UNLOCKING THE DOOR TO JUSTICE: DOMESTIC WORKERS IN DIPLOMAT'S HOUSEHOLDS

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To Stefan.

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Abstract

Domestic workers who are employed in diplomats' households face a huge challenge when their rights are violated. Due to the immunity of their employers, domestic workers have limited access to courts. This research study addresses the gap of legal protection of domestic workers employed by diplomats in European countries and examines the role of receiving States in their capacity of hosting foreign diplomats. The study is based on a broad literature review and is complemented by two expert interviews with representatives of Ministries of Foreign Affairs in Austria and Sweden. Furthermore, a legal analysis of jurisprudence of national courts as well as the European Court of Human Rights is conducted. The findings reveal that receiving States have a positive obligation under international human rights law to offer effective protection to domestic workers employed by diplomats. The interviews in Austria and Sweden have shown an increasing awareness for the situation of domestic workers and political will to prevent rights violations. The study contributes with its collection of primary data on the procedural framework of the Ministry of Foreign Affairs in Austria and Sweden. It shall serve as a guideline for discussions and future research studies but also give practical recommendations to Protocol Departments.

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1 Acronyms

CCEM	Comité Contre l'Esclavage Moderne
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic and Social Rights
ID card	Identification card
ILO	International Labour Organization
MFA	Ministry of Foreign Affairs
NGO	Non-Governmental Orgnaisation
NHRI	National Human Rights Institutes
OSCE	Organization for Security and Co-operation in Europe
UNESCO	United Nations Educational, Scientific and Cultural Organization
VCCR	Vienna Convention on Consular Relations
VCDR	Vienna Convention on Diplomatic Relations
UK	United Kingdom
U.S.	United States

2 Introduction

Does diplomatic immunity implicate serious human rights violations being unpunished such as forced labour – a contemporary form of slavery? Domestic workers in households of diplomats face a huge challenge when their rights are violated. Due to the diplomatic immunity of their employers, domestic workers are prohibited to enforce their rights, regardless of the gravity of the rights violation. This research study discusses rights violations of domestic workers who are employed in diplomat's households and addresses their limitation of right to justice. In particular, this research explores positive human rights obligations of receiving States of foreign diplomats to effectively protect domestic workers from abuses. The significance of this research topic lies in the denial of a fundamental principle of democracy that everyone should have the right to be heard from independent courts. Hence, it constitutes a legal gap of protection. The magnitude becomes obvious when serious cases involving slavery-like practices such as forced labour or domestic servitude are reported and receiving States remain inactive despite the *jus cogens* prohibition of slavery.

Previous studies have underlined the vulnerability of migrant domestic workers while addressing the weak labour law to protect them[1]. It has also been reported that migrant domestic workers employed by diplomats are even more exposed to human rights violations[2]. The UN Special Rapporteur on Contemporary Forms of Slavery has highlighted the specific protection gap of domestic workers who were subjected to servitude by their diplomatic employers[3]. Furthermore, it was noted that receiving States lack the courage to request a waiver of immunity or declare the diplomat *persona non grata*[4]. It has been emphasized that the most effective way to prevent domestic

[1] UN Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, 2011, para. 19; ILO, Working Paper , 2010, p. 17.
[2] UN Special Rapporteur on the Human Rights of Migrants, 2004, para. 36 and 59.
[3] UN Special Rapporteur on Contemporary Forms of Slavery, 2010, para. 57.
[4] UN Special Rapporteur on Contemporary Forms of Slavery, 2010, para. 58.

workers from rights violations is the regulation of the delivery of diplomatic visas of the domestic worker[5]. Since, the Ministries of Foreign Affairs of the receiving States are in charge of issuing these specific visas for domestic workers, they are in a unique position to monitor employment relations of domestic workers with diplomats. In 2011, the German Institute on Human Rights has conducted a comprehensive study in six European countries[6] on the access to justice of domestic workers employed by diplomats and has concluded that there is a need for effective protection[7].

The purpose of this research is to explore the role of receiving States under international human rights law in their capacity of hosting foreign diplomats and international organisations. The study aims to identify good practices for an effective protection of domestic workers and to find alternative ways of redress. For the given reasons, this study conducts a comparative analysis of the procedural and administrative framework of Austria and Sweden based on two expert interviews with representatives of the respective Ministries of Foreign Affairs. The research study is limited to practices in European countries; however, since rights violations of domestic staff by diplomats are a globally occurring phenomenon the findings can be applied to other countries as well.

This paper is composed as follows: after a brief introduction on the topic of domestic workers, the relevant principles of diplomatic immunity are explained. It continues by giving examples of jurisprudence from European countries. Furthermore, the principle of positive human rights obligations is applied to the situation of domestic staff working for diplomats. Finally, the research findings of Austria and Sweden, but also best practices from other European countries are presented. The last chapter concludes with recommendations to effectively protect domestic workers.

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[5] OSCE, Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2010b, p. 28.
[6] Austria, Belgium, France, Germany, Switzerland and the United Kingdom. Kartusch, 2011.
[7] German Institute for Human Rights, Meeting Report of International Roundtable, 2011.

3 Rights violations of domestic workers in the context of immunities

At first glance one may think that rights violations arising from domestic work in diplomatic households constitute a small number and are exceptional cases. However, it is a globally occurring phenomenon that arises from a structural gap of legal protection. The gravity of some rights violations amount even to slavery-like practices such as domestic servitude and forced labour. Despite the *jus cogens* nature of the prohibition of slavery, the victims have only limited access to remedies, if any.

The spectrum of rights violations of domestic workers by diplomats and their families range from less severe forms of labour law violations, such as no remuneration of overwork or unconsumed annual leave, to severe forms of violations such as excessive hours of work without free time or days off and paying far less than the minimum wage. At the other end of the spectrum employment conditions amount to inhuman and slavery-like practices and illustrate breaches of civil or criminal law. For instance, the failure to provide adequate food or accommodation, no remuneration at all, restrictions of freedom of movement, physical, psychological and/ or sexual abuse. Severe forms of violations remain rather exceptions than the norm[8].

3.1 Definitions

Domestic workers

For this research study the term *domestic worker* is defined as person who is employed by an individual diplomat for carrying out domestic work in the private household of the diplomat[9]. According to the 1961 Vienna Convention on Diplomatic Relation this group of employees are called 'private servants'. Domestic workers have to be distinguished from members of the service staff of the mission, who are employed by

[8] Kartusch, 2011, p. 5, 21; European Group of National Human Rights Institutions, 2013, p. 3.
[9] Denza, 1998, p. 13.

the sending State. They are in the domestic service of missions such as chauffeurs or gardeners, and form part of the mission[10]. Employment disputes arising in the context of service staff of the mission invoke state immunity.

'Private servants' according to the VCDR are not nationals of the receiving State[11]. They are migrant workers, recruited outside the receiving State. 'Private servants' according to the definition of the VCDR enjoy privileges provided that they are not nationals or permanent residents of the receiving States. They are exempted from tax regulations on the wages they obtain for their employment in the receiving State[12]. Theoretically, a diplomat can recruit domestic workers also from the receiving State but the majority of domestic workers employed by diplomats are migrant workers due to lower salaries and the willingness of migrant domestic workers to live in the same household. For the interviews the definition of domestic workers is limited to migrant domestic workers.

Diplomat

A diplomat refers to a person who enjoys diplomatic immunity. For this research, the term diplomat includes head of foreign missions, other persons of missions who have diplomatic rank and perform duties of a diplomatic nature, consuls and civil servants of international organisations who have diplomatic status.

Receiving State or *host State* refers to a State that hosts foreign diplomats, consuls or civil servants of an international organisation; whereas the *sending State* indicates the State that is sending the diplomat.

3.2 Violations of international legal instruments

Rights violations experienced by domestic workers constitute human rights violations and illustrate breaches of several international legal instruments:

[10] Denza, 1998, p. 13.
[11] Denza, 1998, p. 337.
[12] Denza, 2008, p. 411.

- The right to just and favourable working conditions that is laid down in the Convention on the Elimination of All Forms of Discrimination against Women (Art. 11 CEDAW) and the International Covenant on Economic, Social and Cultural Rights (Art. 7 ICESCR) is violated in most of the reported cases[13].
- The absolute prohibition of slavery and slavery-like practices such as servitude or forced labour is enshrined in the International Covenant on Civil and Political Rights (Art. 8 ICCPR) and the European Convention on Human Rights (Art. 4 ECHR)[14].
- The right to access to courts is a fundamental principle that entails the right to be heard from independent authorities, but also the right to effective remedies and the right to enforcements of judgments. This is manifested in the ECHR (Art. 6 and Art. 13) and the ICCPR (Art. 2)[15].
- The right to privacy is enshrined in the ECHR (Art. 8) and ICCPR (Art. 17). It is not fulfilled when a live-in domestic worker is not provided with a private room and is required to sleep in the children's' room[16].
- The freedom of movement, guaranteed in the ICCPR (Art. 9 and 12)[17], is violated when the employer confiscates personal documents including the passport of the domestic worker, or when the domestic worker is not allowed to leave the house unaccompanied.
- The right to personal integrity and the prohibition of torture, which is laid down in the CEDAW (Art. 2) and the ICCPR (Art. 7) and the ECHR (Art. 3), is perpetrated in cases of physical or sexual abuse[18].
- The right to adequate standard of living and food is guaranteed in the ICESCR (Art. 11 and Art. 12).

[13] European Group of National Human Rights Institutions, 2013, p. 3.
[14] Kartusch, 2011, p. 5, 21; European Group of National Human Rights Institutions, 2013, p. 3.
[15] Kloth, 2010; Kartusch, 2011, p. 5 and 21; European Group of National Human Rights Institutions, 2013, p. 3.
[16] Kartusch, 2011, p. 5, 21; European Group of National Human Rights Institutions, 2013, p. 3.
[17] Ibid.
[18] Ibid.

3.3 Conflict of immunities and human rights

Immunities are granted to States and their official representatives for the purpose of retaining friendly diplomatic relations in order to resolve interstate conflicts in a peaceful manner. Representatives of foreign States shall carry out their official functions without any arbitrary interferences by the host States. Therefore, diplomats, consuls and representatives of international organisations are immune from the jurisdiction of host States. This includes that they cannot be sued before criminal, civil or administrative courts of the host State and judgments cannot be executed. This very nature of immunities has the unpleasant aftertaste that persons, whose rights are violated, cannot realise their right to courts, which embodies a fundamental principle of human rights. The Latin saying *Ubi jus ibi remedium*, which means that "where there is a right there is a remedy"[19] puts this conflict of immunities and human rights in a nutshell and implies that if there is no remedy there is no right. The question that arises is whether immunity is a higher commodity than fundamental human rights?

The European Court of Human Rights has pointed out in its jurisprudence that the right to access to courts (Art. 6) is not an absolute right and may be subject to limitations if "*the restriction pursues a legitimate aim, is proportionate and does not have the effect of extinguishing the applicant's right of access to court altogether*"[20]. The aim of granting immunities - to retain friendly diplomatic relations between States - is essential for the superior goal of public order and is legitimate[21]. This legitimacy is undisputed. However, is the interpretation of immunity – in this case diplomatic immunity - absolute? Indeed, the Vienna Convention on Diplomatic Relations, which is the basic codification of diplomatic immunity, foresees restrictions of diplomatic immunities in form of waiver of immunity (competence of sending State) and declaration of *persona non grata* (competence of receiving State). In practice, this opportunity to limit diplomatic immunity is hardly ever applied. In the United Kingdom the general rule is,

[19] Oxford Online References
http://www.oxfordreference.com/view/10.1093/oi/authority.20110803110448446 [last accessed on 3 July 2013].
[20] Kloth, 2010, p. 2.
[21] *Cudak v. Lithuania*, ECtHR, Application no. 15869/02, Judgment of 23 March 2010, para. 71.

that unless the immunity is not waived by the sending State, the diplomat is declared *persona non grata* for offences, inter alia, rape or other sexual assault and traffic offences[22].

Slavery and slavery-like practices are absolutely prohibited and have *jus cogens* status, which implies that this principle cannot be overridden by States through international treaties or general customary rules[23]. However, even in cases involving such severe human rights violations receiving States shy away from taking adequate actions. A human rights based approach requires receiving States to fulfil their positive obligation to protect individuals' rights and to offer alternative ways of redress for this specific group[24].

3.4 Vulnerability of domestic workers

Domestic workers are particularly vulnerable to abuses and exploitation. The majority of domestic work is carried out in the private sphere that is in many countries beyond the reach of labour law. On the one hand this is the result of explicit exclusion of domestic work by labour law regulations and on the other hand the difficulty to monitor the compliance in the private sphere[25]. Another aspect that leads to a failure to protect domestic workers is the non-recognition of domestic work as work. Domestic work is traditionally associated with unpaid work in the home performed by women or girls. Due the hidden nature of the workplace and the informal employment relationship it is indeed, prone to exploitations and abuses. Migrant domestic workers are even more exposed to rights violations because of their irregular immigration status, their lack of knowledge of domestic labour law, and their limited access to legal remedies[26]. Live-in migrant domestic workers are purely seen as coming to serve the family with 24 hours

[22] Denza, 1998, p. 68.
[23] Kartusch, 2011, p. 6.
[24] Kartusch, 2011, p. 6.
[25] ILO, Working Paper , 2010, p. 17.
[26] UN Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, 2011, para 19

availability[27]. This becomes also obvious in the term of 'private servants' that is used in the Vienna Convention on Diplomatic Relations.

Overall, there is a high imbalance of power in employment relations regarding domestic work that is even more unequal when the employer is granted privileges and immunities from the State. This privileged status and the non-recognition of domestic work contribute to the high vulnerability of domestic workers working for diplomats.

[27] ILO, Working Paper , 2010, p. 29.

4 Research aim, scope and methodology

The aim of this research study is to analyze the situation of domestic workers who are employed by persons granted diplomatic immunities. The focus lies on the role of receiving States that hosts foreign diplomats and international organisations. The legal and institutional responses to rights violations of domestic workers are examined and examples of promising practices for effective protection shall be identified.

The main research questions are as follows:

(1) What is the role of receiving States in the protection of domestic workers employed by diplomats?

(2) Are diplomatic measures, foreseen in the Vienna Convention on Diplomatic Relations of 1961 – waiver of immunity (Art. 32), *persona non grata* (Art. 9) -, applied in the context of domestic workers?

Based on the main research questions answers to these specifics are to be found:

- Do receiving States have obligations towards domestic workers employed by diplomats?
- How do Protocol Departments perceive their roles in out-of-court negotiations?
- What is the responsibility of receiving States if diplomats concerned fail to cooperate?

The first hypothesis is that receiving States have a positive obligation under international human rights law to effectively protect domestic workers. The second hypothesis states that receiving States hardly ever make use of the possibilities foreseen in the VCDR (informally requesting the sending State to waive the immunity, or declaring a diplomat *persona non grata*).

The scope of this thesis is limited to European States, hosting foreign diplomats and international organisations. In particular, the legal and institutional responses of Austria and Sweden are examined. Austria is selected being a host country for a large international community and the pioneering role in protecting of domestic workers employed by diplomats; whereas Sweden was selected due to the availability of institutionalized knowledge of the research institutes where this study was conducted – University of Lund and Raoul Wallenberg Institute. This research study does not evaluate how European countries deal with rights violations perpetrated by their own diplomats.

The following approach was chosen to answer the research question and to test the hypotheses: First a literary analysis of secondary data on domestic workers and immunities is conducted. This includes official documents from governments of receiving States, international organisations and non-state actors. Continuing, by applying international legal instruments in relation to the aforementioned topics, the gap of legal protection is demonstrated. Further on, a legal analysis of jurisprudence of national courts and the European Court of Human Rights relating to employment disputes involving immunities is presented.
In order to gain primary data on the procedural and administrative framework of Austria and Sweden, two expert interviews are conducted with representatives of the respective Ministries of Foreign Affairs, in particular the Protocol Departments, in April and May 2013.

5 Domestic workers in diplomat's households on the international agenda

In recent years, the international community raised awareness on the difficult situation of this group of domestic workers. Organisations on the regional and international level, as well as civil society had shed light on these hidden activities.

5.1 International level

In 2008 the CEDAW General Recommendation[28] on women migrant workers has highlighted the situation of migrant domestic workers employed by diplomats. Human rights violations perpetrated by diplomats enjoying immunity include some cases of sexual abuse, violence and other forms of discrimination. The report called attention on the legal gap of protection: domestic workers immigration status is tied to the employer. When domestic workers report an abuse, which results in the termination of the employment, they automatically loose their permit to stay and hence, cannot remain in the country for the duration of legal proceedings, if any[29]. Besides the formal barriers, the report is concerned with other practical impediments that deny domestic workers access to justice, such as language difficulties, lack of freedom of movement because the workers' passport is confiscated by the employer and leaving the house unaccompanied is prohibited by the employer. Another reason, as noted in the recommendation, is that migrant domestic workers lack outside contacts. Migrant domestic workers may suffer in their situation for a long time until the violation is reported[30]. CEDAW appeals to the countries of origin of the migrant domestic worker to fulfil their responsibility and to offer better protection through their embassies and consular to the victims in the foreign country, by providing medical care, counselling,

[28] CEDAW, General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R.
[29] CEDAW, General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, para. 21.
[30] Ibid.

shelter etc. This recommendation is rather general and focuses on the responsibility of sending States.

More recently, the UN Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences brought up the specific issue of domestic workers employed by diplomats in her report in 2010[31]. The report talks about a number of cases where diplomats exposed their domestic workers to servitude and similar abuses. One of the causes, according to the report, is that the visa status of migrant domestic workers is linked to a single employer and in some countries they are not free to change their employer in case of exploitation[32]. The Special Rapporteur criticises the policy of sending States and receiving States of not properly investigating reported abuses of their diplomats and not effectively carrying out diplomatic measures, which are foreseen in cases of abuse of immunity. The report clearly expresses that "[*t]he Special Rapporteur is concerned that sending countries have a tendency to hush up credible reports of exploitation committed by their diplomats, rather than to launch criminal investigations. Meanwhile, receiving countries often lack the courage to demand a lifting of diplomatic immunity or declare perpetrating diplomats to be persona non grata*[33]". She implies a certain degree of double standards of receiving States; on the one hand admitting that there has been an abuse and allowing victims on this grounds residence permit, but on the other hand not initiating diplomatic consequences. The report recommends Member States to abolish immigration law that ties the visa status to the sponsorship of a single diplomatic employer and advises to establish laws that allow victims of serious abuses by employers the right to stay[34].

The UN Committee on the Protection of the Rights of all Migrant Workers analysed the gap of legal protection in its first General Comment on migrant domestic workers in 2011. It recommends that States should guarantee, "*that migrant domestic workers can*

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[31]UN Special Rapporteur on Contemporary Forms of Slavery, Annual Report, 18 June 2010, UN Doc A/HRC/15/20*.
[32] UN Special Rapporteur on Contemporary Forms of Slavery, 2010, para. 57.
[33] UN Special Rapporteur on Contemporary Forms of Slavery, 2010, para. 58.
[34] UN Special Rapporteur on Contemporary Forms of Slavery, 2010, para. 96.

obtain legal redress and remedies for violations of their rights by employers who enjoy diplomatic immunity under the Vienna Convention on Diplomatic Relations"[35].

In 2011 the ILO adopted the first Convention[36] and a supplementing Recommendation[37] on domestic workers rights. This Convention is a landmark in the recognition of domestic work but the Convention itself does not make any reference to the specific group of domestic workers working for diplomats; however, the Recommendation, which is not legally binding, includes in its final paragraph that States 'should consider' to adopt policies and codes of conduct for their diplomatic agents in order to avoid exploitations of domestic workers. States ought to enhance bilateral, regional and multilateral cooperation in order to provide the necessary protection[38].

5.2 Regional level

At the regional level, the Parliamentary Assembly of the Council of Europe adopted a recommendation on domestic slavery, concluding that diplomatic immunity granted by the Vienna Convention on Diplomatic Relation is in conflict with Article 6 ECHR, proclaiming the right of access to courts. Hence, it suggests amending the VCDR so as to lift immunity in cases of all offences committed in the private life[39].

The most committed regional human rights institution that addresses the exploitation of domestic workers in diplomat's households is the OSCE. The Special Representative of the OSCE for Combating Trafficking in Human Beings put the topic of domestic servitude committed by diplomats very high on her agenda. In the annual report of 2010 the Special Representative describes the situation of trafficked domestic workers in the households of diplomats: "*they are often exposed to ill and degrading treatment including psychological and sexual abuse, and suffer practical starvation, confinement*

[35] UN Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, 'General Comment No. 1 on Migrant Domestic Workers', 23 February 2011, UN Doc CMW/C/GC/1, para 49.
[36] ILO Convention No. 189, Decent Work for Domestic Workers, 2011.
[37] ILO Recommendation No. 201, Decent Work for Domestic Workers, 2011.
[38] ILO Recommendation No. 201, Decent Work for Domestic Workers, 2011, Art. 26 (4).
[39] Council of Europe, Recommendation 1523, 2001.

and physical punishment"[40]. This physical and psychological suppression leads them to bear their situation for years, before escaping and reporting the mistreatment. She also highlights the problematic of the visa regulation of domestic workers in diplomat's households and recommends to address employment regulation, migration policy and diplomatic privileges[41].

A research paper on trafficking for domestic servitude, published by the Office of the OSCE Special Representative, includes the issue of domestic servitude in diplomat's households. The paper concludes that the most effective way to prevent exploitation of these workers is the regulation of the delivery of diplomatic visas for domestic workers[42], i.e. to control the issuance of the special visa more stringently and to supervise its renewal. One specific measure to prevent abuses is to set up compulsory meetings with the worker and the visa issuing authority on a regular basis. This personal meeting allows to inform on employees rights and gives space to report problems with the employer[43] (see chapter 7.3.1.1, p. 51). The report mentions Austria as a pioneering example in this regard. The paper suggests a number of concrete recommendations to the diplomatic corpus; inter alia, it demands access to legal remedies for exploited domestic workers of diplomatic agents, encompassing compensation[44]. It asks from sending countries of the diplomat to waive immunity in situations of well-founded cases of trafficking[45]. Moreover, it recommends to receiving States of the diplomat to make full use of the diplomatic measures, such as informal negotiations with the employer, the foreign mission or international organisation and in serious cases to declare a diplomat *persona non grata*[46] (see chapter 8.2, p. 67).

Just recently, the Special Representative initiated a series of five workshops under the title of preventing trafficking for domestic servitude in diplomatic households. Switzerland and the permanent mission of Austria to the UN hosted the first workshop in June 2012 in Geneva. Protocol departments of the foreign ministries of the OSCE

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[40] OSCE, 2010a, p. 12.
[41] OSCE, 2010a, p. 13.
[42] OSCE, 2010b, p. 28.
[43] Ibid.
[44] OSCE, 2010b, p. 66, para. 26.
[45] OSCE, 2010b, p. 66, para. 28.
[46] OSCE, 2010b, p. 66, para. 29.

Member States participated in order to exchange best practices on how to inform domestic workers of their rights and to monitor their employment relation[47].

All in all these reports and statements have in common the criticism on the immigration policy; domestic workers employed by diplomats, who enter the country with a specific visa permit, have not the right to change their employer in case of exploitation without losing their permit to stay. The abolishment of this regulation is recommended for prevention of rights violations.

[47] OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Annual Report, 2012, p. 17.

6 International immunities in the context of domestic workers

This chapter discusses the principles of immunity in the context of domestic workers. The prevailing immunity that is of significance for this research topic is diplomatic immunity. Nonetheless, this chapter also outlines the basic aspects of consular immunity, immunity of employees of international organisations and state immunity.

6.1 Diplomatic Immunity

The principles of diplomatic immunity are codified in the Vienna Convention on Diplomatic Relations of 1961 (VCDR). The VCDR regulates, inter alia, the privileges and immunities that are granted by a State to foreign representatives of another State while holding an official post within its territory. The intention of granting such extensive privileges and immunities is to retain friendly diplomatic relations between two mutually recognized States[48], even in case of armed conflict[49]. In its preamble the Convention highlights the purpose of diplomatic immunities that is not to benefit individuals but to ensure the protection of the diplomatic mission and its staff in order to guarantee their efficient performance of functions free from interference by authorities of the receiving State[50]. To date, the Vienna Convention on Diplomatic Relations is ratified by 187 out of 193 UN Member States, as of 8 March 2013, and thus enjoys nearly universal ratification.

According to the VCDR of 1961 there are three categories of persons who are entitled to diplomatic immunities:

a. members of the diplomatic staff are persons in the mission who have diplomatic rank including the head of the mission, who is authorised by the sending State to

[48] Vienna Convention on Diplomatic Relations, 1961, Art. 3 para. 1(e).
[49] Fox, p. 706.
[50] VCDR, 1961, Preamble; Fox, 2008, p. 701.

act in that capacity and other diplomatic agents who engage in diplomatic activities[51];

b. members of the administrative and technical staff are carrying out administrative and technical services in the mission, such as interpreters or accountants;
c. members of the service staff: are working in the domestic service of the mission and include for example embassy drivers, cooks, gardeners and cleaners.

The difference between service staff and 'private servants' is that the service staff is employed by the sending state and not by an individual diplomat and forms part of the mission[52]. In contrast, 'private servants' are not members of the foreign mission, according to the VCDR. The different categories of mission members enjoy different degrees of immunities. Members of the diplomatic staff are entitled to complete immunity from criminal and civil jurisdiction provided that the person is not a national, or permanent resident of the receiving State[53]. Members of the diplomat's family who are living in the same household are included in the diplomat's immunity[54]. The other two categories enjoy only immunity *ratione materiae* - immunity for acts performed within the course of their official duties. Besides the three groups mentioned in the VCDR, representatives of States in international organisations enjoy diplomatic immunity as well (see chapter 6.3, p. 23).

6.1.1 Scope of diplomatic immunity

Article 31(1) of the VCDR states that "*A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction*"[55] with three exclusions. Diplomatic agents enjoy full immunity from criminal jurisdiction of the receiving State and limited immunity from civil and administrative jurisdiction[56]. The limitation of immunity from civil and

[51] Denza, 1998, p. 13.
[52] Denza, 2008, p. 410.
[53] VCDR, 1961, Art. 38 para. 1.
[54] Fox, 2008, p.705.
[55] VCDR,1961, Art. 31. para. 1.
[56] Criminal jurisdiction means the right or the power that national courts have to administer serious violations that interfere with the peace and good order of society; that is considered as harmful to public

administrative jurisdiction includes, inter alia, "*action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions"*[57] (Art. 31 para. 1 lit. c). This exclusion does not encompass regular contractual relationships for goods and services related to daily life of a diplomat and its family but is aimed at continuous trade and business activities[58]. Therefore, an employment contract between a diplomat and his private domestic worker does not account for 'commercial activities' according to Art. 31 para. 1 lit. c. In the case of *Tabion v Mufti*[59] - a domestic worker from the Philippine who brought a charge against a diplomat - the US Court of Appeal concluded in 1996 that "*Day-to-day living services such as dry cleaning or domestic help were not meant to be treated as outside a diplomat's official functions. Because these services are incidental to daily life, diplomats are to be immune from disputes arising out of them*"[60].

The immunity from receiving State's jurisdiction does not exempt the diplomatic agent from the jurisdiction of the sending State (Art. 31 para. 4). Therefore, the domestic worker has at his or her disposal the avenue to file a complaint before the sending States courts. Theoretically, this is a possible form of legal remedy to persons in dispute with diplomats that is foreseen in the VCDR. In practice, however, legal proceedings against a diplomat before the courts of the sending State is connected with many difficulties and does not provide a satisfactory remedy for a claimant. The plaintiff would have to bear heavy costs of taking additional legal counselling in the foreign country and travel expenses, including for witnesses. Furthermore, it is not guaranteed that the conduct is classified as an offence in the sending State. For instance, the protection by labour law might be different in the sending State. For this reasons, legal actions in the sending State are rather a theoretical than a realistic remedy[61].

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morals and is punished by State, e.g. human trafficking, robbery, murder; thus it's a matter between a private person and the State. Whereas civil jurisdiction deals with disputes between two private parties, where the victim seeks for redress; e.g. personal injury;

[57] VCDR,1961, Art. 31 para. 1 lit.c.

[58] Denza, 2008, p. 305.

[59] *Tabion v. Mufti*, United States Court of Appeals, No. 95-1732, Judgment of 17 January 1996.

[60] *Tabion v. Mufti*, 1996, p. 6.

[61] Denza, 2008, p. 322.

Despite the privileges and immunities, diplomats are obliged to respect the laws and regulations of receiving States (Art. 41 para. 1 VCDR) but this is more a moral duty or a duty of courtesy than a legal obligation[62].

The legal consequence of jurisdictional immunity is that charges brought before national courts cannot be proceeded as long as immunity persists. It is treated like a procedural bar; consequently, when immunity terminates, such as the assignment of the diplomat comes to an end, the court may validly proceed with the claim[63]. Thus, immunity from jurisdiction does not mean exemption of personal liability or impunity.

6.1.2 Termination of immunities

There are three possible situations when the immunity of a diplomat comes to an end: the diplomat's function terminates, the sending State waives the immunity of the diplomat or the receiving State declares a diplomat *persona non grata*.

The termination of the official function: since immunity is granted for the efficient performance of diplomatic representation of a State, there is no need for personal immunity anymore when the representative function has ended. Therefore, personal immunity ceases automatically with the ending of the appointment. However, acts performed in the exercise of the function continue to be immune, even after ending of the appointment[64] (Art. 39 para. 2 VCDR). When a domestic worker files a complaint against its employer, a former diplomat, the receiving States court has to decide on the determinative question whether the employment was a private or an official act.

In the case of *Swarna v. Al-Awadi*[65], an Indian national who was employed in the household of a Kuwaiti diplomat in New York, filed a complaint at the District Court in

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[62] Denza, 1998, p. 373.
[63] Fox, 2008, p. 706.
[64] *Wokuri v. Kassam*, 2012, High Court of Justice in England and Wales, No. HC11C01460, Judgment of 30 January 2012, para. 9; Fox, 2008, p. 708.
[65] *Swarna v. Al-Awadi*, Southern District Court of New York, No. 09-2525, Judgment of 24 September 2010.

New York after the diplomats official function in the U.S. terminated. The Court analysed whether the defendant enjoyed the so-called residual immunity for this employment. In 2010 the court came to the conclusion that the employment of the claimant as a domestic worker was in no relationship to the functions of a diplomatic mission[66]. The court argued that the plaintiff was not hired to work at the Kuwaiti mission and noted that even though she occasionally served the members of the Kuwaiti Mission when invited by Mr. Al-Awadi,*"[t]his tangential benefit to the Kuwait Mission did not make her an employee of the mission, and did not make Mr. Al-Awadi's act of employing her 'in law the act [..] of the sending State'"*[67]. Another case where the court interpreted the application of residual immunity less extensively was *Baoanan v. Baja*[68]. The District Court of New York pointed out that Ms. Baoanan was predominantly hired to meet the private needs of the diplomat and his family and that working in the Mission for official events did not "*transform her employment into an official act*"[69]. In both cases the U.S. court focused on determining whether the employment was an official or private act. By doing so, the courts allowed to analyze the facts from its individual facts, rather than accepting the concept of diplomatic immunity as foregone conclusion.

In the recent case of *Wokuri v. Kassam*[70] the High Court of England and Wales interpreted the application of residual immunity under Art. 39 para. 2 VCDR in line with the above mentioned U.S. cases. In January 2012 the judge dismissed the request of the defendant, the former Deputy Head of Mission at the Ugandan High Commission in London, to bar the proceeding due to residual immunity in respect of her employees claim for full salary. The judge highlighted that a serving diplomat enjoys broad personal immunity under Art. 31 para. 1 VCDR, while a diplomat after the termination of his or her appointment has immunity according to Art 39 para. 2 VCDR only to acts performed in the exercise of the official function. It does not apply to actions pertaining private life. The judge referred to the cases of *Swarna v. Al-Awadi* and *Baoanan v. Baja*

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[66] *Swarna v. Al-Awadi*, SDNY, 2010.
[67] Siedell, 2011, p. 183.
[68] *Baoanan v Baja*, Southern District Court of New York, No. 08 CIV 5692 (VM), Judgment of 16 June 2009.
[69] Siedell, 2011, p. 185.
[70] *Wokuri v. Kassam*, EWHC, 2012.

and affirmed that residual immunity does not apply to actions of domestic duties in the diplomat's private household and "*that may provide, at best, 'an indirect' rather than a 'direct benefit' to diplomatic functions*"[71]. The final judgment is still pending at the time of finishing this research. It might be a path breaking court judgement regarding residual immunity in Europe.

When a sending State expresses a waiver of immunity, the sending State allows the dispute becoming subject to the jurisdiction of the receiving States. It results in the inability of the diplomat to invoke immunity from jurisdiction before receiving States courts. Article 32 VCDR states that immunity from jurisdiction can be waived only by the sending State and if so, it has to be explicitly expressed. However, Article 32 para. 4 highlights that even when immunity from jurisdiction is waived, it does not imply that immunity in respect of execution is lifted. Hence, for the enforcement of a court judgment a separate waiver from execution is needed[72]. In practice, when a diplomat is not voluntarily complying with a final judgment of a court in the receiving State, the possibilities of execution are very limited[73]. Despite the fact that waiving immunity is the exclusive competence of the sending State, in practice the receiving State (Ministry of Foreign Affairs) may informally request to waive immunity. It is up to the sending State whether it grants the request or not.

Lastly, when the sending State does not waive the immunity, the receiving State has the ultimate course of action to declare a diplomat *persona non grata*, meaning that the person is not accepted as a representative of the foreign State[74]. The sending State has to either recall the diplomat or terminate his or her appointment. If the sending State refuses to do so within reasonable time, the receiving State can reject to acknowledge the person as part of the foreign mission[75]. The most common ground, in the history of the VCDR, to declare a diplomat *persona non grata* was espionage and involvement in

[71] *Wokuri v. Kassam*, EWHC, 2012, para. 19, 24, 25.
[72] Denza, 2008, p. 330.
[73] Denza, 2008, p. 320.
[74] VCDR,1961, Art. 9 para. 1.
[75] Denza, 2008, p. 73.

terrorist activities. The exercise of declaring a diplomat *persona non grata* varies from State to State. In the United Kingdom it is reported that waivers of immunity are requested, inter alia, for second drink/driving offences, rapes and other serious sexual offences[76]. As a result of systematic parking offences, the United Kingdom notified all diplomatic missions in London, of making use of the *persona non grata* procedure in cases of persistent and deliberate failure to respect parking regulations. Even though it was not applied, the notification was accepted and had a positive effect[77].

6.2 Consular immunity

Consular immunities are enjoyed by consuls who are authorised to carry out consular activities. Consuls assist and protect citizens of the sending State in the territory of the receiving State. In contrast to ambassadors, there might be several consuls in one country normally residing in the bigger cities of the receiving State. Consular immunity is codified in the Vienna Convention on Consular Relations (VCCR) of 1963 and pursues the same objective as diplomatic immunity of maintaining friendly relations among nations[78]. Consular immunity resembles diplomatic immunity but is more restricted in scope. Consuls are immune from arrest or detention except for serious crimes, given a decision by the competent judicial authority (Art. 41 para. 1 VCCR). Consular immunity is restricted in criminal and civil jurisdiction to acts performed within the official performance of consular functions[79] (Art. 43 para. 1 VCCR).

6.3 Immunity of officials of international organisations

International organisations are granted immunity for the independent and impartial functioning of its objectives. The immunity is aimed to protect the organisation from diverging interests and direct influence of its Member States, particularly, from the host State where the organisation is located[80]. The immunity of United Nations employees is

[76] Denza, 1998, p. 68.
[77] Denza, 1998, p. 70.
[78] Vienna Convention on Consular Relations, 1963, Preamble.
[79] Kloth, 2010, p. 120.
[80] Kloth, 2010, p. 133.

regulated in the Convention on the Privileges and immunities of the United Nations of 1946. The Convention differentiates between three categories of persons enjoying immunities:

- Representatives of Member States, who enjoy limited diplomatic immunities;
- United Nations official, who are permanently employed staff members, enjoy functional immunity, i.e. immunity from legal proceedings for acts performed in their official capacity;
- Experts on missions, such as Special Rapporteurs or members of peacekeeping operations, also enjoy functional immunity[81].

Only the Secretary-General has the competence to waive the immunity of any UN officials[82]. Beyond that, international organisations have negotiated bilateral agreements with the States where the organisation has its headquarters that provides for high-level international civil servants who represent Member States with the same extent of immunities and privileges as diplomats[83].

6.4 State immunity

There are two international treaties regulating the rules on State immunity: first, the European Convention on State Immunity of 1972 of the Council of Europe, which is not of great significance, since to date it is ratified by only eight countries. Second, the UN Convention on Jurisdictional Immunities of States and their Property of 2004 that has not yet entered into force. As of today, it has been signed by 28 States and need 30 States for entry into force[84]. There is no codification of state immunity so far that is widely ratified.

Nonetheless, a restrictive interpretation of State immunity is widely recognized by States and has become international customary law. State immunity applies only in

[81] Reinisch, 2009, p. 3.
[82] Reinisch, 2009, p. 3.
[83] Kartusch, 2011, p. 17.
[84] United Nations Treaty Collection: http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=III-13&chapter=3&lang=en [last accessed on 1 July 2013].

respect to acts of sovereign authority (*acta jure imperii*) but not for acts of commercial or private-nature (*acta jure gestionis*)[85]. In case of an employment dispute the court must examine whether the employment is related to the exercise of sovereignty or not. In the case of *Cudak v. Lithuania*[86] the ECtHR concluded that the applicant's position as a receptionist in an embassy was not a function related to the exercise of governmental authority[87] and hence, the Lithuanian courts were competent to hear the complaint (see chapter 7.2, p. 35).

Despite the legal status of the UN Convention, courts have referred to the UN Convention in it's jurisprudence and applied Art. 11 in cases of employment disputes[88]. The UN Convention discusses in Art. 11 the issue of employment contracts between a State and an individual and notes that: States can invoke State immunity from jurisdiction before courts of another State inter alia if:

- the employee carries out a function that is closely related to the exercise of governmental authority;
- the subject of dispute is related to the recruitment, renewal of employment or reinstatement of an individual;
- the subject of dispute refers to the dismissal of termination of employment and legal proceedings would interfere in the security interests of the employer State;
- the employee is not a national or permanent resident of the employing State;
- the employer State and the employee have a written agreement that "*subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction*"[89].

[85] *Cudak v. Lithuania*, ECtHR, Application no. 15869/02, Judgment of 23 March 2010, para. 18.
[86] *Cudak v. Lithuania*, ECtHR, 2010.
[87] *Cudak v. Lithuania*, ECtHR, 2010, para. 69.
[88] For instance in *Cudak v. Lithuania*, ECtHR, 2010.
[89] UN Convention on Jurisdictional Immunities of States and Their Property, 2004, Art. 11 para. 2 lit. f.

7 Examples of case law

The very nature of employment disputes between domestic workers and diplomats entails a substantial limitation of the employer's right of access to courts due to the immunity of the employer. This is the explanation for the few number of court cases that exists concerning domestic workers and diplomats. Nevertheless, there are exceptional cases where national courts of receiving States decided to be competent to hear the complaint and admitted the employee's claim.
Despite the fact that diplomats enjoy functional and personal immunity from receiving State's jurisdiction, they have to comply with the laws of the receiving States[90]. The Vienna Convention on Diplomatic Relations outlines the purpose of immunity that is to facilitate diplomatic relations and not to personally benefit individual diplomats[91]. In most European countries national labour law standards are applicable to the employment of domestic workers working for diplomats[92]. In Sweden, the Protocol Department is currently discussing to incorporate an obligatory clause in the model employment contract that explicitly states that Swedish labour law shall be applied in cases of employment disputes arising from the contract[93] (see chapter 7.3.1.2, p. 52).

The following chapter provides examples of case law of national courts and identifies conditions for an employment claim to be admitted by national courts of receiving States. Furthermore, cases decided by the European Court of Human Rights are introduced. However, these cases are not explicitly dealing with domestic workers employed by diplomats but they include employment disputes and state immunity. In the final part of this chapter alternative channels of international treaty bodies are discussed.

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[90] VCDR, 1961, Art. 41 para. 1.
[91] VCDR, 1961, Preamble.
[92] Kartusch, 2011, p. 32; Interview with Karlsson, 2013; Interview with Spadinger, 2013.
[93] Interview with Karlsson, 2013.

7.1 National courts in receiving States

According to the research study of Kartusch, the majority of Protocol Departments and NGO's were not aware of cases that resulted in convictions against diplomats before criminal, civil or labour courts. Only in Belgium, France, the United Kingdom and Switzerland interview partners have referred to some cases where the employee was awarded compensation by labour courts[94]. However, in these cases the employers did not participate in the legal proceedings.

In some cases national courts have considered to be competent to hear the claims of domestic workers, despite the immunity of employers from jurisdiction. Kartusch[95] has identified four situations where cases against diplomats were admitted:

- The assumed immunity has never exited: the employer was not entitled to the full range of diplomatic immunity because he or she held a position at a lower level that included only functional immunity and thus, the diplomat did not enjoy immunity for private acts. Another reasoning is that family members were nationals or permanent residents of the host State, which excludes family members immunity (see chapter 6.1, p. 1)[96].
- The diplomat's immunity has terminated: this may arouse when the diplomats posting has terminated, or the immunity was waived by the sending State or the international organisation[97]. In these cases the diplomat's immunity does not cover private acts anymore.
- The domestic worker was employed by the sending State and not by the individual diplomat[98]. This means that state immunity, which is more restrictive than diplomatic immunity, is applicable (see chapter 6.4, p. 24). Employment disputes involving state immunity are more likely to be admitted by courts and as a part of international customary law accepted by many States[99].

[94] Kartusch, 2011, p. 35.
[95] Kartusch, 2011, p. 33.
[96] Ibid.
[97] Ibid.
[98] Ibid.
[99] Mahmoudi, 2013.

- Lastly, the diplomat fails to raise immunity before courts: The VCDR does not regulate the way immunity has to be pleaded in national courts[100]. If legal proceedings are initiated and the diplomat relies on his or her immunity and ignores the complaint, there is a risk that the court might not be aware of the diplomatic status and proceeds with the complaint[101]. This might have the outcome that judgments in favour of the claimants were adopted, despite the legitimate immunity from jurisdiction[102].

In 2011 the German Institute for Human Rights tried to achieve a landmark decision from the Federal Constitutional Court, the highest court in Germany, on the question whether serious human rights violations can override diplomatic immunity. The case is about an Indonesian domestic worker, "*Ms. Devi Ratnasari*"[103], who accompanied her employer, Mr. A – a diplomat at the Saudi Arabian embassy - to Germany. According to her allegations, she had to work under humiliating conditions and was exposed to systematic abuse: she was beaten by the family members with a stick, had workdays up to 20 hours, without compensation or a day off[104]. She had to take care of the wheelchair-confined wife of the diplomat and his five children. She had to sleep on the floor in the children's room; her passport was confiscated and she was not allowed to leave the house[105]. The German legal framework does not foresee any personal meetings between the Protocol Department and the domestic worker, unless it is requested[106]. Thus, she had no contacts to the outside world. She remained in this situation for 19 months[107], until she finally escaped after she was hit with a bottle on the head.

[100] Denza, 1998, p. 253.
[101] At least in Belgium, France, Ireland, Switzerland and Ireland; Kartusch, 2011, p. 33; Denza, 1998, p. 253.
[102] Kartusch, 2011, p.33.
[103] Fictional name given by Ban Ying; *'Ratnasari Devi',* Landesarbeitsgericht Berlin-Brandenburg, No. 17 SA 1468/11, Judgment on 9 November 2011.
[104] *'Ratnasari Devi',* Landesarbeitsgericht Berlin-Brandenburg, 2011, para. 3.
[105] *'Ratnasari Devi',* Arbeitsgericht Berlin, No. 36 Ca 3627/11, Judgment on 14 June 2011, p. 2.
[106] Kartusch, 2011, p. 25.
[107] Die Welt, 2011.

The diplomat denied the allegations but accepted as a result of non-judicial negotiations to merely pay for unconsumed days off[108]. Ms. Ratnasari had to leave Germany and returned to her home country, but she assigned the German Institute for Human Rights to represent her before domestic courts and to enforce her claims. The German Institute for Human Rights filed a civil complaint on behalf of Ms. Ratnasari against the diplomat before the Berlin Labour Court and claimed for back pay (salary based on the minimum wage, overwork, unconsumed days off) in total of € 32.000 and at least € 40.000 in compensation for pain and suffering[109]. However, the court in first instance decided the case to be inadmissible due to lack of jurisdiction based on diplomatic immunity[110]. It was noted that the defendants' immunity applies, no matter how serious the rights violations might be. Nonetheless, the judge suggested the possibility to sue the State of Germany as the responsible party[111].

> *"Gestützt auf die allgemeinen Aufopferungsgrundsätze hat ein Dritter, der ein Sonderopfer erbracht hat, Anspruch auf Ersatz [...]. Denn in dem Fall, dass tatsächlich bestehende Ansprüche [...] der Klägerin gegenüber dem Beklagten nicht gerichtlich geltend gemacht werden können, wird ein Entschädigungsanspruch aufgrund einer rechtmäßigen hoheitlichen Maßnahme der Bundesrepublik Deutschland als Gesetzgeber [...] bestehen, weil diese Vorschrift zu einem unmittelbaren Eingriff in eine geschützte Eigentümerposition [...] der Klägerin dergestalt geführt hat [...]"*[112].

The judgment states that in cases where the claimant cannot enforce claims due to acts of state sovereignty – in this case the granting of immunities to diplomats – the claimant is entitled to compensation from the respective State, because the act constitutes a significant and direct interference in the personal rights of the claimant[113].

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[108] *'Ratnasari Devi',* Landesarbeitsgericht Berlin-Brandenburg, 2011, para. 3.
[109] *'Ratnasari Devi',* Landesarbeitsgericht Berlin-Brandenburg, 2011, para. 9.
[110] *'Ratnasari Devi',* Arbeitsgericht Berlin, 2011, p. 4.
[111] *'Ratnasari Devi',* Arbeitsgericht Berlin, 2011, p. 6;
'Ratnasari Devi', Landesarbeitsgericht Berlin-Brandenburg, 2011, para. 3; Spiegel Online, 2011.
[112] *'Ratnasari Devi',* Arbeitsgericht Berlin, 2011, p. 6.
[113] Ibid.

This judgment reflects an absolute approach because it does not allow any restrictions to immunity. It clearly says that the degree of violation is not significant, as far as the person enjoys immunity on personal matters. The court views international order and diplomatic relations of States as a higher commodity than fundamental human rights of individuals. It argues that the interference in personal liberty is legitimate and proportionate. The court did not examine the allegations, even though it raises serious concern of servitude and forced labour[114], which is absolutely prohibited.

In the second instance, the Landesarbeitsgericht Berlin-Brandenburg dismissed the appeal and confirmed that the application of immunity from jurisdiction does not depend on the gravity of the rights violation[115]. Furthermore, the court looked at the purpose of diplomatic immunity and emphasized the significance of diplomatic immunities and privileges for friendly inter-state relations, which is widely recognized in international customary law. Interferences in diplomatic immunities of any kind, according to the judgment, might disturb diplomatic relations between States[116]. The court argued that restrictions of immunity of foreign diplomats might result in disadvantaged treatment or repressions of diplomats from sending States stationed in the foreign country[117]. An appeal to this judgment was submitted before the Federal Constitutional Court (the court of last instance). However, in 2012 shortly before the hearing at the Federal Constitutional Court should take place, the diplomat was withdrawn from his position and left the country. This constituted a substantial change of facts regarding the question of jurisdiction and hence, the claim was remanded to the court of first instance. The Constitutional Court noted in its judgment[118] that Mr. A's personal immunity ceased to exist, according to Art. 39 para. 2 VCDR, with his departure from Germany. Mr. A's immunity is now limited to acts performed within his official function but does not apply to acts of his personal life anymore. The ceasing of

[114] The ECtHR concluded in similar cases such as in *Siliadin v. France* and *C.N. v. The UK* that the conduct amounted to domestic servitude and forced labour (see p. 35).
[115] *'Ratnasari Devi',* Landesarbeitsgericht Berlin-Brandenburg, 2011, para. 17.
[116] *'Ratnasari Devi',* Landesarbeitsgericht Berlin-Brandenburg, 2011, para. 19.
[117] Ibid.
[118] *'Ratnasari Devi',* Bundesarbeitsgericht, 2012.

immunity over acts of private life had the consequence that previous judgments were declared null and void and the case was remanded to the courts of lower instance[119].

The German Institute for Human Rights was aiming to obtain a decision of the high court of Germany on the conflict of absolute diplomatic immunity versus serious human rights violation. A judgment in this matter could have been of significance and could have served as guideline for future cases on the national level. Additionally, a negative decision of the court of last instance would have paved the way for taking the case before the ECtHR. Nevertheless, the German Institute continues to enforce Ms. Ratnasari's claims but the chances to achieve a decision in favour of Ms. Ratnasari is very low, since the allegations took place three years ago and both, the claimant and the defendant have left the country[120].

The case of Ms. Ratnasari portrays an example of a procedural barrier in enforcing the claims of the domestic workers due to immunity from jurisdiction; whereas in the case of *C.N. and V. v. France*[121] the immunity of the diplomatic employer from jurisdiction was waived by the international organisation. The national court of last instance found the diplomat and his wife guilty on all charges. Nonetheless, the victims struggled enforcing their awarded claims due to immunity from execution. The victims were not as such employed as domestic workers but this case is of significance for this research study since the victims had to carry out domestic work without their consent and the perpetrator enjoyed diplomatic immunity.

The applicants, two sisters, escaped from the civil war situation in Burundi where their parents were killed. At the age of 16 and 10 years they came to France with the assistance of their aunt and uncle[122] who guaranteed to provide necessary education.

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[119] Ibid.

[120] Tageszeitung, http://www.taz.de/1/archiv/digitaz/artikel/?ressort=in&dig=2012/08/20/a0046&cHash=a105dee069 [last accessed on 18 June 2013].

[121] *C.N. and V,* Conseil d`État, No. 325253, Judgment of 11 February 2011; *C.N. and V. v. France*, ECtHR, Application no. 67724/09, Judgment of 11 October 2012.

[122] The uncle was a former minister in the government of Burundi.

They lived in the basement of the couple's house in unhygienic conditions. The first applicant, the older sister, was never sent to school and had to carry out the domestic work of the household, which consisted of 9 members. The second applicant was allowed to enrol in school but had to help in housekeeping as well. Both children were never remunerated. The aunt did not allow them to go out except for schooling and regularly threatened them to send back to Burundi. After 4 years they managed to escape from that situation[123].

The uncle was at that time a high official at the UNESCO and as such, he and his family enjoyed diplomatic immunity. One day after the applicant's escape, the Public Prosecutor requested the withdrawal of the immunity of the diplomat and his wife from the Director-General of the international organisation. Three weeks later the Director-General granted the request in order to allow investigations about suspicion of maltreatment[124]. Hence, there was no obstacle for initiating legal proceedings against the diplomat and his wife. The court of first instance found the couple guilty of subjecting individuals to living (for both applicants) and working conditions (only for first applicant) that were incompatible with human dignity and misusing their vulnerability and dependence[125]. However, the Court of Appeal did not share the same opinion and annulled the first judgement arguing that the intentional element of the crime - to put the applicants in conditions contrary to human dignity - was missing[126]. The Court held that "*[..] the living and working conditions offered by the accused to their nieces did not derive from a wish to humble human beings thus infringing their essential rights but from the fulfilment of an obligation to provide assistance*"[127]. The applicants' appeal was rejected.

C.N and V. turned to the ECtHR, which finally found France guilty for not fulfilling it's positive obligation to effectively protect the applicants from being held in servitude and

[123] *C.N. and V. v. France*, ECtHR, Application no. 67724/09, Judgment of 11 October 2012, para 5-21.
[124] *C.N. and V. v. France*, ECtHR, 2012, para 22.
[125] *C.N. and V. v. France*, ECtHR, 2012, para 37.
[126] *C.N. and V. v. France*, ECtHR, 2012, para 47.
[127] Ibid.

forced labour[128] (see chapter 7.2, p. 44). After they submitted the application before the ECtHR the French Administrative Supreme Court, the Conseil d'État, which exercises supervisory power over case law and which is the Supreme Court in administrative jurisdiction in France[129], admitted their appeal. The significance of this Conseil d'État judgment lies in the finding of an alternative way for compensation for domestic workers. The Conseil d'État confirmed that French courts are competent to decide over this case based on the waiver of immunity because the diplomat tried to challenge the question of jurisdiction. It held that the defendants were guilty on charges of subjecting individuals to living and working conditions that are incompatible with human dignity and convicted the defendants to a payment of €33,400 on compensation[130]. Moreover, the court applied the doctrine of strict state liability, which exists in France, and held that France was liable to pay for the compensation, which the claimants cannot obtain from the diplomat because of his immunity from execution[131]. This doctrine foresees state liability regardless of negligence for cases where an international convention has a direct and significant disadvantage for a particular group of people. For this case the Court identified the disadvantaged group as domestic workers employed by diplomats who have obtained a judgment from French courts but cannot enforce their rights due to immunity from execution[132]. The judgment is based on the principles of state liability and equality of public burdens and reads as follows:

> *"[L]a responsabilité de l'Etat est susceptible d'être engagée, sur le fondement de l'égalité des citoyens devant les charges publiques, pour assurer la réparation de préjudices nés de conventions conclues par la France avec d'autres Etats et incorporées régulièrement dans l'ordre juridique interne, à la condition [...] que le préjudice dont il est demandé réparation, revêtant un caractère grave et spécial, ne puisse, dès lors, être regardé comme une charge incombant normalement aux intéressés*"[133]

[128] *C.N. and V. v. France*, ECtHR, 2012, para 94.
[129] Website of Conseil d'Ètat, http://www.conseil-etat.fr/en/juger/ [last accessed 22 June 2013].
[130] *C.N. and V,* Conseil d`État, No. 325253, Judgment of 11 February 2011.
[131] Ibid.
[132] Ibid. Kartusch, 2011, p. 34.
[133] *C.N. and V,* Conseil d'Ètat, 2011.

This judgment is in line with the German decision in the case of Ms. Ratnasari that suggests state liability as an alternative channel for domestic workers to receive compensation[134]. In the case of Ms. Ratnasari the domestic worker could not enforce the claims due to immunity from jurisdiction. In the French case the victims could not obtain the compensation because the diplomat enjoyed immunity from execution[135].

In contrast to the case of C.N. and V., the immunity of the employer of Ms. Ratnasari was not lifted. What distinguishes both cases is that in the French case the victims were minors, which added to the seriousness of the violation. Additionally, the significant factor that led to the immediate waiver of immunity was that the diplomat in the French case was employed at an international organisation. The interviewee from the Austrian Protocol Department confirmed that international organisations are more willing to cooperate with Protocol Departments than foreign missions. It was argued that international organisations are for the purpose of their reputation interested in resolving the dispute[136]. The question whether the German Protocol Department has met its responsibility to put pressure on the diplomat or requesting a waiver of immunity from the mission is unrevealed. Do receiving States have a responsibility to protect domestic workers and if so, to what extent do receiving States have responsibility, in cases such as Ms. Ratnasari, where the diplomat and the mission does not cooperate?

In the case of "*Alia*"[137] the court decided that it has jurisdiction because the diplomat did not invoke his immunity. Alia was hired in her country of origin by a diplomat as a domestic worker and brought to the United Kingdom for employment in his household. She suffered five months physical and psychological abuse, including sexual assault. She was working in de facto slavery-like conditions: she had to work seven days without breaks or days off, she was never paid and was not allowed to leave the house

[134] Kartusch, 2011, p. 34; *'Ratnasari Devi',* Arbeitsgericht Berlin, 36 Ca 3627/11, Judgment on14 June 2011; *C.N. and V,* Conseil d`État, No. 325253, Judgment of 11 February 2011.
[135] *C.N. and V,* Conseil d`État, 2011.
[136] Interview with Spadinger, 2013.
[137] The name is fictional and given by the NGO Kalayaan.

unaccompanied. With the assistance of the NGO Kalayaan and a lawyer she filed a complaint before the labour court. The employer failed to raise immunity from jurisdiction and therefore, the court considered itself competent to hear the case and found the diplomat guilty on the charges of sexual harassment, failure to pay the national minimum wage and violation of the maximum working hours. The court awarded her a compensation of approximately £ 80.000. However, the diplomat left the country and the employee could not obtain the compensation[138].

Only very rarely have domestic workers filed claims before civil courts. Proceedings before criminal courts have been initiated in some countries including Austria, Belgium and Ireland and the United Kingdom, under the offence of trafficking in human beings. Overall employees of diplomats have no legal certainty and since the violations take place in private households they struggle to provide evidences for their allegations[139].

7.2 European Court of Human Rights

Given the limited access to justice for domestic workers with diplomatic employers at the national level, the international human rights framework offers supplementary protection. Some NGO's have pursued the strategy to bring individual cases before the European Court of Human Rights to reinforce domestic workers' rights and to catch political attention for this issue.

The French NGO CCEM[140], an organisation combating modern slavery, submitted in 2001 the case of *Siliadin v. France*[141] to the ECtHR. Even though this case did not involve diplomatic immunities, it is of importance since, it was the first time the ECtHR confirmed the existence of domestic servitude. Despite the *jus cogens* nature of slavery-like practices, France did not offer effective protection to the victim because the French

[138] Kartusch, 2011, p. 33; The Guardian, 2010.
[139] Kartusch, 2011, p. 35.
[140] Comité contre l'Esclavage Moderne.
[141] *Siliadin v. France*, ECtHR, Application no. 73316/01, Judgment of 26 October 2005.

criminal code did not explicitly prohibit slavery and forced labour[142] (see chapter 7.2, p. 44). The failure of the criminal code to recognize forced labour in domestic work as a criminal offence, is an obstacle that some domestic workers face when taking legal actions against their employers[143].

The same failure to offer effective protection to victims of servitude and forced labour was confirmed by the ECtHR in the case of *C.N. and V. v. France*[144] in 2012 (see chapter 7.2, p. 44). The proceeding before national courts was discussed in the previous sub-chapter. The diplomat was working in an international organisation. French courts were competent to hear the case because the immunity from jurisdiction was lifted after a request by the public prosecutor. Therefore, the ECtHR did not have to examine whether or not the limitation of the right to access to courts under Article 6 of the ECHR due to diplomatic immunity is justified, even in cases about absolutely prohibited human rights violations. The complaint was submitted to the ECtHR before the Conseil d'État admitted the case. The ECtHR concluded that France violated its positive obligation arising from the prohibition of slavery (Art. 4). The judgment did not examine the aspect of immunity from execution and state liability, or how to enforce compensations awarded by domestic courts.

So far, the European Court of Human Rights has not dealt with diplomatic immunities and employment disputes in the light of access to justice. Nevertheless, there are a number of cases involving state immunity and employment disputes that can be used as guideline; but case law of state immunity cannot be applied one-to-one since, diplomatic immunity is intended to offer a broader protection compared to state immunity. One can counter that customary law is subject to developments and similar to state immunity that has become more limited[145] over time, diplomatic immunity may be subject to adaptations. The widely accepted restriction of state immunity constitutes a

[142] *Siliadin v. France*, ECtHR, 2005, para. 141.
[143] Kartusch, 2011, p. 45.
[144] *C.N. and V. v. France*, ECtHR, Application no. 67724/09, Judgment of 11 October 2012.
[145] *Fogarty v. The United Kingdom*, ECtHR, Application no. 37112/97, Judgment of 21 November 2001, para. 37-38.

good example of upholding the principle of immunity and nevertheless allowing restrictions in areas such as employment disputes.

The case of *Cudak v. Lithuania*[146] is about a complaint of a Lithuanian national, who was employed as a receptionist in the Polish Embassy in Vilnius and was unfairly dismissed after she lodged a complaint for sexual harassment by a diplomat at the embassy. Her employment contract included a clause stating that Lithuanian law shall be applied to resolve employment disputes arising from that[147]. When she claimed for compensation for the unfair dismissal the Lithuanian courts found that it lacked jurisdiction due to the Polish Embassy's immunity. The ECtHR analysed whether the restriction of access to courts due to state immunity constituted a violation of Art. 6 ECHR. It held that the right of access to courts under Art. 6 is not absolute and it may be subject to limitations; nonetheless, the interference has to pursue a legitimate aim and the means have to be proportional[148]. Therefore, in cases of restriction of Art. 6 due to state immunity from jurisdiction, courts must evaluate whether the application of immunity is justified. The legitimate aim of granting state immunity is the promotion of comity and good relations between States. By applying the proportionality test the court confirmed the trend in international law to limit state immunity with respect to employment disputes[149]. The Court distinguished between acts of public-law nature (*acta jure imperii*) and of private-law nature (*acta jure gestionis*)[150]. Since the applicants' position was not particularly related to the exercise of state authority, and the original complaint was arising from sexual harassment, which is in no relation with Polish state security, the Court concluded that State immunity shall not apply to this employment dispute. It found Lithuania in breach with the applicants' right of access to courts by accepting Poland's reasoning that state immunity applies and declining to hear the applicant's claim[151]. Lithuania failed "*to preserve a reasonable relationship of*

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[146] *Cudak v. Lithuania*, ECtHR, Application no. 15869/02, Judgment of 23 March 2010.
[147] Kloth, 2010, p. 50.
[148] *Cudak v. Lithuania*, ECtHR, 2010, para. 55.
[149] *Cudak v. Lithuania*, ECtHR, 2010, para. 63.
[150] *Cudak v. Lithuania*, ECtHR, 2010, para. 71.
[151] Kartusch, 2011, p. 45; *Cudak v. Lithuania*, ECtHR, 2010, para. 74.

proportionality"[152]. This judgment is of great importance because the court refers to the evolving nature of international law, which is applicable to diplomatic immunity as well. Unfortunately the judgment did not discuss the legal value of the clause in the employment contract that Lithuanian law should be applied. Kloth[153] notes that this clause does not amount to a waiver of immunity, which has to be explicitly expressed. "*Under international law a provision in a contract that specifies that the law of the forum State is applicable does not contain an implied waiver of state immunity*"[154].

In the recent case of *Sabeh El Leil v. France*[155] the ECtHR confirmed the limitations of state immunity. The applicant, a French national, was employed as accountant at the Kuwaiti embassy in Paris for 20 years. His contract was terminated by the embassy on economic grounds. When he submitted a complaint before the French Labour Court for compensation for the dismissal the Court of Appeal found his complaint inadmissible due to lack of jurisdiction arising from state immunity. The ECtHR referred to the 2004 UN Convention on Jurisdictional Immunities of States and their Property, which limits state immunity in employment issues, given some exceptions which do not apply to this case (see chapter 6.4, p. 24). Furthermore, it could not be demonstrated that legal proceedings before French court would constitute a risk of interference with the security interests of the State of Kuwait. The ECtHR concluded that domestic courts failed to provide sufficient reasoning of the dismissal of the application and thus, violated the very essence of the applicants right of access to a court[156].

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[152] *Cudak v. Lithuania*, ECtHR, 2010, para. 74.
[153] Kloth, 2010, p. 51.
[154] Ibid.
[155] *Sabeh El Leil v. France*, ECtHR, Application no. 34869/05, Judgment of 29 June 2011.
[156] Netherlands Institute of Human Rights: http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/233813e697620022c1256864005232b7/e81523a2bde52bc6c12578bd0033ecfa?OpenDocument [last accessed on 25 June 2013].

7.3 International Treaty Bodies

The doctrine of diplomatic immunity restricts jurisdiction of the receiving State but has no *erga omnes* effect[157]. Hence, another possibility for domestic workers to seek redress is to turn to international treaty bodies and their mandate to hear individual complaints.

Possible channels are for instance the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) under Article 6: the elimination of trafficking on women and Article 11: the elimination of discrimination against women in the field of employment.

Furthermore, the UN International Covenant on Civil and Political Rights (ICCPR) provides supplementary protection under Article 2 para. 3: right to effective remedy, right to judicial remedy, right to enforcement of awarded claims and Article 8: the prohibition of slavery, servitude and forced labour.

Finally, the UN International Covenant on Economic and Social Rights (ICESCR) offers redress on the base of Article 6: the right to work and Article 7: the right to fair working conditions[158]. The optional protocol to the respective Covenants/Convention gives the Committee the power to receive and to consider communications from individuals about rights violations. The Optional Protocol to the ICESCR has just recently entered into force on 5th May 2013[159]. Individual complaints are admitted provided that the complaint is brought against a State that has ratified the treaty and the respective optional protocol. The decisions taken by the Committees are not legally binding; States are invited to supply information within three months on the steps it has taken to react on the Committee's findings.

Generally the channels provided by international treaty bodies are useful in order to raise political awareness and to influence policy directions. So far, no cases concerning domestic workers abused by diplomats in European countries have been submitted to

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[157] Värk, 2003.

[158] Kartusch, 2011, p. 45.

[159] Website of the Committee on Economic, Social and Cultural Rights: http://www2.ohchr.org/english/bodies/cescr/ [last accessed on 26 June 2013].

international treaty bodies[160]. NGO's are restricted in pursuing this strategy due to lack of resources and the uncertainty of the outcome of the proceedings[161].

However, in 2003 the German NGO Ban Ying submitted a report on female domestic workers in the private households of diplomats in Germany to the CEDAW Committee in order to open an inquiry procedure[162]. Despite the fact that the request of the NGO was not successful in initiating an inquiry, the report created media attention and resulted in some structural changes by the German Protocol Department in 2004. For instance, the Protocol Department introduced minimum wages for domestic workers employed by diplomats[163].

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[160] Kartusch, 2011, p. 45.
[161] Ibid.
[162] Ban Ying, Report to the CEDAW Committee to open an inquiry procedure, September 2003.
[163] Kartusch, 2011, p. 46.

7 Positive human rights obligations of receiving States to protect domestic workers

Under international human rights law States have the obligations to respect, to protect and to fulfil the human rights of individuals that is laid down in binding international human rights treaties. These human rights obligations arise only insofar as States have jurisdiction over the individuals. This is displayed for instance in Article 1 of the ECHR which expresses that "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms […] of this Convention"[164].
Article 37 para. 4 VCDR gives some clarifications on the question of jurisdiction over domestic workers: *"the receiving State must exercise its jurisdiction over those persons [domestic workers] in such a manner as not to interfere unduly with the performance of functions of the mission"*[165]. This article notes that receiving States may exercise jurisdiction over domestic workers provided that this does not constitute an interference in the functioning of official duties of a mission. Hence, one can argue that receiving States have jurisdiction over domestic workers employed by diplomats, which results in an obligation of receiving States to protect domestic workers' human rights.

Today it is broadly confirmed in doctrine and jurisprudence that States' human rights obligations go beyond merely refraining from interference with individuals' human rights[166]. International human right law requires States to go further and to take actions in order to prevent violations by third parties and to enable individuals to realize their rights in practice. For the aim of applying obligations of receiving States to domestic workers employed by diplomats, the nature of human rights obligations is briefly explained in the following part. In the second part, the scope of positive human rights obligations is demonstrated on the basis of jurisprudence of the European Court of Human Rights. Finally, the last part applies the concept of positive obligations to

[164] ECHR, Council of Europe, 1950, Art. 1.
[165] Vienna Convention on Diplomatic Relations, 1961, Art. 37 para. 4.
[166] Kälin and Künzli, 2009, p. 96.

receiving States of domestic staff of diplomats. This last part reflects the research findings from interviews with representatives of the Austrian and Swedish Ministry of Foreign Affairs, as well as results from previous research studies from other European countries.

7.1 The nature of human rights obligations

The nature of human rights obligations is classified into two groups - positive and negative obligations - depending on whether States have to be active or inactive in order to meet their obligations. Negative obligations call upon States to refrain from interference, whereas positive obligations impose on States to actively engage and to take actions[167]. One can further distinguish between the obligations of States to respect, to fulfil and to protect human rights:

- The obligation to respect is accomplished through non-interference by State authorities. These obligations are met by simply not intervening into certain rights. Since this requires inaction, the right to respect is a negative obligation. For example, the obligation to respect the right to private life and family life is violated when receiving States stipulate the marital status of domestic workers that requires being single.
- The obligation to protect requires positive state action to protect individuals from threats emanating, in particular, from third parties, but also from natural and human-made risks[168]. For instance, the State has to take measures in order to avoid exploitation of domestic workers by their diplomatic employers. However, the obligation to protect applies only insofar as "*the state is aware, or could have been aware […] of the violation or threat thereof and has the practical and legal means to prevent it*"[169]. The obligation to protect is preventive when actions are aimed at preventing a violation by third parties and it is remedial when the objective of the action is to assist victims during or after a violation to obtain redress or

[167] ibid.
[168] ibid.
[169] ibid.

compensation[170]. For example, the prohibition of slavery requires legislation that criminalizes slavery and slavery-like practices, such as domestic servitude and forced labour. If a State fails to explicitly criminalize domestic servitude, victims are not protected by law from this conduct and have no legal base for redress[171].

- The obligation to fulfil refers to States' duty to introduce legislative, administrative and judicial measures necessary to ensure that individuals are actually able to realize their rights in practice[172]. For instance, in order to fulfil the right to justice, States ought to offer legal advice to domestic servants. States can be held responsible for inaction, only to a certain degree. The obligation to fulfil is limited by States availability of resources[173]. Since the obligations to protect and to fulfil require actions from State authorities, they form positive human rights obligations.

Obligations arising from human rights

negative	to respect		
positive	to protect	preventive	operational and immediate (eg police)
			through legislation (eg prohibitions)
		remedial	operational and immediate (eg rehabilitation)
			through legislation (eg legal remedies)
	to fulfil	legislative, institutional and procedural facilities to ensure full realization of the right	
		benefits in the narrow sense (money, goods, services)	

Table 1: Nature of human rights obligations (Kälin and Künzli, 2009, p. 97)

One consequence of the theory of positive obligations of human rights is that the scope of human rights protection has been extended, insofar as it applies to violations by State, the vertical level, and violations by private persons, the horizontal level[174]. States can indirectly be held responsible for human rights violations perpetrated by private

[170] Kälin and Künzli, 2009, p. 109.
[171] *C.N. and V. v. France*, ECtHR, Application no. 67724/09, Judgment of 11 October 2012; C.N. v. The UK, ECtHR, Application no. 4239/08, Judgment of 13 November 2012.
[172] Nowak, 2003, p. 49.
[173] Kälin and Künzli, 2009, p. 97.
[174] Nowak, 2003, p. 52.

persons, provided that the violation resulted from a failure of the State to comply with its positive obligations[175].

7.2 The positive obligations of States to protect individuals from violations committed by third parties

Case law of international courts confirms the recent development of the application of positive obligations of States and the extended human rights protection on the horizontal level. When courts are testing whether or not a State is in breach with its positive obligation, it is not examining the act itself, but moreover it assesses if the act resulted from a failure of State regulation or implementation.

The application of positive obligation in the context of the right to life is undisputed and also acknowledged in jurisprudence. But which rights encompass a positive obligation of States? Is it applicable also to acts such as forced labour and domestic servitude?

In the case of *Siliadin v. France*[176] the ECtHR confirmed for the first time the validity of positive obligations in regard to slavery, forced labour and servitude. The applicant was brought to France at the age of 15 years by Mrs. D for the purpose of domestic work. It was agreed that she would carry out domestic work in the household of Mrs. D until her flight ticket was reimbursed. Further, it was agreed that Mrs. D would take care of the applicants' immigration status and her schooling. In fact, she became an unpaid servant for Mr. and Mrs. D. After several months she was 'lent' to another family, where she remained for about four years under inhuman living and working conditions. The applicant had to work 15 hours every day, was never paid and did not attend schooling. Finally, she escaped with the help of a neighbour[177]. Indeed, the Versailles Court of Appeal found the couple guilty for wrongfully obtaining unpaid or insufficiently paid services from a vulnerable person; but the court did not agree on the

[175] Council of Europe Handbook No. 7, 2007, p. 14.
[176] *Siliadin v. France*, ECtHR, Application no. 73316/01, Judgment on 26 October 2005.
[177] *Siliadin v. France*, ECtHR, 2005; Stoyanova, 2012, p. 181.

claim that her working and living conditions were in interference with her human dignity[178].

Finally, the ECtHR concluded that France's criminal code did penalize working and living conditions conflicting with human dignity, but the criminal code was silent on acts constituting slavery and servitude and did not specifically classify it as criminal offences[179]. The Court tested whether the existing provisions provided effective penalties for the conduct and noted that the provisions of the French Criminal Code "*were open to very differing interpretations from one court to the next, as demonstrated by this case, which, indeed, was referred to […] as an example of a case in which a court of appeal had unexpectedly declined to apply Articles 225-13 and 225-14 [the respective articles in France's Criminal Law that criminalize exploitation by labour and conditions incompatible with human dignity*]"[180]. The ECtHR agreed with the applicant that France failed to comply with its' positive human rights obligations to implement criminal law provisions that prevent the violation and effectively punish the perpetrators. Finally, the ECtHR confirmed that "*States have positive obligations, in the same way as under Article 3 [ECHR] for example, to adopt criminal-law provisions which penalise the practices referred to in Article 4 [ECHR] and to apply them in practice*"[181].

Another more recent example confirming the positive obligations of States to protect individuals from violations committed by third parties is the case of *C.N. and V. v. France*[182]. The proceedings before national courts were discussed in the chapter p. 27. This part discusses the outcome of the ECtHR. To recall, the two applicants, two minors, were brought from Burundi to France with the assistance of their aunt and uncle, who was an ex-minister of Burundi. They lived in very unhygienic conditions and had to carry out the housework of the entire family, which consisted of 9 members,

[178] Piotrowicz, 2012, p. 187.
[179] *Siliadin v. France*, ECtHR, 2005, para. 141.
[180] *Siliadin v. France*, ECtHR, 2005, para. 147.
[181] *Siliadin v. France*, ECtHR, 2005, para. 89.
[182] *C.N. and V. v. France*, ECtHR, Application no. 67724/09, Judgment of 11 October 2012.

without any compensation. The first applicant was never sent to school. Their freedom of movement was restricted. After 4 years they managed to escape from that situation. The uncle was at that time official at the UNESCO and as such, he and his wife enjoyed diplomatic immunity. However, the immunity was lifted by the international organisation[183], which allowed initiating legal proceedings without any procedural obstacles (see chapter 7.1, p. 27). The first court found the defendants guilty of subjecting individuals to living and working conditions that were incompatible with human dignity and misusing their vulnerability or dependence[184]. The Court of Appeal did not share the same opinion and argued that the element of intention to put the applicants in conditions contrary to human dignity was missing[185]. The applicants turned to the ECtHR and claimed that they have been held in servitude and subjected to forced or compulsory labour and that France failed to fulfil its' positive obligation. The ECtHR found that the first applicant was indeed subjected to forced labour because she did not give her consent to perform the work[186] and second they were regularly threatened to be sent back to Burundi that was associated by the first applicant with "*death and desertion of her young sister*"[187]. Moreover, the Court held that the first applicant was held in servitude, which is an aggravated form of forced labour, for the reason that she thought that her situation is neither going to change nor to improve[188]. The Court found the second applicant to be outside the scope of Article 4 and therefore, the claim of the 2nd applicant constituted no violation of France's positive obligation[189]. Regarding the positive obligation of France to protect the first applicant, the Court distinguished between the obligation to penalize and prosecute and the obligation to investigate as soon as the facts have come to the attention of the authorities. In order to meet the first obligation, the Court held, that States have to put in place a legislative and administrative framework prohibiting and punishing the conduct. The Court referred to

[183] *C.N. and V. v. France*, ECtHR, 2012, para 22.
[184] *C.N. and V. v. France*, ECtHR, 2012, para 37.
[185] *C.N. and V. v. France*, ECtHR, 2012, para 47.
[186] *C.N. and V. v. France*, ECtHR, 2012, para 76.
[187] *C.N. and V. v. France*, ECtHR, 2012, para 78.
[188] *C.N. and V. v. France*, ECtHR, 2012, para 91.
[189] *C.N. and V. v. France*, ECtHR, 2012, para 75.

the *Siliadin*[190] Case and said that France's Criminal Code did not explicitly punish slavery and servitude and forced labour[191]. France's criminal code was open to different interpretations regarding this conduct and therefore, did not provide practical and effective protection. According to the procedural obligation, France fully investigated the case of forced labour and servitude[192]. The Court followed that France was in violation of its positive obligation to protect the first applicant from abuses through third parties.

The case *C.N. v. The UK*[193] is very similar to the *Siliadin* and *C.N. and V.* case. The ECtHR found that the United Kingdom was in violation of Article 4, the prohibition of slavery, because the UK's criminal law did not offer practical and effective protection to C.N. The legislation did not specifically criminalize slavery, servitude and forced labour, which resulted in an ineffective investigation. Due to the lack of specific provisions police investigative powers were limited, i.e. the police authorities had no power to arrest or interview the suspects under caution for domestic servitude and forced labour[194].

The significance of these three cases, *Siliadin v. France*, *C.N. and V. v. France* and *C.N. v. The UK*, lies in the clear recognition that first, States do have positive obligations to protect individuals from slavery and similar practices and second, those obligations are not limited to violations committed by state-agents but also from third parties. Hence, the doctrine of positive obligations can be applied to the prohibition of slavery.

To what extent can protection be reasonably expected from States? One indication for this evaluation is given by the judgement of *Rantsev v Cyprus and Russia*[195]. The applicants' daughter, Ms. Rantseva was trafficked from Russia to Cyprus with an 'artiste' visa to work in an entertainment cabaret where she was subjected to sexual

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[190] *Siliadin v. France*, ECtHR, Application no. 73316/01, Judgment of 26 October 2005.
[191] *C.N. and V. v. France*, ECtHR, 2012, para 108.
[192] *C.N. and V. v. France*, ECtHR, 2012, para 111.
[193] *C.N. v. The UK*, ECtHR, Application no. 4239/08, Judgment of 13 November 2012.
[194] *C.N. v. The UK*, 2012, para 76.
[195] *Rantsev v. Cyprus and Russia*, ECtHR, Application no. 25965/04, Judgment of 7 January 2010.

exploitation. Ms. Rantseva was in police custody, where she was handed over to her employer and brought to the apartment of an employee of the cabaret. In the morning Ms. Rantseva was found dead under the balcony of that apartment[196]. According to reports of the Cypriot Ombudsman, it was known to the Cypriot authorities that foreign women, particularly from countries of the former Soviet Union, were trafficked under the artiste visa scheme for the purpose of sexual exploitation[197]. The ECtHR held that the positive obligation principle also includes investigations by the public in situations where the public authorities are aware, or should be aware of a real risk or a potential risk of being trafficked or exploited[198]. The Court noted in it's judgment that States have to go beyond criminal investigations and prosecutions in order to fully meet the positive obligation. At the time when Ms. Rantseva was in police custody the authorities should have assessed to which risks she might be exposed in the event of a release[199]. The Court was of the opinion that there were sufficient indicators available to the police authorities to raise a credible suspicion that Ms. Rantseva was, or was at immediate risk of being a victim of trafficking or exploitation[200]. First, the police failed to make immediate investigations and to take appropriate measures to remove her from that situation. Second, instead of doing so and protecting her from her traffickers, the police gave her to the custody of her employer[201]. The Court went further and examined the issue of human trafficking: it highlighted the severity of trafficking and pointed out that States have to take allegations of trafficking seriously. For the first time the ECtHR required States to take positive steps to combat trafficking[202]. Cyprus failed to effectively investigate the circumstances of Ms. Rantseva's arrival in Cyprus and the nature of her employment. States cannot ignore immigration practices that enhance, facilitate and tolerate trafficking[203], such as the 'artiste' visa scheme in Cyprus that facilitated the recruitment and exploitation of women by traffickers.

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[196] *Rantsev v. Cyprus and Russia*, ECtHR, 2010, para. 15-29.
[197] *Rantsev v. Cyprus and Russia*, ECtHR, 2010, para. 80.
[198] Piotrowicz, 2012, p. 197.
[199] Piotrowicz, 2012, p. 194.
[200] *Rantsev v. Cyprus and Russia*, ECtHR, 2010, para. 296.
[201] *Rantsev v. Cyprus and Russia*, ECtHR, 2010, para. 298.
[202] Piotrowicz, 2012, p. 195.
[203] *Rantsev v. Cyprus and Russia*, ECtHR, 2010, para. 284.

There is a development of the application of the positive obligation observable: in the *Siliadin* and *C.N. & V.* case the courts confirmed that States have to put legal provisions in place that criminalise slavery and similar offences. In the *Rantseva* case the court confirmed that the positive obligation applicable to cases of trafficking as well and is not limited to criminal legislation[204]. It is not sufficient to criminalise the offence and to punish the perpetrators; in some situations it is also necessary that States investigate in cases where they know about the risk of a violation and have the resources to do so.

7.3 Receiving States positive obligation to protect domestic workers

The granting of immunities to foreign representatives indirectly violates the rights of a particular group of people – in this case employees of diplomats[205]. States have the duty to protect this vulnerable group of people, to put in place safeguards and offer assistance to victims of exploitation by diplomats.

The following part identifies duties towards domestic workers and policies that offer effective protection. For this goal, the framework elaborated by the European Group of National Human Rights Institutions[206] serves as a guideline. Furthermore, this part discusses the research findings on the legal national framework of Austria and Sweden. The findings are particularly based on interviews with representatives of the respective Ministries of Foreign Affairs and are additionally supported with official documents of the Ministries. These findings are then compared with practices in other European Countries according to the comprehensive study of Kartusch[207] in six European countries.

[204] Piotrowicz, 2012, p. 196.
[205] *C.N. and V.*, Conseil d`État, No. 325253, Judgment of 11 February 2011; *'Ratnasari Devi',* Arbeitsgericht Berlin, No. 36 Ca 3627/11, Judgment on 14 June 2011.
[206] European Group of National Human Rights Institutions, 2013.
[207] Kartusch, 2011: Austria, Belgium, France, Germany, Switzerland, and the United Kingdom.

7.3.1 The preventive obligation to protect

States have the obligation to protect individuals from rights violations committed by private actors. This obligation to protect arises only insofar as States are aware, or ought to be aware of the violation and have the practical and legal means to prevent it[208].

In the context of domestic workers employed in private households' of diplomats, protocol departments of foreign ministries have experience with cases of exploitation showing the risk of abuse by diplomats that domestic workers are exposed to. Hence, one can argue that:

- Receiving States are aware of the imbalance of power in an employment relation between a diplomat and a migrant domestic worker, and the high vulnerability of domestic workers to rights violations (see chapter 3.4, p. 8).
- Receiving States are aware of the limited access to remedies for domestic workers.

Therefore, receiving States have the obligation to protect domestic workers from abuses by their employers. The obligation to protect can be preventive when the objective is to prevent a violation[209]. For example, the requirement that the domestic worker has a private room in the diplomat's household safeguards the employees right to privacy. The obligation can be remedial where the action offers immediate protection from ongoing violation or redress after a violation[210]. This can be, for instance, when the State offers shelter to avoid further exposure to violations or when the State facilitates out-of-court negotiation for resolving the dispute. In order to meet these obligations States can adopt a broad range of administrative measures encompassing the regulation of diplomatic visas for domestic staff, their immigration status and minimum employment conditions.

[208] Kälin and Künzli, 2009, p. 96.
[209] Kälin and Künzli, 2009, p. 109.
[210] Ibid.

7.3.1.1 Regulation of the issuance of diplomatic visa

Since the majority of domestic workers in most European countries are non-EU citizens they require a visa to enter the host countries[211]. Domestic workers working for persons who enjoy diplomatic privileges are exempted from regular immigration regulations and receive specific visas. The Protocol Department has the chance to check the compliance of the employment with core labour law standards by screening the employment contract prior to the arrival of the domestic worker. After the approval of this visa, they are allowed to enter the host State. After arrival the foreign mission or the international organisation has to apply for a special ID card. The issuance of these special ID cards is the responsibility of the respective Foreign Ministry, in particular the Protocol Department of the receiving State.

The OSCE Special Representative for Trafficking in Human Beings has pointed out the significance of the regulation of these ID cards for private domestic staff. It is, according to the OSCE Special Representative, the most effective way to prevent abuses and exploitation of private domestic staff[212]. She gives, inter alia, the example of Austria that has implemented some progressive measures in this respective area.

Upon arrival of the domestic worker in the host country the Protocol Department should, in the absence of the diplomat, set up a personal meeting with the domestic worker and inform the employee about his or her rights and provide information on how to report problems with the employer. This information ought to be in a written form and in a language that the domestic worker is able to understand[213]. Both, the Swedish and Austrian visa procedure incorporate a personal meeting with the domestic worker. In Austria the domestic workers are additionally provided with contact details and information material from a specialised NGO[214] that is written in different languages. Occasionally, when the employer does not understand English, an interpreter from the

[211] Kartusch, 2011, p. 22.
[212] OSCE, 2010b, p. 28.
[213] European Group of National Human Rights Institutions, 2013, p. 6.
[214] LEFÖ: a non-governmental organisation based in Vienna that offers assistance to migrant workers, sex workers and victims of trafficking.

embassy is present at the meeting[215]. In the Swedish Protocol Department it is standard practice to call in an interpreter to the meeting and moreover, the Protocol Department pays attention to have an interpreter who is not hired by the embassy[216].

Furthermore, the requirement to renew the visa on a regular basis is another important element of prevention. This allows the Protocol Department to meet the domestic worker once more in person and to monitor the employment relation[217]. The domestic worker is given the chance to clarify duties of the employer and in case of violation to make reports[218]. The Austrian procedural framework foresees the identification cards of diplomatic personnel with a validity of one year, i.e. it has to be renewed every year. The domestic worker has to come in person to pick up the renewed identification card. Generally, a domestic worker is allowed to apply for the identification card for the time period equivalent to the time of the diplomat's posting in the host country[219]. The Swedish Protocol Department issues the identification card for one year and the domestic worker has to come in person to pick up the renewed residence permit[220]. The personal contact with the employee is regarded as an important step to monitor the employment. The legal framework of the United Kingdom does not envisage personal contact between the Foreign Ministry and the domestic worker[221].

7.3.1.2 Employment conditions

The receiving State should require a written employment contract that is in line with core national labour provisions, such as minimum wage, working time, resting time and days off[222]. Some Protocol Departments provide a model employment contract that gives guideline on the basic standards. In Sweden and in Austria a model employment

[215] Interview with Spadinger, 2013.
[216] Interview with Karlsson, 2013.
[217] Kartusch, 2011, p. 24.
[218] European Group of National Human Rights Institutions, 2013, p. 6.
[219] This applies only to diplomats working in missions, not to diplomats of international organisations.
[220] Ministry of Foreign Affairs of Sweden, Employment of private servants, 2012.
[221] Kartusch, 2011, p. 25.
[222] European Group of National Human Rights Institutions, 2013, p. 7.

contract is provided and is mandatory for the application of the visa[223] (both model employment contracts are attached in the annex, see p. 81). This gives both parties, employer and employee, the opportunity to refer to the agreed conditions in case of a dispute. At the present, the Swedish Protocol Department is revising its' model contract in order to adjust it more effectively to national labour standards. The Swedish MFA is discussing to include a general clause stating that Swedish law shall apply to resolve employment disputes arising from this employment contract[224]. Under international law such a clause does not amount to an implied waiver of immunity because waiver of immunities have to be explicitly expressed by the sending State. Regardless of the legal value of the clause, it shows political will from the Swedish MFA to address violations of domestic workers[225].

Domestic workers in Austria are obliged to open a personal bank account, which the employer has no access to, at a bank institution that is domiciled in Austria[226]. The employers are obliged to transfer the salary via bank transfer. For the renewal of the identification card a proof of bank transfers may be requested by the Protocol Department, which explicitly does not accept payments in cash[227]. The representative of the Austrian Ministry of Foreign Affairs stressed the importance of the regulation of the payment mode because it protects both parties. In case of unpaid salaries, the domestic worker can bring forward factual evidence and at the same time the employer has evidence of the payment and can counter unjustified claims[228]. In Sweden, as of today, there is no regulation on how the salary is paid; however, the mode of payment is subject of discussion, according to the interviewee[229].

Additionally, the Austrian Protocol Department requires since 2011 that the employee be provided with a private room in order to guarantee the right to privacy. When

[223] Interview with Karlsson, 2013; Interview with Spadinger, 2013.
[224] The revision of the model contract is expected to be finished in autumn 2013. Interview with Karlsson, 2013.
[225] Kloth, 2010, p. 51.
[226] OSCE, 2010b, p. 28.
[227] Ministry of Foreign Affairs of Austria, Annex II of the Protocol Guide, p. 54.
[228] Interview with Spadinger, 2013.
[229] Interview with Karlsson, 2013.

applying for the visa the diplomat has to provide a layout plan of the accommodation indicating the private room of the domestic worker[230].

7.3.1.3 Immigration Status

The immigration status of the domestic worker is directly tied to one single diplomatic employer, which implies that once the employment terminates - either due to the end of the diplomat's posting or because one of the contracting parties dissolves the work relationship - the domestic worker loses the right to remain in the territory of that country[231]. This tying of visa to one single employer creates a high dependency of the employer on the diplomat. It bears formal difficulties for domestic workers to initiate legal proceedings, if possible, or any other forms of redress[232]. It puts the domestic worker in a highly vulnerable position because the visa status depends on the continuing employment[233]. The tying of visa to a specific diplomatic employer has often been criticised by NGO's and international organisations and demonstrates a structural legal gap in the protection of domestic workers of foreign diplomats[234]. In the case of *Rantsev v. Cyprus and Russia*[235] the ECtHR has criticised the tying of visas to one single employer. The European Group of National Human Rights Institutes recommends States to provide domestic staff working for foreign diplomats the possibility to switch to other forms of residence and work permits in cases of abuse by the employer[236]. In practice, there are only few possibilities for domestic workers whose rights were violated to change their residence status and the existing possibilities constitute exceptions rather than a legal right.

Change of employer within the diplomatic immunity

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[230] OSCE, 2010b, p. 28.
[231] Kartusch, 2011, p. 26.
[232] CEDAW, General Recommendation No. 26, 2008, para. 21.
[233] UN Special Rapporteur on Contemporary Forms of Slavery, 2010, para. 57.
[234] UN Special Rapporteur on Contemporary Forms of Slavery , 2010, para. 57; OSCE, 2010b, p. 25; CEDAW, General Recommendation No. 26, 2008, para 21.
[235] *Rantsev v. Cyprus and Russia*, ECtHR, Application no. 25965/04, Judgment of 7 January 2010.
[236] European Group of National Human Rights Institutions, 2013, p. 6.

Most of the European countries permit - to a limited extent - a change of employer within the diplomatic community, provided that the switch is carried out within a given time period after the end of the initial employment[237]. In Austria a switch of employer in case of a rights violation is tolerated but constitutes rather an exception. It is evaluated on a case-by-case basis. The interviewee of the Austrian Protocol Department pointed out the concern of the Ministry not to create new channels of migration[238]. In contrast, the Swedish authorities do not accept a switch of employer within the diplomatic community[239]. Nevertheless, the Swedish Ministry may grant an acceptance for a new employment within the diplomatic community if the person returns to the country of origin for at least six months. An exception can be made for private domestic workers of the head of a mission to transfer to the employers' successor, provided that the domestic worker has not exceeded the maximum of 8 years in total[240]. This means in practice, that the employee cannot seek for a new employment when the initial employment has terminated. A similar policy is pursued in Germany, where the possibility to change the diplomatic employer is restricted to the same diplomatic mission[241]. In the United Kingdom the change of employer is prohibited since April 2012[242].

An outstanding example for explicit assistance to domestic workers in this regard is the *Geneva Welcome Centre*[243], which was founded by the Swiss Federal Government and the Canton of Geneva. This institution runs a database of domestic workers holding a special identification card issued by the Protocol Department and diplomats seeking for private personnel. The aim of the Geneva Welcome Centre is to assist diplomats to find

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[237] Kartusch, 2011, p. 26.
[238] Interview with Spadinger, 2013.
[239] Ministry of Foreign Affairs of Sweden, 'Employment of Private Servants', 2012; Interview with Karlsson, 2013.
[240] Ministry of Foreign Affairs of Sweden, 'Employment of Private Servants', 2012.
[241] Kartusch, 2011, p. 26.
[242] Website of Immigration Law Practitioners' Association http://www.ilpa.org.uk/data/resources/14529/12.04-Overseas-Domestic-Workers.pdf [last accessed on 22 November 2012].
[243] Website of the Geneva Welcome Centre http://www.cagi.ch/en/vie-pratique/travail/bourse-emploi-domestiques-prives.php [last accessed on 8 June 2013].

private personnel and to explicitly help domestic workers to find a new employment within the one-month limit after termination of the initial employment[244].

All in all, the possibility to change the employer in case of exploitation is very limited and practically not feasible, except in Geneva, and is in most cases based on informal assistance by the Protocol Departments rather than on legal rights.

Anti-trafficking legislation

Another avenue for domestic workers who were exposed to exploitation is to switch to anti-trafficking legislation. If a domestic worker is identified as victim of trafficking he or she is entitled to apply for a temporary residence permit[245]. However, the entitlement to a temporary residence permit requires the cooperation in investigations and/or prosecution of the perpetrator[246], which is not possible in cases where the perpetrator enjoys immunity. The immunity of the diplomat makes criminal proceedings virtually impossible. This demonstrates another legal gap in the protection of domestic workers who are excluded from this entitlement. In order to address this legal obstacle, the Belgian Government incorporated a specific section in its anti-trafficking framework on 'victims of trafficking working for diplomatic personnel' that notes that a confirmation from the public prosecutor of victim of trafficking status is sufficient for the issuance of a residence permit[247]. Additionally, victims of trafficking are entitled to receive social assistance, including legal advice and access to State funds that are established for compensation for victims of trafficking[248].

The MFA of Netherlands clearly states in the information sheet handed out to domestic workers that the abuse of domestic workers and paying less than the minimum wage are considered as serious offences, namely human trafficking. Offences of trafficking will

[244] Kartusch, 2011, p. 26.
[245] Convention on Action against Trafficking in Human Beings, Council of Europe, 2005, Art. 14.
[246] Convention on Action against Trafficking in Human Beings, Council of Europe, 2005, Art. 14 para. 1.
[247] Kartusch, 2011, p. 27.
[248] Convention on Action against Trafficking in Human Beings, Council of Europe, 2005, Art. 15.

be punished and the Dutch government has established special programmes to offer protection[249].

Compared to Austria, the Swedish Protocol Department has a different procedure regarding the immigration status of domestic workers employed by foreign diplomats. In Sweden the domestic worker receives a visa that is issued in the passport of the domestic worker and gives the permit to enter and to stay in Sweden[250]. This visa is valid for the time of the diplomat's posting in Sweden but is limited to a maximum of eight years[251]. Additionally, a residence permit that is equal to the identification card is issued. This residence permit is valid for one year and has to be renewed[252]. If the employment relation is terminated earlier than agreed, the domestic worker can remain in the country until the visa is valid. Whereas in Austria the visa and the ID card is the same and is valid for one year. When the employment terminates, the domestic worker loses the right to remain in Austria[253]. The Swedish approach allows the employee at least to seek for compensation before departing the country.

The European Group of National Human Rights Institutes points out the judgement of the ECtHR case of *Rantsev v. Cyprus and Russia*[254] where the Court found a violation of positive obligation of Cyprus in regard of it's visa policy of tying the residence status to a single employer and thus making them prone to abuses. In light of this judgement, the European Group of National Human Rights Institutes recommends States to review the immigration practice of making the residence status of domestic workers dependent on the diplomatic employers, in particular for live-in staff[255]. Furthermore, the European Group of NHRI recommends that States should enable domestic workers to legally

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[249] Information sheet for 'private servants' supplied by the MFA of Netherland, 2012. http://www.government.nl/documents-and-publications/leaflets/2012/10/08/private-servants.html [accessed on 13 May 2013].
[250] Interview with Karlsson, 2013; Ministry of Foreign Affairs of Sweden, 'Employment of Private Servants', 2012.
[251] Ministry of Foreign Affairs of Sweden, Employment of 'Private Servants', 2012.
[252] Ibid.
[253] Interview with Spadinger, 2013.
[254] *Rantsev v. Cyprus and Russia*, ECtHR, Application no. 25965/04, Judgment of 7 January 2010.
[255] European Group of National Human Rights Institutions, 2013, p. 6.

remain in the country for the time of judicial proceedings or non-judicial negotiations, or medical treatment, if necessary[256].

7.3.2 The remedial obligation to protect

States have the positive obligation to offer protection to individuals, whose rights are violated. The remedial obligation to protect individuals incorporates measures that are targeted to assist victims of rights violations. This includes immediate protection e.g. by removing the person from the situation and offering shelter and medical treatment, if necessary. It also includes providing remedies to victims. Protocol Departments have a number of measures available to react on allegations of rights violations. Some are based on the Vienna Convention on Diplomatic Relations and others are more of an informal nature, such as raising the issue with the head of the mission of the sending State. It is difficult to crystallise a standard practice since the selection of appropriate measures strongly depends on the circumstances and is decided on a case-by-case basis.

7.3.2.1 Informal measures at the diplomatic level

Both interview partners stated that the standard practice after receiving a report of violation, is to first consult the employee and the employer and asking for a statement to the allegations. If the allegations are credible the Protocol Department strive to find an agreement that both parties give their consent to. The interviewees have mentioned a couple of informal measures that are taken in order to move the diplomat to cooperate with the Protocol Department in cases of violations of the employment contract. For example, the issue is raised with the head of the mission or with the director of the international organisation to facilitate the settlement of the dispute[257]. Some Protocol Departments refuse to issue permits for new domestic workers if the mission or the diplomat has a negative track record on the employment of personal staff or delay the registration of a new domestic workers unless unresolved disputes have been sorted

[256] European Group of National Human Rights Institutions, 2013, p. 7.
[257] Interview with Karlsson, 2013; Interview with Spadinger, 2013; Kartusch, 2011, p. 29.

out[258]. If necessary the Protocol Department considers to issue the identification card for the following domestic worker for a shorter time, for example for 6 instead of 12 months[259].

Out-of-court negotiations

The interviewees in Sweden and Austria are not aware of any judicial proceedings. The Austrian representative mentioned that some cases have been submitted before Austrian courts; however, the cases were dismissed because of immunity of the employer[260]. Hence, non-judicial negotiations are the only effective form of redress for domestic workers. The content of out-of-court negotiations are limited to labour law claims, such as payment of salaries, overtime work, unconsumed days off, social security payments, compensations for illegal dismissal after sickness or pregnancy but also the reinstatement after illegal dismissal. In some cases the costs of return flights are also part of the claims[261]. It was clearly indicated that other claims that are not employment-related, such as compensation for pain and suffering, are not part of the compensations paid[262]. The calculation of the compensations is based on the minimum wage of the respective country[263]. The role of the Protocol Departments in regard of out-of-court negotiations is not interpreted in the same way. In Austria and Belgium the Protocol Departments explicitly act as independent mediators[264]. The representative of the Austrian Protocol Department views that Protocol Departments have an obligation to facilitate negotiations between diplomats and domestic workers and to assist to find an agreement[265]. In contrast, according to Kartusch[266], the Protocol Department of the United Kingdom does not involve in negotiations at all. The representative from the

[258] Kartusch, 2011, p. 29.
[259] Interview with Spadinger, 2013.
[260] Interview with Spadinger, 2013; Interview with Karlsson, 2013.
[261] Kartusch, 2011, p. 38; Interview with Spadinger, 2013; Interview with Karlsson, 2013.
[262] Ibid.
[263] Ibid.
[264] Kartusch, 2011, p. 38.
[265] Interview with Spadinger, 2013.
[266] Kartusch, 2011, p. 38.

Austrian MFA has mentioned that international organisations are more willing to cooperate than foreign missions[267].

In the German case of "*Ms. Hasniati*"[268] the diplomat refused to cooperate; however, an alternative solution was found as a result of out-of-court negotiations directed by the NGO Ban Ying and the German Protocol Department. The case is about a woman from Indonesia who was working in Berlin under inhuman conditions for a diplomat from Yemen for two and a half years. She was locked in the apartment of the employer, and was subjected to physical violence on a regular base. She had to work up to 19 hours every day and never received any remuneration. When she suffered several months from tuberculosis the diplomat was forced to bring her to the hospital, where she confided her story. Due to the effort of Ban Ying and the political will of the German Ministry of Foreign Affairs to find a solution the Yemeni embassy finally agreed to pay compensation in the amount of €23,250[269] to the employee in place of the diplomat who refused to cooperate. The negotiations process took one year and was not very promising. The turning point was when Ban Ying went public with the story of Ms. Hasniati after a deadline expired that was set by the NGO. The broad media coverage put pressure on the embassy and eventually resulted in the compensation by the sending State[270]. An important aspect for the successful negotiation was that the Ms. Hasniati was allowed to remain in the country because she was granted a short-term residence permit for one year[271].

This case underlines the importance of NGOs that provide assistance to domestic workers and safeguard the interests of their clients by joining out-of-court negotiations conducted by Protocol Departments or directly approaching the diplomat or embassy[272].

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[267] Interview with Spadinger, 2013.
[268] Name is fictional.
[269] The original offer of the embassy was €5,000.
[270] Kartusch, 2011, p. 43.
[271] Berliner Zeitung: http://www.berliner-zeitung.de/archiv/gepeinigte-hausangestellte-erhaelt-aufenthaltserlaubnis-jemenitische-botschaft-zahlt-gehalt-nach,10810590,10536056.html [last accessed on 26 February 2013].
[272] Kartusch, 2011, p. 39.

The *Office of the Amiable Compositeur*[273] in Geneva is an outstanding example of an independent body that offers free legal advice to employees and diplomatic employers and directs negotiations as a mediating party. The Office offers to calculate the amount of compensation payment, which is set far below what the employee is entitled to in negotiations facilitated by Protocol Departments[274]. The 'outsourcing' of this dispute settlement from the Protocol Department to an has several advantages: in contrast to the Protocol Department that is guided by the superior goals of retaining friendly diplomatic relations with sending States and protecting the their own diplomats abroad from arbitrary interferences, the *Office of the Amiable Compositeur* can operate independently. The assignment of an independent body with this dispute-settlement can prevent a conflict of interest and offer more efficient services for an amiable settlement that both parties agree with.

7.3.2.2 Diplomatic measures foreseen in the VCDR

According to the research findings of Kartusch[275], it has been reported in at least four countries (Austria, Belgium, Switzerland, United Kingdom) that the receiving State had requested the sending State or the international organisation to waive the immunity of the diplomat[276]. There are no figures available on the number of requests. In Germany and Sweden no cases have occurred so far, where a waiver of immunity was requested for a case involving rights violations of domestic workers[277]. In the United Kingdom it has been reported that if the police authorities approach the Protocol Department with a request to waive the immunity it was standard practice to pass on the request to the respective foreign ministry[278]. In comparison, France seems to have a more absolute approach of diplomatic immunity, where it was reported that a request for a waiver of immunity would be considered only in serious criminal offences, such as suspicion of

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[273] Website of the *Office of the Amiable Compositeur*: http://www.ge.ch/ds/services-et-offices/?rubrique=amiable-compositeur-en [last accessed on 31 June 2013].
[274] Kartusch, 2011, p. 41.
[275] Kartusch, 2011.
[276] Kartusch, 2011. p. 30.
[277] Kartusch, 2011, p. 30; Interview with Karlsson, 2013.
[278] Kartusch, 2011, p. 30.

murder[279]. There has been one recent example, involving the exploitation of domestic work, where the immunity was waived after a request of the receiving State – the judgment of the *Conseil d'État*[280] concerning *C.N. and V.* (see chapter 7.1, p. 27).

The ultimate course of action that is at the disposal of receiving States is to declare a diplomat *persona non grata*. Cases where a diplomat was declared *persona non grata* for the abuse of domestic workers is not known[281].

The OSCE Special Representative on Combating Trafficking in Human Beings has criticised that States have granted domestic workers the status of victims of trafficking but at the same time have not imposed any formal consequences on the diplomatic level[282]. Despite the fact that trafficking is considered a serious criminal offence, which would justify diplomatic measures according to the VCDR.

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[279] Ibid.
[280] *C.N. and V. v. France*, ECtHR, Application no. 67724/09, Judgment of 11 October 2012; *C.N. and V.,* Conseil d`État, No. 325253, Judgment of 11 February 2011.
[281] Kartusch, 2011, p. 52.
[282] OSCE, 2010b, p. 66, para. 29.

8 Recommendations

The previous chapter has demonstrated the positive obligations of receiving Sates to effectively protect domestic workers. The following chapter summarizes promising developments and practices and gives recommendations based on the research findings in the previous chapter.

Receiving States can implement a broad range of measures to protect domestic workers, in particular to prevent abuses and to offer effective judicial and non-judicial channels of redress in cases of violations. Protocol Departments of receiving States play a decisive role in the protection of domestic workers. First, they are in the position to direct and monitor this unregulated grey zone of employment relation and second, Protocol Departments are the only contact point for many domestic workers. Therefore, the recommendations are mainly directed to Protocol Departments. It is taken into consideration, that Protocol Departments are restricted in terms of personnel and budgetary resources. However, most of the measures are not expensive to implement.

8.1 Preventive measures to protect domestic workers

Protocol Departments should pay attention to put in place safeguards that prevent abuses and prevent abusive situations to escalate and to become grave human rights violations.

8.1.1 Regulation of diplomatic visa

The regulation of the visa scheme for private staff of diplomats is the most effective way to prevent abuses[283]. Prior to the arrival of the domestic worker an application for the visa has to be submitted. The Protocol Department, as the responsible authority for

[283] OSCE, 2010b, p. 28.

the issuance of diplomatic visa, has the opportunity in this early stage of registration to check the compliance of the employment with core labour law standards.

• Therefore, the Protocol Department should require a written employment contract that is in accordance with basic employment conditions, such as minimum salary, minimum working hours and time for rest.

• A significant aspect of protection of domestic workers is the personal contact. Protocol Departments should set up meetings with the employee. Therefore, domestic workers should be obliged to pick up the ID card in person in the absence of the diplomat. Additionally, the personal pick up of the ID card gives the domestic worker more control over personal documents.

• During this meeting the Protocol Department should inform domestic workers about their rights and give information on how to make report of violations. This information has to be conveyed in a language that the domestic worker can understand. Additionally, the information should be delivered as well in written form and in different languages. The understanding of rights and duties of the employer is a prerequisite to access to justice. As an example in this regard, the Austrian Protocol Department distributes leaflets from a specialized NGO in different languages.

• In case of language difficulties an interpreter should be called in. The Swedish Protocol Department pays attention to call an interpreter who is not hired by the embassy that enhances an adequate and safe environment for talking about sensitive issues.

• When the special identification card is issued for the first time, it should be valid for only one year and then be subject to renewal. The domestic worker should be obliged to pick up the renewed ID card in person. This second meeting is of significance because potential violations might occur after the first personal meeting. The employee is enabled to seek for information on rights and report problems in the employment

relation. The personal meetings effectively prevent grave human rights violations such as forced labour and domestic servitude and allow the Protocol Department to monitor and to tackle problems before they escalate. In cases of reported violations the Protocol Department can require additional documents for renewal, such as proof of payment.

• If violations are reported to the Protocol Department, the ID card should again be issued for a year or shorter and further follow up meetings should be arranged. If necessary, NGO members who have experience with migrant workers, domestic workers or trafficking in human beings should be called in.

• Protocol Departments should inform domestic workers as well as diplomats about their rights and duties according to national labour law standards. For instance, by requiring signed information letters.

• The staff of Protocol Departments who are in contact with domestic workers should be sensitive to the problems of trafficking and migrant domestic workers. During personal meetings the staff should enable an environment that encourages the employee to talk about problems with the employer and if required, the staff should assist domestic workers to get in contact with specialised NGO's.

8.1.2 Regulation of employment conditions

• Protocol Departments should provide a mandatory model employment contract that entails minimum labour law standards in line with national and international labour law provisions, such as minimum wage, working time and days off. A positive example in this regard is Sweden that is discussing to include a clause stating that Swedish labour law shall apply and disputes shall be settled before Swedish courts.

• Another example of good practice is the regulation of the mode of payment in Austria. It is required that the domestic worker opens a personal bank account where the employer has no access to, and only payments via bank transfer are permitted. The

Austrian Protocol Department may demand bank statements as a requirement for the renewal of identification cards. Protocol Departments should take the regulation of the mode of payment into consideration since it constitutes an easy tool to proof actual payments.

• In cases of live-in domestic workers, the Protocol Department should ensure that the domestic worker has a private room at his or her own disposal. This can be fulfilled by asking for a layout plan of the accommodation that indicates the private room of the domestic worker. This simple step safeguards the domestic workers right to privacy, as it is practiced in Austria.

8.1.3 Immigration status

The residence status of domestic workers employed by foreign diplomats is strictly tied to the employment with one single diplomat. The possibilities to change the employer are very restricted and practically not feasible. Hence, those restrictions prevent domestic workers from reporting or leaving the exploitive working conditions. This visa regime creates a high dependency of the employee and is prone to violations by the employer and might constitute a breach of positive obligations.

• States should in light of the judgment of the ECtHR in the case of *Rantsev v. Cyprus and Russia*[284] revise their visa policies and abolish visa schemes that tie the visa to one single employer[285].

• Protocol Departments should as a minimum standard permit domestic workers to change the employer within the diplomatic community in case of violation and foresee a feasible time period for finding a new employer.

[284] *Rantsev v. Cyprus and Russia*, ECtHR, Application no. 25965/04, Judgment of 7 January 2010.

[285] UN Special Rapporteur on Contemporary Forms of Slavery, Report 2010, para. 96.

8.2 Remedial measures to protect domestic workers

Receiving States ought to offer effective judicial or non-judicial remedies for domestic workers. This can include informal measures at the diplomatic level, such as out-of-court negotiations, but also formal actions based on the VCDR, measures regarding the immigration status and alternative remedies such as state liability or non-judicial complaint mechanism.

8.2.1 Informal measures at the diplomatic level

There are no guidelines for Protocol Departments on how to react to reports on rights violations or on how the process of negotiations should take place. It depends very much on the commitment of the individuals how the complaint is proceeded with[286]. In countries, such as the United Kingdom, the Protocol Department plays no role at all in finding a non-judicial solution. Taking into consideration the limited access to judicial remedies and the imbalance of power, Protocol Departments should be aware of their responsibility to facilitate settlings of employment disputes. Out-of-court negotiations are in practice the only available remedy for domestic workers. The initiating of legal proceedings is required in order to have access to existing state-funds for legal aid. Since, judicial proceedings are limited to domestic workers, they often rely on assistance by NGO's or lawyers working on pro bono basis[287].

• Protocol Departments should recognize their significant role as independent mediator and their responsibility to engage in dispute settlements and strive for an agreement that both parties agree with.
• Guidelines on how to proceed with complaints and how to conduct negotiations between employer and employee facilitated by Protocol Departments should be developed.
• States should provide funds for legal advice for domestic workers for at least cases of serious rights violations.

[286] Kartusch, 2011, p. 53.
[287] Kartusch, 2011, p. 54.

• Protocol Departments ought to make use of the whole range of informal measures that are at their disposal and put political pressure on the diplomats in order to achieve cooperation.

8.2.2 Formal measures according to the VCDR

While out-of-court negotiations assisted by Protocol Departments are in some cases effective tools to enforce claims, employers are not obliged to participate and cooperate in negotiations. According to the nature and gravity of the rights violation Protocol Departments should not shy away from taking steps based on the VCDR.

• Receiving States should systematically request waivers of immunity in serious cases, such as trafficking or non-cooperation on the part of the diplomat and put political pressure on the sending State or international organisation to accept the request[288].
• Receiving States should in cases of grave or repeated violations, and in case of non-cooperation make use of the declaration of *persona non grata*.

8.2.3 Immigration Status

Measures regarding the immigration status can also be remedial: if the employment relation terminates due to non-compliance of the employer, the domestic worker automatically loses the right to legally remain in the country. This visa policy impedes the employee's right to effective remedy because it is difficult to seek for redress after a departure from the receiving State.

• States should enable domestic workers in prima facie cases of rights violations to remain in the country for the duration of legal proceedings in order to enforce their claims. Taking into consideration the difficulty to initiate judicial proceedings, the legal framework should recognize out-of-court negotiations as equally valid.
• Staff of Protocol Departments and non-state actors, such as specialized NGO's and women's shelters, should be aware of the possibilities of victims of trafficking to obtain

[288] Kartusch, 2011, p. 53.

regular residence permits and refer domestic workers who are recognized as victims of trafficking to switch to ant-trafficking legislation.

8.2.4 Alternative remedies

Alternative complaint mechanism

• States that have a high number of diplomats residing in their territory ought to consider establishing an independent institution that is assigned to resolve employment disputes involving diplomatic and consular immunities. The *Office of the Amiable Compositeur*[289] in Geneva is an outstanding example of an independent body that is assigned with the settlement of employment disputes involving diplomatic and consular immunities. Geneva, as the headquarter of many international organisations, has a high number of diplomats residing and hence, has a higher number of employment disputes involving diplomats.

State liability

Diplomatic immunity from execution prevents domestic workers, who have been awarded compensation from national courts, to obtain payments from the diplomat because the receiving State has no power to enforce the judgment. In reference to the French Supreme Court judgment in the *C.N. and V.* case[290] and the judgment of the German Labour Court in the case of *Ms. Ratnasari*[291], States should establish funds for claims that could not be enforced due to immunity from execution.

Legislative actions

According to international anti-trafficking legislation, victims of trafficking have to cooperate with public authorities to prosecute the traffickers in order to obtain a regular residence permit.

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[289] Website of the *Office of the Amiable Compositeur*: http://www.ge.ch/ds/services-et-offices/?rubrique=amiable-compositeur-en [last accessed on 31 June 2013].

[290] *C.N. and V,* Conseil d`État, No. 325253, Judgment of 11 February 2011.

[291] *'Ratnasari Devi',* Arbeitsgericht Berlin, No. 36 Ca 3627/11, Judgment on 14 June 2011.

• States should take into consideration the difficulty for domestic workers to prosecute their diplomatic employers, and therefore, modify national trafficking legislation in such a manner that also domestic workers can benefit from protection based on anti-trafficking.

Another legal gap of protection of domestic workers is the failure to explicitly criminalize slavery, servitude and forced labour as confirmed in the ECtHR judgments in *C.N. and V. v. France* and *C.N. v. The UK.*

• States should in order to fulfil their positive human rights obligations, implement the absolute prohibition of slavery and slavery-like practices into national criminal law.

9 Conclusion

The goal of this research study was to examine the role of receiving States in the context of rights violations of domestic workers by their employers, who enjoy diplomatic immunity, from a human rights perspective. For this objective, the framework regulating the entry of domestic workers in Austria and Sweden was examined as well as the actions taken by the respective Ministries of Foreign Affairs in cases of rights violations.

The findings reveal that receiving States have a positive obligation under international human rights law to offer effective protection to domestic workers. This obligation incorporates on the one hand preventive actions in order to avoid rights violations to arise, and on the other hand remedial obligations to offer assistance in cases of rights violations. In particular, the obligations include:

Interviews with representatives of the Protocol Departments of Austria and Sweden have shown an increasing awareness for the situation of domestic workers and political will to offer protection. Since 2010, Austria has introduced pioneering measures that safeguard the interests of domestic workers. In Sweden the model contract for the employment of domestic workers is under revision, in order to make it more compatible with Swedish labour law. In cases of reported rights violations, both Protocol Departments engage in out-of-court negotiations between the employer and the employee and facilitate a settlement of the dispute.

However, research on other European countries has shown that diplomatic measures that are foreseen in the VCDR, such as requesting a waiver of immunity or declaring a diplomat *persona non grata*, has hardly ever applied in this context, not even in cases including serious human rights violations. On the one hand, exploited domestic workers

are granted status of victim of trafficking but at the same time it does not bear any formal consequences on the diplomatic level, which amounts to double standards.

Nonetheless, there is increasing awareness of the vulnerable situation of domestic workers and the need for protection. This becomes visible in the effort of regional and international organisations: for instance, the OSCE Special Representative for Combating Trafficking in Human Beings has organized a series of workshops for Protocol Departments of Member States under the title of “Domestic servitude in diplomatic households” in 2011.

The significance of this research study lies in the conclusion that receiving States have the obligation to protect domestic workers. Furthermore, this study contributes by collecting primary data on the procedural framework of the Ministry of Foreign Affairs in Sweden. It shall serve as guideline for discussions and future research studies but also give recommendations to Protocol Departments.

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11 Annex

Annex A: Model Employment Contract, Austrian Ministry of Foreign Affairs

D I E N S T S C H E I N Privates Hauspersonal
SERVICE AGREEMENT for private household help

1. Name und Anschrift des Dienstgebers
(name and adress of employer):
..

2. Name und Anschrift des Dienstnehmers
(name and adress of employee):
..

3. Geburtsdatum des Dienstnehmers
(birth date of employer):
..

4. Beginn bzw. (bei befristete Dienstverhältnissen
auf bestimmte Zeit auch Beendigung) des Dienstverhältnisses
(begin and termination of contract of employment):
...

5. Dauer der vereinbarten Kündigungsfrist
(duration of period of notice):
..

6. Dauer der Probezeit (höchstens eine Woche)
(duration of probationary period- at maximum one week):
..

7. Arbeitsort
(place of work): **..**

8. Verwendung im Haushalt
(description of employment):

O Hausgehilfe/in ohne Kochen (domestic help without cooking)	O Krankenbetreuerin (nursing)
O Hausgehilfe/in mit Kochen (domestic help with cooking)	O Diplom Krankenbetreuer/in (professional nurse)
O Köchin/Koch (cook)	O Kindergärtnerin mit Befähigungsnachweis (nursery school teacher)
O Kinderbetreuerin (nanny, childen's nurse)	O Erzieher/in mit Befähigungsnachweis (professional childen's nurse)
O Säuglingspflegerin (infant nanny)	O Hausprofessionist/in (housekeeper)

O Diplom-Säuglingspflegerin
(infant nurse)

9. Art der Sonderleistungen, wie z.B. Krankenbetreung, Kinderbetreuung, Pflege des Fahrzeugs, Gartenarbeit, Wartung von Haustieren, etc.
(special tasks of employment, e.g. taking care of sick persons, children, vehicles, gardening, domestic pets, etc.):
..

10. Vereinbarter (monatlicher oder wöchentlicher) Geldbezug
(agreed monthly or weekly payment):
..

11. Vergütung für Sonderleistungen
(payment for special tasks): ....

12. Dienstnehmeranteil der Sozialversicherung wird vom Arbeitgeber getragen
(employee's share of social insurance contribution is borne by the employer):
O Ja (Yes) O Nein (No)

13. Vereinbarte Sachleistung,
Frühstück, Gabelfrühstück, Mittagessen, Jause, Nachtmahl
(breakfast, fork lunch, lunch, snack, dinner):
...

14. Höhe der Abgeltung sofern Sachleistungen nicht gewährt werden
(payment in case no retribution in kind is granted):
..

15. Wird ein Wohnraum zur Verfügung gestellt
(provision of accomodation by the employer):
O Ja (Yes) O Nein (No)

16. Ausmaß des jährlichen Erholungsurlaubes
(duration of annual holiday): ....

17. Arbeitszeit: an Wochentagen von / bis
(work hours on week days):
from..............................to...................................
Arbeitszeit: an Sonntagen und kirchlichen Feiertagen von / bis
(work hours on sundays and holidays):
from..............................to...................................

18. Möglichkeit zum Besuch des Gottesdienstes an Sonntagen und kirchlichen Feiertagen
(possibility of participation in religious services):
from.............................to...................................

19. Ein freier Wochennachmittag ab 14 h wird vereinbart für:
(one afternoon off during the working week is agreed upon):

Monday, Tuesday, Wednesday, Thursday, Friday, Saturday

20. Abweichende Vereinbarungen der Arbeitszeit, der Freizeit, der Ruhezeit und der Ruhepausen in den Fällen des § 5 Absatz 7 Hausgehilfengesetz (deviating working time, time off, or breaks as to § 5 para 7 Hausgehilfengesetz):

..

21. Geltender Mindestlohntarif (current minimum wage):

...

Unterschrift des Dienstgebers (employer's signature):

..

Unterschrift des Dienstnehmers (employee's signature):

....

Ort und Datum (date and location):

..

A F F I D A V I T

I,____(name), born on__________________,
employed as______________________(function) at ________________________________, living in _______________________________, declare that I will be responsible for all living expenses, dwelling space and the salary of _____________________________________(name of private household help) who will be employed by me as a private household help in my household. I also undertake to bear all costs of assistance and medical care which might arise to the Republic of Austria, the Länder, the Communities and all other public entities due to my private household help's entry to Austria, his/her sojourn – even if the latter for any reason exceeds the originally applied period – and his/her departure, as well as possible measures to be taken by the alien police. The said costs will be covered within 14 days after demand of payment, alternatively payment may be enforced by court. (Applications made by persons who are not in diplomatic rank have to be certified by court or a notary public.)

I have taken note of the regulations on the employment status of domestic staff as defined in Federal Law Gazettes BGBl No. 235/1962 and BGBl I No. 100/2002.

____________________ on ________________ ________________________________
Venue Date Signature

Annex B: Model Employment Contract, Swedish Ministry of Foreign Affairs

MODEL EMPLOYMENT CONTRACT FOR PRIVATE SERVANTS – CONTRACT

Parties

The parties to this employment contract are ……………………………………………… at ………………………………………………… Embassy/Consulate in Stockholm (hereinafter referred to as the employer) and

…………………………………………………………………………………..

…………………………………………………………………………………...
(information including name, date of birth, citizenship, address in Sweden and in the country of origin, hereinafter referred to as the private servant).

This contract refers to the employment of ………………………………………………. as private servant to …………………………………………………………………….

Contract period

This employment contract is in effect

a) from……………………until …………………… although only as long as the employer serves at the ………………………………………. Embassy/Consulate in Sweden.

or

b) as long as the employer serves at the ……………………………. Embassy/Consulate in Sweden.

Duties

The duties to be performed are:

a)

b)

c)

Working hours

The working hours are ……… hours per week.

The private servant should have the right to a necessary rest period for night-time rest. When possible, this is to include the hours between midnight and 05.00. The private servant shall have a minimum uninterrupted rest period of 36 hours per week. If possible, this rest period is to be scheduled for weekends.

Organisation of working hours

The work is to be carried out between the hours of ………… and …………

Pay

The monthly pay is to amount to SEK…………… This remuneration is paid on the 25th of each month.

In addition to this sum

a) food and lodging is provided in kind (   )

or

b) the private servant is compensated for food and lodging by a sum of SEK………… per month (   ).

Remuneration, and where relevant, food and lodging, is to be paid even if the private servant is prevented from carrying out his or her duties due to sickness.

In addition, the employer is to pay for the private servant's return travel upon termination of the employment, regardless of the reasons the employment was terminated. 'Return travel' refers to travel from Stockholm to the country where the private servant lived before taking up his or her position.

Compensation for overtime worked

Time worked in excess of the agreed upon time up to 40 hours per week is compensated by pay corresponding to the pay per hour worked. Time worked in excess of 40 hours per week is compensated by pay that, per hour, corresponds to ……… per cent of the regular hourly pay.

Annual leave

The private servant is to have the right to ……… days of annual leave per year. During the period the private servant is on annual leave, he or she is to receive full pay.

Insurance

The employer assumes responsibility for taking out and paying a health and accident insurance providing coverage 24 hours per day for the private servant.

The insurance shall apply during the entire period the employment contract is in effect.

Notice of termination

Notice of termination by the private servant should be given as early as possible and no later than one month prior to leaving the position.

Notice of termination by the employer due to shortage of work shall be given as soon as the shortage becomes known and no later than two months prior to the termination of employment.

Notice of termination by the employer due to reasons attributable to the private servant shall be given as soon as these reasons become known and no later than two months prior to the termination of employment. This kind of notice of termination shall be based on objective grounds.

The grounds for notice of termination by the employer shall be given in writing.

The employer shall send a copy of the details including these grounds to the Ministry for Foreign Affairs Protocol Department.

Summary dismissal

Summary dismissal by the employer requires that the private servant has been grossly negligent in his or her duties to the employer.

The grounds for summary dismissal by the employer shall be given in writing. The employer shall send a copy of the details including these grounds to the Ministry for Foreign Affairs Protocol Department.

Disputes

The primary means of resolving disputes pertaining to the content of this contract should be through dialogue between the parties. Alternatively, the parties are to try to reach an agreement at the competent Swedish court.

……………………………………… ………………………………………

Private servant Employer

This contract has been drawn up in two copies and signed by both parties, of which each has taken one. The employer shall send a copy of the contract to the Ministry for Foreign Affairs Protocol Department.