Gabriella Sebardt, **Redundancy and the Swedish Model – Swedish Collective Agreements on Employment Security in a National and International Context**, Iustus 2005, 671 p.*

A foreign academic, such as the present writer, asked to be an "opponent" in the thesis defence of Gabriella Sebardt, takes the risk of sounding contradictory by complementing straight away the candidate for the clarity of her language, the transparency of her methodological options and the depth of the research. All these points prove the great passion and interest driving the candidate in her academic enterprise. It is equally important to acknowledge in the opening sentences of my "opposition" that all sources referred to in the thesis have been accurately selected and that the correlation between text and footnotes denotes a meticulous research background. The thesis is built on a correct and well presented interdisciplinary approach. It also adopts a comparative perspective, taking into account two very different legal systems, the Japanese and the British system.[1]

1. The construction of the thesis

The Introduction of the thesis is the chapter guiding the reader in an interesting journey, which touches on several grounds, including two foreign legal systems.

Terminology and concepts adopted throughout the thesis are put forward with great simplicity and efficacy, so that the reader can be introduced to the fascinating notion of "transition agreements". Complete information is provided on sources and methodologies adopted. A section is devoted to theories of legal dogmatic, with special reference to Prof. Folke Schmidt, whose inspiring scholarship seems to provide ground and support in developing the research project. The candidate indicates her intention to go beyond legal dogmatic and discloses a very attractive scenario for non Swedish readers, namely the study of "a system within the system", based on the analysis of collective agreements. Since collective agreements are sources of labour law and most employment security agreements include dispute resolution mechanisms, thus precluding the jurisdiction of the Swedish Labour Court, research is conducted on qualitative research methods, such as observations, interviews, documentation analysis. This is an indication of clear methodological options (p. 38).

Concepts as well as methods of analysis, as presented and adopted in the thesis, remind the reader of the deep influence played by social sciences in shaping

* The book has also been published at Kluwer Law International, with the title Redundancy and the Swedish Model in an International Context; an international edition intended for the market outside the Nordic countries.

[1] At p. 36 the author specifies that she concentrates on the law of England and Wales.

modern European labour law scholarship. The candidate seems to have absorbed the culture of social sciences combined with labour law, having studied, among other places, at the London School of Economics, which, in the past, was home for scholars such as Otto Kahn-Freund and Lord Wedderburn.[2]

The following chapter on "The legal framework of redundancy in Sweden" is illuminating for both Swedish and foreign readers, particularly for the historical information it provides. It clarifies the distinction between individual and collective dismissals without mentioning EC Directive 98/59, nor acknowledging the impact of the previous EC Directive 75/129 on national legal systems (p. 58 ff.). This is a point that needs to be clarified. The omission of such references may give the impression that the author does not regard European secondary law significant, at least in the subject matter dealt with in the thesis. The implication could be that the Swedish legal system is capable to enhance its own internal coherence, keeping EU law at a distance. However, one finds later on in the thesis (p. 79–80) references to the debate on the comparability of standards and the hierarchy of legal sources, when it comes to transposing EC Directives by means of collective agreements. Mention of the relevant ECJ's case law is also made, albeit in an abrupt style.

Apart from this remote idea of EC legislation, all most relevant elements of the Swedish legal system come together in a complete and accurate account of its evolution. One can mention the citation of the 1976 Co-determination in Working Life Act, the description of the consultation with the unions as a significant part of the procedure to be followed by the employer, then the issue of great consequence in a comparative perspective, related to the ranking of employees to be dismissed. Sanctions are also considered, both for the entitlement to damages and for the right to re-employment. The section devoted to labour market policy and measures (p. 67) deserves to be specifically mentioned, since it reminds the reader of the leading philosophy behind Swedish social policy, ever since the beginning of last century. The "benefit system" and its potential "threat to the social order by wage work" (the quotation from Christensen is in f. note 74, p. 68) finds its practical enforcement in labour market institutions which, in a comparative evaluation, create a sense of admiration – if not of envy! – in foreign observers. Such an admiration must also be addressed towards collective agreements as sources of law, dealt with in sec. 2.5.1 (p. 76 ff.), presented by the author in a dynamic interaction among different levels of bargaining, in parallel with alternative dispute resolutions schemes.[3]

[2] Lord Wedderburn, Common Law, labour law, global law, in B. Hepple (ed.), Social and Labour Rights in a Global Context, Cambridge, CUP 2002, p. 19 ff.

[3] Reference made to litigation on criteria to select employees to be dismissed and on the violation of "the rights of certain employees" (p. 79, n. 135) is one of the crucial issues raising comparative questions, with regard to the role played by fundamental rights in national legal systems. The delicate balance between contractual freedom, functional to the pursuance of economic activities, and respect for employees' fundamental rights, is achieved by national legislatures and often

Collective agreements foundations are also referred to as appropriate institutions for the stipulation of employment security arrangements. In the foundation both collective organisations stipulate that funds must be used as "independent capital for the furtherance of a specified and durable purpose" (p. 82). The author points out that an investigation was started in 2000, in order to explore the possibilities of having employment security agreements for the entire labour market, in consultation with the social partners (p. 88). No agreement was produced until 2004; it is remarkable that such an agreement should be the first one signed by SN, the new employer organisation (p. 90).

The central part of the thesis is occupied by a thorough examination of an impressive amount of collective agreements: 27 private sector agreements, a large number of state sector and municipal sector agreements.

I shall return to this substantive and original research after taking a short detour, in which I intend to contextualise the thesis in a wider comparative environment. As much as this may appear as a sign of self-indulgency of the present writer, it may also serve the purpose of offering a personal reaction in absorbing the contents of Gabriella Sebardt's work. The presentation she makes of "the Swedish model" awakes the curiosities and captures the attention of a foreign observer. She succeeds in addressing all issues forming part of the "imaginary" of European labour lawyers, or at least of a large section of them. "Imaginary" is not a legal term. It leads to a psychological appreciation of what a "model" – and in this sense an "imaginary" legal system – is in the perception of labour lawyers facing, day after day, the contradictions of legal reforms and having to take into account the tension between what would be desirable and what is feasible.

The "imaginary" of the Swedish system, at least in my own perception of it, has to do with the fact that there seems to be a better continuity of legal values inspiring legislative reforms. It rests on the inventive combination of legal and voluntary sources in the regulation of employment contracts, due also to the well functioning of labour market institutions. In portraying this image of the Swedish model European scholars of my generation project into the future the hopes cultivated during the Seventies and best exemplified by Otto Kahn-Freund's path-breaking scholarship in comparative labour law. Kahn-Freund had an influence on Folke Schmidt's work.[4] He also inspired the establishment of the "Com-

by courts in interpreting collective agreements. In Sweden semi-binding legislation leaves ample space of manoeuvres to collective agreements, which regulate ranking in accordance with years of service and "first in, last out" criteria (p. 62–63). However, these criteria may collide with the employer's demand for more specific qualifications potentially lacking in "senior" employees. A new horizon to explore at this regard is the issue of age discrimination. The corresponding fundamental right not to be discriminated should impose on the employer the duty to justify organisational choices on objective grounds.

[4] F. Schmidt, Law and Industrial Relations in Sweden, Stockholm 1977.

parative labour law group" of which Folke Schmidt was an active and enthusiastic member.[5]

In the thesis under discussion the "imaginary" Swedish model is presented in its collective and individual components. It also includes the public sector, traditionally more difficult to isolate in a comparative perspective and yet put forward as a lively and dynamic part of the whole legal system. Historical developments in the public sector date back to the Sixties, a time in which collective bargaining machineries were not yet completely developed elsewhere in Europe.

A few expressions used by the author throughout her thesis confirm some distinctive trends of the system she analyses. Collective agreements on employment security are "a powerful example of the negotiated solutions for which the Swedish model of labour relations is well known" (p. 29). Further on, before entering into the detailed analysis of the selected private sector agreements, she states "this research area is not stagnant, one of the finest points of the collective agreement as a regulatory tool being its adaptability and, hence, change is a constant factor" (p. 94). Finally, quoting significant doctrinal contributions, she underlines the "almost statutory nature" of collective agreements and explores their function when connected to "semi-compulsory or quasi-optional" law (p. 76).

All such fascinating notions confirm that my de-tour into the "imaginary" of the Swedish model is nothing but a confirmation of the solid legal and voluntary grounds on which a lively and well functioning system of collective bargaining rests. It shows the quasi-public function of private collective agreements, the capacity they have to deal with matters of a public widespread relevance, such as employment security. The "imaginary" runs parallel to reality. This is proved by the wide and meticulous study of collective agreements undertaken by the author.

2. A few remarks on the comparative legal analysis

The thesis is framed within a national and an international context. Comparative analysis is chosen as a way to look at other systems in order to understand better the implications within the author's domestic system. "The driving force behind this exercise is the desire to critically assess the Swedish law" (p. 540). No temptation is shown to "transplant" legal institutions.[6] The search consists in proposing for a comparison "two contrasting foreign examples", confirming in this way the uniqueness of the Swedish case (p. 540).

The originality of the comparative enterprise undertaken by the author consists in studying two legal systems, very different from one another. The Japanese

[5] F. Schmidt et al, Discrimination in Employment, Stockholm 1978.

[6] Quotations of Otto Kahn-Freund's well known concepts (uses and misues of comparative law) are at p. 541, f. note 4.

Employment Stabilization Fund system is based on administrative measures, whereas the British system is statutory and finds its origins in the 1960s legislation introducing a floor of minimum rights. The two legal systems are the object of a thorough and yet synthetic description in Chapter 8, devoted to "Comparative evaluation". The author frames both systems within an historical evaluation of the events leading to the legislative reforms occurred over the years. The approach she takes shows that legal systems evolve and that there are economic and social reasons causing changes. This may sound like a truism, but is in fact the sign of a mature and well balanced attitude to comparative legal methodology.

The comparative analysis developed in the thesis is not intended to disclose the author's ideological preferences, based as it is on the understanding of changing circumstances behind the law. Because of this cautious attitude sec. 8.4.1 entitled "Similarities, Differences and General Trends" (p. 573) is a good example of balancing the analysis of the three systems, while taking into account all actors in the respective systems of industrial relations and all possible outcomes. The British system thus appears as the one in which something has been lost, whereas the Swedish and Japanese systems, for different reasons, were built on their respective consolidated practices and rules.

Even in the analysis of social cost allocation and efficiency (p. 575 ff.) the Swedish model is characterised by a unique combination of flexibility and stability. In addressing the issue of avoiding costs and finding the subject who can best achieve this goal, the author reflects upon Hugh Collins' 1992 contribution in "Justice in dismissals" (quoted at f. note 163, p. 575 and at f. note 168, p. 576) and lays down important theoretical implications *de lege ferenda*. She is convincing in arguing that, although each of the three systems tries to find its own alternatives to collective dismissals, with a different emphasis on measures to be taken, none of them favours a free market solution. The comparative investigation confirms that "perfect regulatory solutions are difficult to obtain" (p. 579) and that labour lawyers must favour a contextual analysis in order to further specify which options can be offered to employees as functional equivalents of employment security.[7]

For all reasons indicated, the auspice of the present reviewer is that Gabriella Sebardt's thesis should circulate in English in a wide international academic community, as well as among practitioners, be they national and European social partners and labour lawyers. The strength of scholarly research is combined with a significant amount of information on collective agreements, sources which are not easy to access. This combination of approaches makes the thesis a very special occasion for foreign readers to understand and appreciate the peculiarities of the "Swedish Model".

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[7] For interesting examples in the prevention of redundancy see Sec. 3.2, p. 97 ff.