Vera Pavlou, **Migrant Domestic Workers in Europe: Law and the Construction of Vulnerability**, Oxford, Hart Publishing, 2021, 166pp, hb £76.50

How does the law facilitate the everyday vulnerabilities experienced by migrant domestic workers, who play a vital role in sustaining the economy and society through the essential - but undervalued - work of cleaning, cooking and caring for children and the elderly in private households? What are the best legal instruments to tackle these vulnerabilities and address these workers' frequent lack of access to the most basic labour rights? Vera Pavlou, in *Migrant Domestic Workers in Europe,* addresses these two fundamental questions through a rich comparative analysis of four European countries: Sweden, Spain, Cyprus and the UK. The book examines each jurisdiction's migration and employment law regimes vis-à-vis domestic workers before exploring the impact of EU law sources and evaluating tactics for challenging vulnerability. It argues that EU law has a greater transformative potential for improving the position of domestic workers than hitherto understood.

In Europe and worldwide, the domestic work sector includes a high concentration of migrants who often face harsh sector-specific regimes that limit routine visa extensions, mobility between employers, and possibilities for bringing family members to join the worker. Chapter one of *Migrant Domestic Workers in Europe* effectively demonstrates how these differential schemes contribute to constructing domestic workers' vulnerability and dependency on employers. It documents a myriad of ways that migrants can become irregular – such as overstaying a formerly valid visa or working more hours than it permits – all of which facilitate the worker's exploitation and deter them from seeking enforcement of rights. The chapter creates a typology of visa regimes for countries across Europe: straightforward but regulated access with relatively strong rights (including family reunification) in many Southern European states; the easier entry access but more restrictive conditions seen in Cyprus; schemes that allow domestic workers to enter through general labour migration rules, but impose more restrictive treatment within the country, as in

Sweden; and the highly restrictive systems of Northern European countries including the UK. The chapter concludes by discussing a 'trade-off' whereby open entry involves 'signing away crucial freedoms and protections' – although this is not straightforward since the Southern European model generally involves more open entry than Northern Europe alongside better rights.

Migration is also the focus of Chapter three, which explores how the EU's legislative instruments relating to regular and irregular third country nationals have constructed separate legal regimes. Pavlou presents a spectrum, from EU migrant workers exercising free movement rights, through transitional arrangements on the accession of new member states and Association and Cooperation Agreements with third countries like Turkey, to the remainder of non-EU migrants. Affecting this final group is a problematic EU-wide scheme deeming domestic workers to be outside the desired category of 'skilled' labour, which is defined to centre formal professional qualifications and high wages. As a result, non-EU migrant domestic workers tend to receive much more limited rights as regards labour mobility, long-term residence and family reunification – creating what Pavlou fittingly calls a 'paradoxical' position that workers with the least bargaining power and most vulnerability to exploitation receive lesser forms of protection (p94). In addition, while the EU's legal framework relating to irregular migration contains certain worker-protective elements, these are inadequate in the absence of a 'firewall' separating access to legal remedies from immigration control (p100-103).

As with migration systems, the book builds a useful comparative typology of labour law regimes. Chapter two identifies three general approaches: the UK's formal inclusion of domestic workers within standard employment law alongside exclusions from certain rights; 'less than normal' protection in Sweden and Cyprus, where a specific set of lower standards applies to domestic workers; and a special regime designed to offer near-normal protection as seen in Spain. At the time of publication Spain had retained some forms of differentiation, including relaxed rules on

rests between shifts for live-in domestic workers and reduced protection for unfair dismissal and on health and safety standards (p62-3); subsequently, in September 2022, the government introduced reforms to equalise unfair dismissal compensation and unemployment protection.

The chapter contains a nuanced discussion of the concept of domestic work as 'work like any other, work like no other' that has guided the International Labour Organisation (ILO) in regulating this area. This notion is intended to move away from treating domestic work as exceptional and 'family-like' towards a rights-based approach, while continuing to recognise that the sector's historic exclusion warrants special protections. Although some labour law scholars have criticised the idea for creating exceptionalism (e.g. Guy Mundlaḳ and Hila Shamir, 'Bringing Together or Drifting Apart?: Targeting Care Work as "Work Like No Other"' (2011) 23 Canadian Journal of Women and the Law 289), Pavlou's analysis shows that the effectiveness of domestic work regulation is more complex than simply determining whether a general ('like any other') or special ('like no other') regime applies. Spain, with a special regime for domestic workers, comes closest of the case studies to offering equality, while the other three countries retain significant exclusions whether through a special regime (Sweden) or sectoral exceptions from general labour law (Cyprus and the UK). The chapter also provides an illuminating breakdown of the practical barriers to redress for migrants working in breach of their visas, and the obstacles to enforcing a contract where a migrant lacks permission to work.

Chapter four details the central argument that EU law contains under-utilised tools for addressing the inequalities in the labour law framework affecting domestic workers. Apart from the free movement and gender equality provisions that apply regardless of sector, this is a contentious issue because some labour law provisions explicitly exclude domestic work, while others contain degrees of ambiguity. First, a key EU Directive on workplace Health and Safety, (89/391/EEC) ('the H&S Directive') defines workers as 'excluding domestic servants' (Article 3(1)). Pavlou makes a

compelling case for reconsidering this exclusion, noting its incompatibility with CJEU interpretations of health and safety as 'intrinsically linked to workers' dignity' and the importance of comprehensive protection, while accepting that this would require amendment action at EU level to have a direct impact (p109-111). Secondly, the H&S Directive is referred to in instruments on Working Time (2003/88/EC) ('the WTD') and on the rights of pregnant workers (92/85/EEC), meaning labour lawyers have often understood these instruments as implicitly excluding domestic servants too. Pavlou challenges this interpretation, pointing to a 2010 CJEU case *Union syndicale Solidaires Isère* (Case C-428/09), which holds that the WTD does not refer to the specific provision of the H&S Directive excluding domestic servants. A further complication is that the WTD allows derogations where workers' time is deemed 'unmeasured,' which the UK has used to support a blanket exemption of 'domestic servants' from key working time protections. Pavlou maintains that this type of exemption is not permissible under EU law, since domestic workers do not control the times and organisation of their work – in contrast to the examples given in the WTD of managing executives, family workers and religious workers – and thus should not be considered to have 'unmeasured time.' She similarly identifies exclusionary aspects of the regimes in Cyprus, Sweden and (to a lesser extent) Spain, advocating the value of EU law to challenge these issues.

In contrast to its argument for an expansive and purposive reading of EU law, the book contains a more restrictive interpretation of human rights law under the European Convention on Human Rights (ECHR), depicting its relevance as mainly limited to situations of extreme abuse (e.g. p16). It is true that the main European Court of Human Rights (ECtHR) cases to date on domestic servitude, *Siliadin v France* (2006) 43 EHRR 16 and *CN v United Kingdom* (2013) 56 EHRR 24, focus on violations of Article 4 ECHR (the prohibition on slavery, servitude and forced labour) and failings in the criminal law response. Yet, just as Pavlou argues for the potential of EU law to extend beyond challenges already brought (e.g. p27), human rights law can have broader relevance

to the 'everyday vulnerabilities' the book identifies – a point that has been made in the literature (e.g. Deirdre McCann, 'Decent Working Hours as a Human Right: Intersections in the Regulation of Working Time' in Colin F Fenwick and Tonia Novitz (eds), *Human rights at work: perspectives on law and regulation* (Hart 2010)) and pursued before monitoring bodies. For example, the right to private and family life under Article 8 ECHR includes access to personal development and establishment of relationships with others and the outside world (*Pretty v United Kingdom* (2002) 35 EHRR 1), whereas excessive hours leave domestic workers little or no time to engage in other activities or develop relationships with people beyond their employer. Purported justifications for interfering with this qualified right to meet the needs of working families may not be proportionate given the very significant impact of excessive hours on domestic workers' rights and the availability of other means for the state to provide support.

In addition, the lack of labour mobility that Pavlou rightly identifies as a problem for non-EU migrants (e.g. p90) interferes with the human right to work, which protects *inter alia* against state interference in seeking employment. This is primarily a social right, e.g. at Article 1 of the European Social Charter 1961, but has also been used to underpin an understanding that restrictions on employment violate Article 8 in ECtHR judgments such as *Sidabras and Dziautas v Lithuania* [2004] ECHR 395. Here, the court employs an 'integrated approach' to interpretation, reading certain social and economic rights into the ECHR (Virginia Mantouvalou, 'Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation' (2013) 13 Human Rights Law Review 529). Looking beyond Europe, the 2020 South African constitutional court case *Mahlangu v Ministry of Labour* (Case CCT 306/19) is an example of constitutional rights being used successfully to challenge domestic workers' exclusion from benefits following injury or death in the workplace.

The book suggests that from a human rights perspective 'all migration regimes are equally problematic' (e.g. p17). However, it is arguable that human rights law allows for the differentiation of the most damaging regimes as those with the greatest restrictions on labour mobility, family reunification and access to labour rights (see e.g. *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1). Conversely, a system akin to EU freedom of movement is less problematic from a human rights viewpoint because it grants, at least in principle, rights to change employer and to family reunification. It is therefore possible to view human rights as complementary to the role of EU law in challenging workplace abuses, from the everyday to the extreme – while also bearing in mind that there is no sharp dividing line between the two. Rather, systemic violations of the right to decent work can undermine conditions and thus facilitate forced labour (see Klara Skrivankova, 'Between Decent Work and Forced Labour: Examining the Continuum of Exploitation' (Joseph Rowntree Foundation 2010)).

Chapter five further explores organising and strategy, arguing that, while engagement in other types of civil society organisations can be 'empowering and transformative' for domestic workers, long-term and significant change to conditions requires trade union engagement. This end is undoubtedly important, but the examples presented also demonstrate the complexity of its achievement. The incorporation of Swedish domestic workers into a tax deduction scheme made unionisation more viable, yet unions are among those who criticise the scheme for 'deepening social inequalities based on class, gender and citizenship status' (p137). In Spain, one major union played a role in integrating domestic workers into social security, but another advocated a distinct approach of moving away from direct recruitment towards the involvement of agencies, companies or cooperatives (p139-141). In Cyprus, domestic workers' poverty compared to the local population and presence on tied visas, alongside the working class character of most of their employers, are presented as obstacles to unionisation (p143-4) – yet these features are unlikely to be exclusive to this national setting.

In its examination of other civil society organisations, the chapter posits that a focus on reforming migration regimes and appeals to an anti-trafficking legal framework come 'at the expense of more transformative framings and claims that centre on labour rights' (p147). However, the two framings are not necessarily mutually exclusive. In 2020 the Anti-Trafficking and Labour Exploitation Unit (ATLEU), a charity representing victims of slavery, trafficking and forced labour, brought a successful 2020 Employment Tribunal challenge to the exclusion of some live-in domestic workers from the minimum wage based on EU and domestic equality law, *Puthenveettil v Alexander & ors* (case no 1361118/2013). Alongside other organisations including NGOs, self-help groups and Unite the Union, ATLEU then made submissions to the Low Pay Commission in 2021, following which the government agreed to repeal the exemption in 2022. Joint work by diverse civil society organisations has therefore spurred a crucial labour-law oriented reform. Nonetheless, as long as the immigration system makes domestic workers vulnerable to falling into irregular status and thus weakens their capacity to bring claims for back payment of wages, the practical enforcement of this right will remain difficult. Efforts to reform the migration regime will therefore necessarily remain a key focus for civil society, in line with the book's recognition of the centrality of migration regimes in shaping vulnerability to exploitation.

Overall, *Migrant Domestic Workers in Europe* is an insightful contribution to the literature, which effectively utilises a comparative methodology to illustrate the law's exacerbation of vulnerability. Its exhortation to push towards a more inclusionary reading of EU law should be taken up as part of a toolkit to bring migrant domestic workers within the comprehensive regimes of protection that they, like all workers, deserve.

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