

# Evaluation of Swedish labour law research 1995–2001

Peter Hanau, LL.D., Professor Emeritus  
and Michael Gotthardt, LL.D.

March 2003



SWEDISH COUNCIL FOR WORKING LIFE  
AND SOCIAL RESEARCH

## Foreword

In January 2001, Government commissioned the Swedish Council for Working Life and Social Research (FAS) to initiate an evaluation of Swedish labour law research in the period 1995 to 2001 with respect to scientific quality and social relevance.

The evaluation focused on labour law research carried out at the faculties/departments of law at Göteborg, Lund, Stockholm, Umeå and Uppsala, as well as the labour law programme at the National Institute for Working Life. Professor Emeritus Peter Hanau and Michael Gotthardt, LL.D., University of Cologne, were appointed as international evaluators. Annie Näslund, LL.B., as supported by Associate Professor Jonas Malmberg, National Institute for Working Life, produced a valuable inventory and compilation of Swedish labour law research 1995—2001.

On behalf of FAS, Research Officer Ulla Wallin and Programme Manager Kenneth Abrahamsson were responsible for providing support to the evaluators in the form of seminars, location of publications and other supporting documents for assessment of research content, volume and quality. FAS hopes that the evaluation will be of value as a constructive supporting document in the continued development of this field.

FAS wishes to thank Professor Emeritus Peter Hanau and Dr Michael Gotthardt for their valuable work. We are also especially pleased that the evaluators' excellent knowledge of the Swedish language enabled them to read Swedish texts in the original, thus obviating the need for translation. FAS also expresses its gratitude to the reference group, subject specialists and practitioners who in different ways contributed to the implementation of the evaluation.

Stockholm, 31 March 2003

*Robert Erikson*

Secretary-General, Swedish Council for Working Life and Social Research

## A. The issue

The Swedish Council for Working Life and Social Research (FAS) has been commissioned by the Swedish government to evaluate labour law research in Sweden.

### I. The research field

In terms of this evaluation, the research field of labour law has been defined by FAS. As currently defined within Swedish science and in the application of law by the courts<sup>1</sup>, the term labour law applies only to legal provisions relating to work performed by employees. This refers to legal regulations in effect between employees and employers and may involve the actual employment contract or legislation such as the Employment Protection Act<sup>2</sup>, as well as collective regulations in the form of collective agreements. Labour law consequently includes not only individual, but also collective labour legislation. The latter refers to legal provisions that regulate the interplay between parties in the labour market, such as the right of co-determination, the development of collective agreements and conflict measures. The evaluation also includes the right to protection under public law as set out in the work environment legislation. Under the assignment the evaluation must therefore examine labour law as a specific subject area within private law and also include work environment legislation.

Labour law nevertheless refers only to regulatory systems relating to work performed by employees. Work can also be performed by engagement of an independent entrepreneur. Such agreements are defined as assignment contracts. Research into the legal regulation of these independent assignment contracts within general private law is therefore not part of this evaluation. On the other hand, research into the actual definition of boundaries, which is far from simple<sup>3</sup>, falls within the scope of the investigation, i.e. research into the process of determining which cases are subject to labour law provisions, i.e. in which cases the party who performs the work should be considered an employee. In addition, certain provisions of labour law are also applicable to independent contractors. In Sweden this applies e.g. to so-called equal contractors under Section 1 (2) of the Co-determination in the Workplace Act (MBL)<sup>4</sup> who are also designated dependent contractors.<sup>5</sup> In addition, the investigation will consider whether labour law research has taken account of new and more recent forms of legal working arrangements such as outsourcing, and leasing of workers.

In other respects the evaluation includes all categories of workers, i.e. private as well as public sector employees.

The purpose of the evaluation is therefore classical, legal research into labour law. The evaluation is not intended to assess research which has a relationship to labour law. Under the assignment, the function and significance of labour law in the context of economics research, or research concerning labour market or employment policy, therefore does not fall within the evaluation. The same applies with respect to social legislation, especially social insurance legislation, which is another area not covered by the evaluation. In this respect the investigation is not based on the systematisation under

---

<sup>1</sup> Cf. Adlercreutz, p. 13.

<sup>2</sup> SFS 1982:80.

<sup>3</sup> Cf. e.g. SOU 1993:32, p. 215 ff and Gotthardt, Kündigungsschutz, p. 55 ff. concerning the Employment Protection Act.

<sup>4</sup> SFS 1975:580. Section 1 (2) of the legal provision states: "Employee under the Act includes a person who performs work for another party and, while not being an employee of said party, enjoys a position similar to that of an employee.

<sup>5</sup> Cf. Adlercreutz, p. 25

EU law which, in conformity with French law, makes no distinction between labour law and social law.<sup>6</sup> These issues will nevertheless not be entirely disregarded in the evaluation. It is also a mark of scientific quality when researchers use interdisciplinary approaches to consider the consequences of their research results within other subjects or – at least – consider the research results in relation to their own discipline. Since the evaluation, under the assignment, is required to consider labour law as a discipline of jurisprudence, we will only assess whether aspects of research in economics, employment policy and social insurance legislation have been taken considered in the framework of legal labour law research.<sup>7</sup>

In accordance with the aim of the investigation, the primary focus of the examination will be on research at the faculties/departments of law at Göteborg, Lund, Stockholm, Örebro, Umeå and Uppsala, and on the labour law programme at the National Institute for Working Life in Stockholm.

## II. Design of the evaluation

The evaluation has been designed in accordance with a framework developed by FAS as a general model for this type of evaluation. It includes the following components:

1. Definition of the research field.
2. Descriptive overview of the development of the research field (the historical development is reviewed by a Swedish researcher).
3. Inventory and compilation of relevant research material (Swedish and international).
4. A Swedish reference group is established and charged with defining the research field to be assessed, presenting the historical overview and compiling the material.
5. A small group of international researchers is appointed who will carry out the actual evaluation and present proposals and recommendations to FAS

The research field to be assessed has been specified as described above (A.1.) and encompasses legal research into labour law.

FAS is responsible for the historical description through a Swedish researcher.

A reference group was established consisting of the following persons: Professor *Ronnie Eklund*, Department of Law, Stockholm University; Associate Professor *Jonas Malmberg*, National Institute for Working Life; Professor Emeritus *Nils Elvander*, Department of Economics, Uppsala University and Professor *Birgitta Nyström*, Department of Law, Lund University.

The reference group considered the period 1995—2001 to be an appropriate period for evaluation of Swedish labour law research.

The material was compiled by the National Institute for Working Life. Under the direction of Professor *Niklas Bruuns* and Associate Professor *Jonas Malmberg*, Annie Näslund at the National Institute for Working Life established a list of 44 researchers and their books, essays and other publications published in the period 1995—2001. These books, essays and publications form the documentation upon which the evaluation is based. Reviews of the researchers' books have been appended.

---

<sup>6</sup> Cf. *Preis/Gotthardt* EAS B 1100 Rn. 3 ff.

<sup>7</sup> Of the publications compiled by Annie Näslund, some nevertheless relate to social insurance legislation as such. One example is *Lotta Valne Westerhäll's* commentary to Ordinance 1408/71 "Social security and migration". While they have not been evaluated specifically, they are included in the statistics under the social insurance legislation boundary area.

As evaluators FAS appointed Professor Emeritus Peter Hanau, LL.D., and Michael Gotthardt, LL.D., Forschungsinstitut für Deutsches und Europäisches Arbeits- und Sozialrecht, Cologne, Germany.

Hanau and Gotthardt were assigned to carry out the actual evaluation, i.e. step five, independently on the basis of steps one through four.

On 13 June 2002, Michael Gotthardt participated in a concept seminar in Stockholm on the theme of "Overview of ongoing international evaluations within FAS". At this meeting, evaluation methods and experiences were discussed with representatives of the following evaluations: social work, IMER research (International Migration and Ethnic Relations), labour law research, youth research and the Centre for Social Research on Alcohol and Drugs. On 4 September 2002, Peter Hanau and Michael Gotthardt presented a progress report to FAS.

On 20 November 2002, Peter Hanau and Michael Gotthardt discussed the evaluation report with affected subject representatives of Swedish labour law research at FAS.

A final presentation of the evaluation took place at the National Institute for Working Life (ALI) on 6 February 2004 with the participation of Dr Michael Gotthardt and Swedish experts on labour law.

### III. Research objectives

In the evaluation, the primary task of the undersigned is to assess the scientific quality of the research and the development of the research field. In this connection the social relevance of labour law research must also be taken into account and assessed. The investigation should furthermore review training, particularly basic training.

We wish to point out at this early stage that the assignment is not intended to provide a comparative evaluation of individual institutions or research projects, e.g. by means of so-called ranking lists. Purpose of the assignment is to present and evaluate Swedish labour law research in its entirety. The evaluators are required to identify gaps, strengths and weaknesses in Swedish labour law research.

## B. Results concerning Swedish labour law research

### I. Strengths and gaps in Swedish labour law research

1. The most highly developed research field is discrimination issues concerning the equality of men and women. Swedish labour law research maintains a very high standard in this respect. Almost nothing is missing from the research; relevant issues such as pay equity, job evaluation, affirmative action and sanction issues have been addressed. Four doctoral dissertations deal with the subject from different standpoints and with different approaches. There is also an established collaboration with legal sociologists and gender research as well as a significant element of interdisciplinary research. Swedish labour law research has also submitted to the requirements that resulted from Europeanisation of this research field. European case law is taken into account and subjected to lively debate. However, investigation of other anti-discrimination legislation is far less comprehensive or penetrating than the research into equality issues. This may be explained by the more recent emergence of this research field. A need for future research is nevertheless evident. This includes issues of great practical relevance, such as age discrimination.
2. Another well developed field is the reception of EU law during the evaluation period. It was after all only in 1995 that Sweden became a member of the Community, having until 1994 been party to the EEA agreement. The reception of EU law was so rapid as to cause almost a sense of envy in German quarters since the process was much more protracted in Germany. Swedish research concerning EU labour law is of a very high scientific standard and shows that Swedish researchers are prepared to adopt a purposeful approach to this new task. The research conducted in this area can justifiably be taken as a sign of the quality of Swedish labour law research. This quality is apparent from the fact that many presentations not only penetrate the domestic literature in depth, but also give major consideration to research results from other countries. While it would be desirable if this were done to an even greater extent, it must be noted here that language often presents a barrier; and foreign research is to a great extent disregarded in other countries such as Germany. In taking the research results of other countries into account, Sweden has progressed further than a number of other countries and is now well on its way towards a genuinely European labour law.
3. It can be noted that Swedish labour law research shows strength also with respect to international, comparative and foreign law. It is nevertheless undeniable that the ongoing internationalisation will continue to necessitate comparative research focusing on the comparison of legislative systems. This is a task for which Sweden is well prepared.
4. Swedish labour law research in the field of individual labour law maintains a high scientific standard. A number of doctoral dissertations include in-depth research. While on the one hand using traditional judicial methods, they also employ legal sociology and empiric methods based on an interdisciplinary approach. The emphasis and strength of the research is on employment agreements and employment protection. However, it has to be said that high scientific quality rarely surfaces in the writing of commentaries and manuals, although some attempts have been made. In certain areas there is a need for additional research. This applies to employers' management decisions in conjunction with flexible forms of work, integrity in working life, the employee's liability for damages, legislation concerning vacation and leaves of absence as well as wage protection. More research would also be of benefit within employment protection. Here it should also focus on collective agreements, e.g. those which are at variance with the law. When the legal position is dictated by central collective agreements, such as Tur-AS, the agreements require scientific commentaries. Security agreements are also an area where research is needed.

Interdisciplinary approaches should be used to examine how changes in employment security, e.g. temporary employment contracts, have affected unemployment and employer attitudes with respect to new employees.

5. Research within collective labour law has been less extensive than in the fields of individual labour law and discrimination issues. This is already apparent from the fact that during the evaluation period only a limited part of one dissertation dealt with collective labour law. The research performed nevertheless evidences high quality and a good scientific standard. Current issues were examined. Swedish labour law research has taken on the new requirements without flinching in the face of internationalisation, and has really opened up towards Europe and research from other countries. Important issues, such as the relationship between collective agreements and the right to competition, have been discussed in reports. Comparative legal research has also been expertly carried out. More in-depth examination of the Co-determination in the Workplace Act would nonetheless be desirable. Although research was carried out before the evaluation period, the research field is far from exhausted. Negotiation systems and the legality of conflict measures could for instance be illuminated against the background of changes in the labour market. A scientific commentary to the Co-determination in the Workplace Act (MBL) would also be desirable. In a country where collective agreements continue to play a major role, there is also a need for commentaries to individual, fundamental collective agreements.
6. Publications relating to the development/flexibilisation of labour law are of a high scientific standard. Swedish researchers are leading participants in the debate on changes in labour law resulting from changes in the labour market. The research shows no signs of insularity, but rather opens up to ideas and developments in other countries. This is not done in a one-sided manner, and neo-liberal trends, e.g. in Chile, and the judicial situation in countries such as USA and Japan are also taken into account. Labour law research therefore does not confine itself to a one-sided perspective of employee protection; nor should the science of labour law, when pronouncing on matters of legal policy, one-sidedly represent the employer or employee side, but rather present objectively considered proposals. The research has thus also considered the interests of others, e.g. those regarded as “outsiders”, i.e. the unemployed. What one could wish for is more collaboration with economists in order to reveal the effects of the regulatory systems of labour law not only on the national economy, but also on unemployment. Such research would provide a basis for legal policy proposals.
7. A relatively large proportion of the research concerns legal dogma and general jurisprudence as it relates to labour law. Two dissertations in this field show that the science of labour law generally speaking has reached a high scientific standard.
8. Research in certain fields is under-represented. This applies to research into issues of work environment and working hours. In part this can be explained by the fairly technical nature of work environment law which also requires extralegal expertise. One field almost devoid of research during the evaluation period was procedural labour law. However, it should be pointed out that the Labour Court is the only legal instance of its kind in Sweden, as a result of which there are fewer court cases than in a system with three levels of labour courts. International civil law is another field that cries out for scientific examination.
9. A more coordinated approach would also be advantageous with respect to research into the interplay of social insurance law and labour law, e.g. concerning relocation measures and terminations, since labour law in practice is linked to the social insurance system. It should be added, however, that this coordinated research field is complex and also fails to receive the attention it deserves, e.g. in Germany.
10. In conclusion we may note that Swedish researchers are open to new issues, such as the significance of labour law in procurement situations. However, one field which is entirely missing

is research into corporate pension systems (“Betriebliche Altersversorgung”). Although not regulated in law, it can still be regulated in agreements (individually or collectively). A number of issues are involved, for instance under which circumstances these regulatory systems can be changed. Research into these issues would be desirable. In addition, this research field also has a European character through EU directive 98/49/EU which relates to the demands of employees who work under such systems in various member states.

11. Overall, Swedish scientific research within labour law maintains a very high standard. Gaps in the research cannot therefore be ascribed to the quality of the research. Here research relating to collective labour law is a valid example. What has been written is of a high scientific standard, exceeding what has been achieved in other countries with respect to the integration of Europe and foreign research. The logical explanation for gaps in labour law research is a lack of resources. It is impossible for Swedish researchers to give equally comprehensive and in-depth attention to all aspects of a growing research field such as labour law. This is further evidenced by the fact that many of the researchers dealt with in the evaluation do not concentrate on labour law, but are included on the basis of occasional papers on labour law. The small cadre of researchers who have specialised on labour law cannot monitor all areas in the field of labour law.

## II. Social relevance of the research

1. Swedish labour law research is socially relevant.
2. In all the developed fields, i.e. individual labour law, collective labour law and discrimination issues, the results of labour law research are used in the application of law, i.e. in the resolution of individual disputes. This was evidenced by citations in Labour Court judgements as well as responses from practitioners who stated that they used research results not only to resolve individual labour law disputes, but also for training purposes and at internal meetings.
3. A criticism directed to researchers is that they could make greater efforts to disseminate their research results to practitioners. There is also a desire for more research that analyses and systematises legal usage in a specific area with respect to the application of law, especially within employment protection. As mentioned above, we can imagine the existing social relevance of labour law research increasing if researchers were to disseminate their results of high scientific quality in the form of manuals and/or commentaries, or design dissertations in this manner. Examples of such research are, as mentioned, *Jonas Maimberg's* dissertation “The Employment Agreement”, which is often referenced by practitioners, and *Birgitta Nyström's* manual “EU and labour law”, which is frequently cited by the Labour Court. More works of this nature would be welcome.
4. More extensive availability of research results on the Internet would also be desirable.
5. With respect to labour law research focusing on legal policy, this can be unhesitatingly stated as having social relevance in the most important fields of individual labour law, discrimination issues and collective labour law. However, the same is true for the basic research which has been taken into account in the legislative processes.

## III. Collaboration between the universities

Swedish labour law research is open and functions in a very efficient and cooperative manner within Sweden and Scandinavia, as well as internationally. This is also shown by the high quality of the labour law research, something which is taken into account and utilised by foreign researchers.

## IV. Labour law as a branch of science within Swedish legal research

Swedish labour law research is a well-established field within Swedish legal research.

## V. Measures

In order to maintain the high scientific standard of labour law research in the future while strengthening research in presently weak areas and raising the existing social relevance of the research, we recommend the following measures:

1. A fundamental problem is that resources available for labour law research today are insufficient to meet the needs for research within labour law, a research field undergoing constant change and expansion. This situation can only change with the establishment of professorships that are dedicated to labour law and have labour law as their primary research area. Meeting the research needs would require three dedicated professorships to be established at Swedish universities in addition to the National Institute for Working Life. Such an investment would in the long term contribute to securing and augmenting the knowledge base of labour law in Sweden. Taking scientific freedom into account, our opinion is in principle that the selection of topics should not be further limited. In order to initiate more research in collective labour law we nevertheless believe that one of the professorships should focus specifically on collective labour law. This would be a means of initiating more research also in the form of dissertations in this field; an element lacking during the evaluation period. There is a need for research in this field. In spite of increased legislation, collective agreements continue to play a major role in Swedish labour law. A specific seat of learning could stimulate research into collective agreements that deviate from semi-discretionary laws and in this way also contribute to greater social relevance. The Swedish negotiation system is changing, as shown by the establishment of the National Mediation Office. Forms of worker participation and mandatory information requirements also demand further research. Important impulses are arriving from Europe, such as European agreements reached by means of social dialogue as well as EU directive 2002/14 concerning information and consultation. Special attention must also be given to how women's interests can be taken into account in the negotiation of collective agreements and the impact on equality issues must also be examined.<sup>8</sup>
2. This alone demonstrates that European labour law exerts a major and growing influence on Swedish labour law. Here Swedish labour law research has made significant contributions during the evaluation period. It is important to safeguard and develop the high research level in this field. Since European labour law influences domestic legislation, or indeed may become the domestic legislation, this simultaneously means research into Swedish labour law. While already taking place to a large extent, a collaboration with foreign researchers and an intensified European dialogue where foreign research results are taken into account would be desirable. Since the National Institute for Working Life is already being referred to as a coordinating resource, it would be a plausible step for government to expand the institute on the one hand to become a competence centre for European labour law with a coordinating function with respect to European research in general. On the other hand the National Institute for Working Life is being referred to as the institute that is engaged in dialogue with the practitioners to whom it disseminates research results. This is another function which should be expanded by utilising recent forms of communication and which is also connected to the first-mentioned function since the growing internationalisation of our world demands knowledge of the legal situation in other countries as well as EU law. This is also desired by the practitioners.

---

<sup>8</sup> Cf. Europäische Kommission, *Veränderungen der Arbeit*, p. 107.

3. In addition there are certain issues where research efforts should be increased. We recommend incorporating these issues into a larger research programme where individual researchers are able to apply for research grants; a measure which could also draw younger researchers into the field. The research programme could be characterised by two aspects: firstly, that the research also addresses the needs of the practitioners, and, secondly, that the research also employs interdisciplinary methods. We see the following themes as possible in the context of such a programme, although this obviously does not imply advance exclusion of others:
  - a) With respect to employment protection, there is a need for general research devoted to analysis and systematisation of case law. This is desirable since the field of employment protection has a high level of practical significance. At the same time, basic research could be pursued by determining which principles the Labour Court actually applies in its adjudication of cases. Such basic research would furthermore be of benefit to practitioners, for instance when principles are identified or developed that concern circumstances which must or may be taken into account in the adjudication of dismissal cases.
  - b) The referenced issue is linked to the effects of employment protection on the national economy and employment. Here there is a need for new research using interdisciplinary approaches and including economists who take into account the effects of new forms of employment, e.g. simplified forms of temporary employment or the leasing of workers.
  - c) Another issue of future importance is the interplay between constitutional rights and labour law,<sup>9</sup> e.g. protection of the worker's integrity. Here we refer to developments in the EU area including the EU statute on basic civil rights, The European Convention on Human Rights, and the basic rights enshrined in the Swedish form of government.
  - d) Research is also highly desirable concerning the new anti-discrimination measures prescribed in EU directive 2000/78 with respect to a general framework for equal treatment including e.g. age-based discrimination, and in EU directive 2000/43 with respect to discrimination based on race and ethnicity. Here there is also a need for knowledge – using interdisciplinary methods – with respect to fundamental values as well as practical consequences.
  - e) Issues involving working hours is also a research field in need of more in-depth examination. This concerns not only implementation of the working hours directive in Sweden, but also the basic debate on working hours, e.g. new flexible forms of working time such as annual working time, sabbatical years etc., and how wage-earning can be combined with child-raising. We refer to SOU 2002:58 where the Committee for new working hours and vacation regulations [Kommittén för nya arbetstids and semesterregler (Knas)] proposes new legislation concerning flexible vacation time. Here again the research may benefit from an interdisciplinary approach.
  - f) Systematisation of labour law in relation to social insurance legislation would also be desirable.
4. We recommend funding for individual research projects relating to:
  - a) Research into procedural labour law;
  - b) Research concerning international civil law and labour law;
  - c) Research into corporate pension systems.

---

<sup>9</sup> Cf. Europäische Kommission, *Veränderungen der Arbeit*, p. 106.

5. To increase the existing social relevance we could also imagine Swedish researchers to a greater extent adapting their high-quality research results for use by practitioners in the form of commentaries and manuals. This should be stimulated by introducing regular research sabbaticals that would enable such projects, insofar as this is not already being done at the universities. This work could be further stimulated by promoting dissertations that systematise and analyse case law.