, as it mainly forces women to exit the labour market, and at the same time it also has a class dimension, as it is mainly poorer people who leave the labour market to acquire this status, while the wealthier can buy care services on the market

Different analyses of European strategies of regulating domestic work (Supiot, 2001, Jaehrling, 2004, Farvaque, 2012, Morel, 2013) pointed that most national schemes have in common the subsidizing of demand. Evaluation studies show that in this way - especially in cases where these schemes enable

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<sup>8</sup> Zakon o preprečevanju dela in zaposlovanja na črno (Uradni list RS, št. [12/07](#) – uradno prečiščeno besedilo, [29/10](#), [57/12](#), [21/13](#) – ZJTD-A in [32/14](#) – ZPDZC-I).

<sup>9</sup> Pravilnik o osebnem dopolnilnem delu (Uradni list RS, št. [94/14](#)).

households to become direct employers - the state backs out of its responsibility to control working conditions, regulation of work with collective agreements, protection of workers from termination, securing the institute of minimal wage, defining educational criteria for work performers, enabling trade union representation, etc. Subsidizing demand is thus reflected as an active de-regulation of labour market for specific social groups, such as low-skilled, long-term unemployed, migrants and women, which leads to creation of inequality for high- and low-skilled work on labour market (Morel 2013). One of the important critiques is that the logic of demand subsidizing redistributes public means in favour of wealthier users instead of establishing public, accessible to all, care capacities and recognition of the field of care as an activity of special public interest (Supiot, 2001). As emphasized by Morel (2013), this logic of regulation reflects specific social choices: enhancement of income inequalities, promotion of social structure based on distinction between productive and reproductive work, low-skilled and high-skilled work, institutionalisation of growing dualism of the labour market and legitimisation of inequalities in access to care services. Tomei (2011) adds that all these schemes perpetuate the image of care work as poorly paid, low-skilled, flexible, women's and migrant's work, and thus as work field of no quality.

## **2. Latin America**

### **2.1. Contextualization**

In Latin America, since the colonial times, domestic work is part of the household's life. At the end of the nineteenth century and the beginning of the twentieth century, upper-class families frequently have more than two or three domestic workers. A very common practice at that time was an arrangement known as *criadazgo*. Condemned by many as a form of modern-day slavery, *criadazgo* is the practice of poor families—frequently rural families—handing minors over to affluent families (Allemandi, 2015). The expectation is that minors will exchange domestic work for food, board and the chance to study but in practice, they usually drop out of school because of the long working hours (OIT/IPEC, 2001).

After the second world war, domestic work started to increase because new economic conditions give women the opportunity to work outside their households. This period—characterized by the growth of the service sector—allows middle-class and upper-class educated women to participate in the labour market. Particularly, these women developed a career as professional or worked as secretaries. The expansion of women's education explains the augmentation of high-educated working women. As a consequence, domestic work sector grew because other women—less educated—was hired by the household to perform domestic tasks, traditionally performed by the housewife. As Kusnesof (1993) highlighted, through externalization, middle and upper-class women were able to have a job without change the traditional organization of domestic work within the household. The rise of the domestic work at that period can also be explained by the decrease of industrial jobs for low-educated women. The new regulations of industrial labour which incorporate protection and benefits—such as maternity leave—made female work more expensive and employers preferred to hire low qualified male workers than female workers. Consequently, domestic work was the only available option to participate in the labour market for low-educated women. Since then, domestic work represents the most common job for these women.

Domestic work changed during the last decades. In the second part of the twentieth century, most of domestic workers came from rural areas to work into the cities. They came from poor families, not having a formal education. Most of them were hired as live-in domestic workers or worked full-time for the same employer. On the contrary, during the twenty-first century, the majority of domestic workers came from urban areas. Migration in this sector is related to neighbouring countries. Domestic workers who live in employers' house became a minority because most of domestic workers worked full-time in live-out arrangement or worked part-time for several employers. The latter became a common



arrangement in the last period. In some countries, more than 30% of domestic workers work in a casual basis.

At the beginning of the twenty-first century, domestic work represented around 8% of paid employment in the region. However, domestic work decreased from 2000 to 2011. In 2000, domestic work represented 18.4% of female employment and 15.3% in 2011 (OIT, 2012). This situation can be explained by the decrease of the domestic work sector in some countries: Brazil, Chile, Colombia, Ecuador, México, Peru, and Uruguay.

In Latin America, between 10% and 15% of the households hired a paid domestic worker (OIT, 2012). Adding the number of domestic workers who work by the hour or by the day, the sector became more significant. Even working-class households use to hire domestic workers. Also, some domestic workers hire another woman from their family or neighbour to help with the domestic tasks, particularly with care work.

The majority of domestic workers in Latin America work as informal workers without access to social security benefits. Their salary is frequently lower than the other workers because they are excluded from the legal minimum wage regime or because employers deduct food and board from their salaries. This is a very common practice in the region.

Since the colonial times, Latin American countries reproduce the servant model, adding some innovations related to changes in family structure; transformation of labour market; urbanisation; and the incorporation of technology for domestic work. Families used to include different generations and today the common type is the nuclear family (couple with children), while monoparental families became ordinary too. This morphological change in families' composition implies the diminution of domestic work demand. The participation of women in labour market became generalized in all countries, and the segmentation between skilled and unskilled workers woman became a main characteristic of all labour markets. Thus, some women worked outside the household, while others work inside other women's households. In current time, families live in smallest houses, and the need for domestic work is reduced. Consequently, the arrangements like work by the day or work by the hours became more extended. Finally, technologies for home tasks—such as washing machine or dishwasher—change the way domestic work is performed. Beside all these changes, the servant model—in which the employer doesn't recognize her/himself as an employer because she/he not recognize the domestic worker as a worker—still in place.

### **2.3. Definition of domestic work: the challenge to become a job**

The contemporary notion of domestic work is still base on the original servitude model that created this set of jobs (Kuznesof, 1993). At the end of the nineteenth century, when Latin American societies started their demographic transitions, domestic work was the only available position on the labour market for unskilled women (Gogna, 1993; Marshall, 1977; Jelin, 1976). At that time, patronage was the most common way of dealing with poverty in major cities. The State handed over children—particularly, young girls on the street—to rich families, which sheltered them on the condition that they become servants (Allemandi, 2015).

During the twentieth century, although domestic work changed due to increasing numbers of women on the labour market (especially in middle-class jobs) (Torrado, 2010; Gherardi & Zibecchi, 2010) and new household technologies (Perez, 2013), domestic work continued to be women's work, a work without social value (Lautier, 2003). Since domestic work was seen as a natural activity for women, domestic workers were viewed as members of the family and subject to the family's authority (Brites, 2007; Lautier & Destremeau, 2002). Even today, the notion of work—that is, a paid activity that provides access to labour and social rights—continues to be mixed with the traditional idea of service (Valenzuela &

Mora, 2009). The social inequality that led workers from poor sectors to seek work in the households of wealthier sectors contributes to reaffirm this model. In this context, labour legislation is considered protection against an unfair employer but not as essential to the organization and regulation of labour relations (ILO, 2010).

Therefore, the challenge of labour laws is to formalize domestic work (Chen, 2011; McCann & Murray, 2014). Given that the state has been unable to ensure compliance with the law, informal arrangements become the most common way to regulate this particular type of labour relation (Rodgers, 2009). Many employers say that they give their domestic workers more rights than required by law; hence, it would be unnecessary for them to sign a contract. However, informal domestic workers cannot access social security benefits if the employer doesn't pay their contributions. According to the employers, in most cases, domestic workers access social security through their spouses or welfare plans that these workers qualify for due to their low incomes (Pereyra, 2013). Thus, employers don't consider themselves responsible for the social contributions either for respecting the law in terms of working conditions. For them, this relation is not a labour relationship but an arrangement between two persons, an arrangement based on trust. Consequently, one of the greatest challenges that Latin American countries face is to develop public campaigns for changing the traditional notion of domestic work, as well as to innovate on the enforcement mechanisms used by the state to ensure compliance with the law.

### **2.3. Ways of regulation: the ILO Convention no. 189 as a model**

The ILO Convention no. 189 represents the model to follow when Latin American countries seek to incorporate a distinctive status for domestic work into national labour codes. The debate on whether domestic work should be considered "work like no other" or "work like any other" (Blackett, 1998) –a debate that deals with how to define the labour rights which Convention no. 189 and Recommendation no. 201 cover (ILO, 2010; Blackett, 2014; Albin & Mantouvalou, 2012; Oelz, 2014)–also occurs at the national level. Schemes that were originally considered parallel–like the general salary employment regime and the self-employment, rural labour and domestic work regimes–are overlapping and often contradictory (Poblete, 2015). In some cases, efforts are made to adapt domestic work to the typical employment regime, but in others the goal is to emphasize its particular features. However, in all cases, national legislation aims to attain a balance between these perspectives in order to recognize all the labour and social rights of domestic workers.

When domestic work is considered as "a job like any other," all labour rights must be included in the legislation. The most controversial one is the legal minimum wage; others are: the payment of extra hours, the annual bonus, working time, vacations, weekly rest, unfair dismissal, and maternity leave. When domestic work is considered as "a job like no other," legislators seek to protect domestic workers from abusive labour relationships in which they don't receive the total amount of their salary or they don't have authorization to take a break during the labour day.

Regarding the wages, half of the countries included domestic workers in their legal minimum wage regime (9 of 17 countries) (Valiente, 2016). The wage distortion argument weighed heavily in congressional debates in different Latin American countries during the law-making process. To allow domestic workers to be included in the legal minimum wage regime would mean that families earning the minimum wage—or just a little more—would no longer be able to hire a domestic worker. In some countries in which minimum wage is not the norm for all workers, some legislators argued that the scarce application of the minimum wage regime in other sectors made it impossible to guarantee minimum wage for domestic workers. Another claim in the wage distortion argument was that the employer of a domestic worker was usually another woman—generally from the middle-class—who was replaced by the domestic worker to undertake household tasks. The gender discrimination that all

women suffer in the labour market with regard to wages thus has a direct impact on what domestic workers earn because this middle-class woman would not be able to pay the minimum wage. Although these opposite positions, half of Latin American countries recognize minimum wage to domestic workers.

Legislation in the majority of Latin American countries recognize the right to receive extra payment for extra hours as well as for work during the holidays (10 of 16 countries). In most of the countries, extra hours are paid 50% or 100% more. Some countries acknowledge one-day mandatory rest periods—such as Sunday— which cannot be exchanged or paid as extra hours. In other countries, the law established that the employer and worker could jointly agree on the worker taking a different day off or two half days off. This measure was controversial during the congressional debates for two reasons. On the one hand, when a domestic worker exchanges a holiday for a day off, generally she cannot choose the day. The social asymmetry in which this labour relationship is based conditions domestic workers' claims, and reduce their possibilities of negotiation. On the other hand, when she worked extra hours, the payment for this extra time is frequently difficult to claim, both at individual level and at the institutional level. Because of the structure of the labour relationship, for domestic workers is always difficult to talk about the salary due. Additionally, in labour courts, domestic workers cannot claim the extra hours because they are almost impossible to probe.

In the case of annual bonus, it was included in half of Latin American countries regulations. It is important to highlight that not all the countries included this provision in their Labour Code (7 of 13 countries).

Concerning working time, half of the Latin American countries include domestic workers in their general working regime (9 of 17 countries). This measure had strong opposition because of the traditional notion of domestic work associated with the servant model. Many legislators argue that working time must reflect the nature of the work rendered. Even legislators who supported the reduction of working time used the flexibility argument as the base for a consensual reform. For them flexible hours are necessary in order to respond to the particular needs of each family. However, in most of the legislation the principle of non-discrimination as the argument for adapting domestic work regulation to the general working time regime in line with the ILO Convention prevail. Also, the majority of the countries recognize the right to weekly rest and some countries also recognize the right to rest during the journey.

Regarding the right to holidays, the majority of Latin American countries establish the same regime acknowledge to other workers (12 of 18 countries), three countries stipulate a specific regime for domestic workers, and three others don't recognize this right.

The rights to maternity leave was recognized in the majority of the countries of the region, as well as the right to a fair dismissal. Only in few countries, domestic workers have access to social security benefits. When comparing domestic work legislation in the region, it appeared that South Cone countries introduced more provisions than other Latin American countries, especially compared to Caribbean countries.

Concerning the special protections that domestic work needs because of its particular nature -the employer home as the workplace and the isolate manner in which it is performed-, some countries established special provisions. One of the most controversial issues during congressional debates was the regulation of the payment in kind. The payment in kind is very common practice in the region. Domestic workers usually receive leftover or old clothes. Sometime, these are considered as part of the salary. In some countries, payment in kind represents 40% to 60% of the monthly salary. More than half of Latin American countries allow in the legislation the payment in kind (room and board) which is deducted from the salary (7 of 11 countries). However, almost half of the countries recognize that room and board are part of labour conditions, and for that reason, the employer must provide room and board to the domestic worker.

In Latin America, during the regulatory reforms, the goal was to reshape domestic work following the employment relationship model. Almost all labour rights and social security rights included in the Labour Code were integrated to domestic work regulation, even though some of these rights are difficult to implement considering the particularities of this activity. Thus, the core concern for Latin American countries was whether the law could be effectively implemented. The aim was to develop different mechanisms to formalise this particular labour relationship, which generally develops in an informal manner. 'Formalisation'—understood as the opposite of informality—thus became the keyword during the law-making process.

Like the concept of informality proposed by the ILO, formalisation often proves ambiguous. As Davidov has highlighted (Davidov, 2005), this ambiguity can be attributed to the overlapping of two different issues. On the one hand, informality refers to the exclusion of certain categories of workers from the law; this brings up gaps in the existing legislation, which does not cover all of the positions in the labour market. On the other hand, informality is presented as a question of noncompliance with the law – or even fraud. Therefore, state intervention can take two very different paths: it must expand the legal framework on the one hand and implement effective enforcement mechanisms on the other. Legislators in these countries tackled informality by taking both paths simultaneously, making legislation more inclusive on the one hand while also focusing on the development of enforcement mechanisms.

The main difficulty in terms of enforcement was the characteristics of this particular workplace: the employer residence. The inviolability of home reduces to a certain extent the state's ability to verify compliance with these laws.<sup>10</sup> Innovative control mechanisms were needed to 'resolve the tension between two conflicting rights: the employer's right to protect his or her private domain and the worker's right to decent working conditions' (Rodgers, 2009).

Different strategies appear in the range of policy solutions of Latin American countries. Strategies for compliance include information campaigns, mechanisms for simplifying enrolment in social insurance schemes and the addition of advantages or benefits—like tax breaks for employers. In terms of enforcement strategies, there are systems for filing reports, mediation, workplace inspections, penalties for noncompliance, accessible labour courts and a process of formalisation 'ex-officio'.

Given the difficulty of implementing laws in a sector traditionally regulated by personal relations—based on the 'domestic world logic,' (Boltanski & Chapello, 1999) and guided by the local criteria of fairness and duty—, legislators from these countries sought to design innovative mechanisms while attempting to involve classical labour institutions.

## **Conclusion**

It can be observed that in EU stimulation of PHS runs in parallel with structural changes of the national welfare systems aiming to limit public expenses for social reproduction and shifting of responsibility for meeting reproductive needs of the population from their socialization to privatized market solutions. The existing regulations of PHS establish precarious employment statuses with exceedingly low incomes, too long or forcibly reduced working time with regard to the labour legislation, limited social rights from work, bogus self-employments or exploitative agencies, with a large share of this work still remaining within grey economy. Therefore, it is at place the observation of European Women's Lobby that care work, which is in the core of the PHS definition, cannot be regulated in this way because of its central

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<sup>10</sup> See: María Gabriela Loyo & Mario D. Velásquez, Aspectos jurídicos y económicos del trabajo doméstico remunerado en América Latina. In: María Elena Valenzuela & Claudia Mora (eds.), Trabajo doméstico: un largo camino hacia el trabajo decente, (OIT 2009); María Luz Vega Ruiz, L'administration et l'inspection du travail dans le domaine du travail domestique: les expériences de l'Amérique latine, 23 (1) Canadian Journal of Women and the Law, 341, 358 (2011).

and vital role in sustaining societies and economy and that there is a need to value the central importance of care (EWL 2012). Rather than the fight for decent minimum working conditions for domestic workers, there is a political fight going on within the EU for the recognition of care work as a necessary condition of any economy and form of social welfare, as well as economic and gender equality.

In Latin America, where the national welfare systems never covered care services, familiarisation was always the answer to the household's care needs. The naturalisation of domestic work as an unquestionable and normal practice, including low payment, poor labour conditions without the recognition of any rights, contribute to keep the state out of care services provision. Labour market, through direct contractualisation, was the prevalent strategy that families used to access to domestic and care work. Hence, the state limits its intervention to the improvement of the legislation on domestic work without questioning the foundations of this labour relationship.

However, equality in care work requires shifts towards equal co-responsibility between men and women at the household level, as well as among all shareholders: the state, capital and the local community. This means there should be more public, collective and socialised care services at the level of childcare, elder care, care for the disabled and sick, and at the level of everyday reproduction, and they should be universally accessible and of good quality. Care work that is presently devalued as unqualified, inferior and unimportant needs economic and symbolic revalorisation to become considered as the basic contribution to social reproduction and integration. The political valuation of care work also requires the reorganisation of production. With this I have in mind the currently marginalised debates that address the issues such as the reduction of working hours; a more even distribution of the available and required work among all people, including a more flexible increase or decrease in the number of working hours in accordance with the needs of an individual's life course, while also maintaining the existing social security and income; a different set of universal social rights that would help socialise modern social risks; policies that ensure the equality of all workers in the distribution of paid and unpaid work. In short, equality in care work could actually open up perspectives on alternatives to neoliberalist policies, which would include the vision of a "caring society".

## References

- Albin Einat; Mantouvalou, Virginia. 2012. "The ILO Convention on Domestic Workers: From the Shadows to the Light", in *Industrial Law Journal*, Vol. 41, No. 1, pp. 67-78.
- Allemandi, Cecilia. 2015. "Niños sirvientes y "criados": el trabajo infantil en el servicio doméstico (ciudad de Buenos Aires, fines del siglo XIX-principios del XX)", in *Cuadernos del IDES*, No. 30 (October), pp. 11-38. <http://ides.org.ar/wp-content/uploads/2012/03/Cuadernos-del-IDES-N%C2%BA-30-October-2015.pdf>
- Blackett, Adelle. 1998. *Making domestic work visible: the case for specific regulation*. Labour Law and Labour Relations Programme, Working Paper No. 2. Geneva, International Labour Office.
- Blackett, Adelle. 2014. "The Decent Work for Domestic Workers Convention, 2011 (no. 189) and Recommendation (no. 201). Introductory Note", in *International Legal Materials*, Vol. 53, No. 1, pp. 250-266.
- Boltanski, Luc & Ève Chapello (1999), *Le nouvel esprit du capitalisme* (Paris, Fayard).
- Brites, Jurema. 2007. "Afeto e desigualdade: gênero, geração e classe entre empregadas domésticas e seus empregadores", in *Cadernos Pagu*, No. 29 (julho-dezembro), pp. 91-109.
- Chen, Martha Alter. 2011. "Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges", in *Canadian Journal of Women and the Law*, Vol. 23, N° 1, p. 167-184.
- Davidov, Guy (2006) Enforcement problems in 'informal' labor markets: a view from Israel, *Comparative Labor Law and Policy Journal*, 27(3): 26.

- Gherardi, Natalia y Zibecchi, Carla (2010) 'El derecho al trabajo y la ocupación de las mujeres : una visión regional para América Latina', en Di Pietro, M. (comp.), *Género y empleo: iniciativas de la sociedad civil como modelos para la construcción de políticas públicas de empleo con mirada de género*. Buenos Aires: Equipo Latinoamericano de Justicia y Género.
- Gogna, Mónica (1993), "Empleadas domésticas en Buenos Aires", in Chaney, Elsa & Mary Garcia Castro, *Muchacha, cachifa, criada, empleada, empregadinha, sirvienta y...nada más. Trabajadoras del hogar en América Latina y el Caribe*. Caracas, Nueva Sociedad.
- ILO (2010), *Decent work for domestic workers. Report IV (1)*, International Labour Conference, 99<sup>th</sup> Session, 2010, Geneva.
- Jelin, Elizabeth (1976), *Migración a las ciudades y participación en la fuerza de trabajo de las mujeres latinoamericanas: el caso del servicio doméstico*. Buenos Aires, Centro de Estudios de Estado y Sociedad.
- Kuznesof, Elizabeth (1993), "Historia del servicio doméstico en la América hispana (1492-1980)", in Chaney, Elsa & Mary Garcia Castro, *Muchacha, cachifa, criada, empleada, empregadinha, sirvienta y...nada más. Trabajadoras del hogar en América Latina y el Caribe*. Caracas, Nueva Sociedad.
- Lautier, Bruno (2003), "Las empleadas domésticas latinoamericanas y la sociología del trabajo: algunas observaciones acerca del caso brasileño", *Revista Mexicana de Sociología*, año 65, nro. 4, oct-dic.
- Lautier, Bruno, Destremau, Blandine (2002), Dossier "Femmes en domesticité. Les domestiques du Sud, au Nord et au Sud", *Revue Tiers Monde*, 170, abril-junio, IEDES, Université Paris I.
- Marshall, Adriana (1977), "Inmigración, demanda de fuerza de trabajo y estructura ocupacional en el área metropolitana argentina", *Desarrollo Económico*, 17 (65): 3-37.
- McCann, Deirdre y Jill Murray (2014), "Prompting Formalisation through Labour Market Regulation: A 'Framed Flexibility' Model for Domestic Work", *Industrial Law Journal*, 43 (3): 319-348.
- Pereyra, Francisca (2013), "El acceso desigual de los derechos laborales en el servicio domestic argentino" una aproximación desde la óptica de las empleadoras, *Estudios Sociales*, 45: 54-66.
- Pérez, Inés (2013), "De 'sirvientas' y eléctricos servidores. Imágenes del servicio domestic en las estrategias de promoción del consume de artículos para el hogar (Argentina, 1940-1960)", *Estudios Sociales*, 45: 42-53.
- Poblete, Lorena (2015), "New Rights, Old Protections: The New Regulation for Domestic Workers in Argentina", MacGill – Labour Law and Development Research Laboratory *working paper series*, 5. [http://www.mcgill.ca/ldri/files/ldri/poblete\\_final.pdf](http://www.mcgill.ca/ldri/files/ldri/poblete_final.pdf)
- Poblete, Lorena (2018), "The Influence of the ILO Domestic Workers Convention in Argentina, Chile and Paraguay", *International Journal of Comparative Labour Law and Industrial Relations*, 34 (2):177-201.
- Poblete, Lorena (2018), "The ILO Domestic Workers Convention and regulatory reforms in Argentina, Chile and Paraguay. A comparative study of working time and remuneration regulations", *International Labour Review*, 157(3): 435-459.
- Rodgers, Janine (2009), "Cambios en el servicio doméstico en América Latina", in Valenzuela y Mora (ed.) *Trabajo doméstico: un largo camino hacia el trabajo decente*. Santiago de Chile, OIT.
- Torrado, Susana (2010), "Modelos de acumulación, regímenes de gobierno y estructura social", en TORRADO, S. (dir.) *El costo social del ajuste (Argentina 1976-2002)*, Tomo I. Buenos Aires, Edhasa, p. 21-61.
- Valenzuela, María Elena & Mora, Claudia, eds. (2009) *Trabajo doméstico: un largo camino hacia el trabajo decente*, Santiago de Chile: OIT.