

Organizing in the Shadows: Domestic Workers in the Netherlands

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In 2009, a small group of domestic workers joined FNV Bondgenoten, the largest Dutch trade union in the private sector and affiliated with the Dutch trade union confederation FNV. The group that joined consisted mainly of women immigrant workers, many of whom did not have a residence permit. FNV's policy is that we organize workers and do not ask for passports. Still, a group like this brought to light several problems for FNV, both practical and fundamental. The Article identifies three types of problems. The first set of problems concerns the invisibility of domestic workers. Domestic workers work in private houses and are leery of talking to strangers if they don't have residence permits. This demanded new organizing tactics from the sector, like asking women to bring a friend to a meeting and joining churches. A cash payment of membership fees system was devised, its administration done by handwriting. At the same time, the public debate on immigration toughened; immigrants without residence permits ("illegal aliens") in particular were depicted as somewhere between a profiteer and the devil. This debate also took place within FNV. The second set of problems is defined by the traditional views in Dutch society on domestic work. The group chose to become union members, since they wanted to better their position in the labor market. Dutch law on domestic work excludes them from full protection of labor and social security law. The inclusion of domestic work in labor and social security law is contrary to cultural and historical traditions and views and therefore contentious. The third set of problems is

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caused by the connectedness of labor and social security law and immigration law. Domestic workers in the Netherlands work in the shadows in two ways: by not having a residence permit, and by not being protected by labor and social security law. The result of our campaign is that a group of publicly financed care workers will be better protected, but the group of domestic workers that fought for ILO Convention 189 will still be excluded from our labor and social security law and not be able to qualify for a residence permit.

INTRODUCTION

Maids — or domestic workers — have worked in the rich houses of Amsterdam ever since the city started to prosper in the seventeenth century. Having a maid was limited to the elite who could afford to hire girls or young women from the countryside. The shortage of maids in the early twentieth century led German and Belgian women to migrate to the Netherlands to work as maids. These girls and young women thus helped to feed their families.¹ Nowadays there are still maids working in Amsterdam, but from Latin America and East Asia. However, in many cases they are no longer working as live-in maids, but are traveling around the city with a keychain full of keys and cleaning three or four houses a day. They are feeding their families abroad and allowing their brothers and sisters, nieces, nephews or children to finish their schooling.²

In January 2009, a small group of domestic workers joined FNV Bondgenoten,³ the largest Dutch trade union in the private sector and affiliated with the Dutch trade union confederation FNV. At that time, I was working as a policy advisor on issues concerning flexible labor, temporary work agencies, migration and equal pay and thus became involved with this group of workers. They had been members of ABVAKABO FNV, the union for government, public services and care workers, but were not satisfied with the organization. The group that joined FNV Bondgenoten consisted mainly of

1 SJOUKJE BOTMAN, GEWOON SCHOONMAKEN, DE TROEBELE ARBEIDSRELATIES IN BETAALD HUISHOUDELIJK WERK [AMSTERDAM INST. FOR SOC. SCI. RESEARCH, JUST CLEANING: THE TURBID LABOR RELATIONS IN PAID DOMESTIC LABOR] 27-39, 100-09 (2011).

2 *Id.* at 50-56.

3 On January 1, 2015 FNV Bondgenoten merged with FNV Bouw, FNV Sport, ABVA KABO FNV and FNV confederation into a single trade union — FNV. Therefore, the term FNV in this Article refers intermittently to FNV as confederation, FNV Bondgenoten, and FNV as a union. I try to make clear when I am referring to the new union, to a single affiliate union in the former confederation, or to the confederation.

female immigrant workers, many of whom did not have a residence permit. FNV policy has been, and still is, that we organize workers and do not ask for passports.⁴

The group chose to become union members because they wanted to better their residence status and their position in the labor market. Einat Albin and Virginia Mantouvalou give three reasons for domestic workers to join labor unions: recognition as workers, voice, and active workplace participation.⁵ All three reasons were most certainly important for the Dutch domestic workers who joined our union. They felt they were doing important work, which made it possible for others to participate in other parts of the labor market, and they needed recognition as workers and support in voicing their problems and demands. Their slogan was: “you trust us with your keys and with your children, but deny us full (residence and labor) rights?”

The Netherlands has a long tradition of demanding of women to do their “own” domestic work, which basically means caring for their family members and cleaning the houses they share with their dependents. The economic system is based on the unpaid labor of women who perform the domestic work. Hence, the inclusion of domestic work in labor and social security law is contrary to cultural and historical traditions and views and therefore contentious.

In keeping with that tradition, Dutch law indeed excludes domestic workers from full protection of labor and social security law, even when performing the work for others. To overcome this exclusion, attention was paid to the negotiations that took place within the ILO towards Convention 189⁶ and the potential for its implementation in the Netherlands. A ratification campaign was launched in the Netherlands. Although the Convention will not be ratified anytime soon, the campaign’s outcomes will improve the rights of domestic workers in the publicly financed care system, but not for the group of domestic workers the trade union represents. That particular group brought to light several fundamental problems, with practical implications for the trade union’s strategy; each is discussed in detail in the subsequent Parts: traditional views in

4 Lodewijk de Waal, President, FNV, Speech on the occasion of May 1, in 2002, stated: “[B]ut they are here and they work here. And we don’t let colleagues down . . .” Since then FNV has written several letters to parliament on the subject of immigrants without residence papers and argued against criminalization.

5 Einat Albin & Virginia Mantouvalou, *Active Industrial Citizenship of Domestic Workers: Lessons Learned from Unionizing Attempts in Israel and the United Kingdom*, 17 THEORETICAL INQUIRIES L. 321 (2016).

6 ILO Convention 189, Domestic Workers Convention (2011) (entered into force: Sept. 5, 2013) (concerning decent work for domestic workers).

Dutch society on domestic work (Part I); the invisibility of domestic workers (Part II); and the connectedness of labor and migration law (Part III).

This Article analyzes Dutch labor and social security law along the lines described above and gives a short description of Dutch immigration law and the debate around it. I describe the difficulties we encountered in organizing the domestic workers and how they are connected with the cultural aspects and legal rules governing both domestic work and immigrant workers. I explain why we have chosen to campaign for ILO 189 and the successful outcomes of the campaign. However, I show that despite the growing visibility and public acknowledgement of domestic workers organized by FNV Bondgenoten, the connection between labor and immigration law and the profound notions on domestic work have not been addressed. This is the reason why the group that triggered the trade union's activities will not benefit from the campaign.

I. THE CHARWOMAN'S CONTRACT: TRADITIONAL VIEWS ON DOMESTIC WORK

To unfold the difficulty of representing domestic workers, it is important to trace back the traditional Dutch view on domestic work. In Dutch society, housewives traditionally had a clear position. They cleaned, raised children, took care of the elderly, and cooked. Only in the upper classes did housewives benefit from the help of maids, cooks and nannies. Dutch housewives were ridiculed by Montesquieu for their thorough cleaning of their houses. The first social laws in the Netherlands, dating from the end of the nineteenth and beginning of the twentieth century, protected breadwinners and aimed to make it possible for wives and mothers to stay at home and take care of children and husbands.⁷ The breadwinner principle shaped Dutch social laws.

The Dutch social security system was developed fully after World War II. Apart from the unemployment benefits scheme, all social security is based on the protection of all citizens. Old age pensions, disability pensions, and welfare provisions were to be obtainable for all.⁸ At the same time, however, the Dutch labor and social security systems were built on the breadwinner principle and excluded (married) women from a broad range of rights and entitlements, including old age pensions, disability pensions, and unemployment benefits. Male citizens — regardless of whether or not they were in paid

7 ELISABETH BADINTER, *L'AMOUR EN PLUS [MOTHER LOVE: MYTH AND REALITY]* pts. 2-3 (1980) (Fr.).

8 For a full analysis, see JOOP M. ROEBROEK, *THE IMPRISONED STATE: THE PARADOXICAL RELATIONSHIP BETWEEN STATE AND SOCIETY* (1993).

labor — were able to obtain old age pensions, but women were not. The only benefit women were eligible for was a widow's pension to substitute for the breadwinner after his death. This was considered to be a virtue because it gave women the opportunity to remain housewives. By contrast, there was no provision for breadwinners to replace the housewife in case she might die. Only since 1985 have Dutch courts started to judge these laws as contrary to European equality law.⁹

At the same time, household tasks have been, and still are, looked down upon. When Dutch feminist Joke Smit described the emptiness of female existence in 1967, she made clear that a housewife's life was not fulfilling enough and that she wanted to share the world outside and the household chores with men and thus redistribute domestic work¹⁰ — not because domestic work was enjoyable and therefore something to share, but because it had to be done. Her essay is generally considered the beginning of second-wave feminism in the Netherlands, which thus started with a condemnation of domestic work as drab, tiresome, but — alas — something that needed to be done. Domestic work is considered to be necessary, but not fulfilling. It is not considered real work, which will make your day and earn you a living.

In the early 1990s there was a revolt against the traditional way of thinking, inspired by Carol Gilligan's book on female psychology.¹¹ Still, the discussion centered around the need to be at home to raise children, but not about the importance of domestic work consisting of tasks like cleaning the bathroom or shopping at supermarkets.¹² Even the modern housewives, designated as *Mint Tea Mothers*, put out the cleaning and supermarket chores and focus on raising their children, helping out at schools and sports clubs.¹³

9 For an overview of the Court's rulings, see, for example, Sascha Precal, *Gelijke behandeling retrospectief* [Equal Treatment Retrospective], 2 SOCIAAL ECONOMISCHE WETGEVING 78 (1988); Mies Westerveld, *van Algemene Weduwen- en Wezenwet naar Algemene Nabestaandenwet* [From General Act on Widows and Orphans to General Act on Surviving Spouses and Orphans], 1991 SOCIAAL RECHT 83.

10 J.E. Kool-Smit, *Het onbehagen bij de Vrouw* [The Discomfort of Woman], DE GIDS, Nov. 1967, at 167.

11 CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982).

12 For an overview of the Dutch discussions at the time, see Margriet Kraamwinkel, *Women's Work and Law: New Perspectives on the Labor Market Strategy*, 26 NEW ENG. L. REV. 823 (1992).

13 The term "Mint Tea Mothers" refers to well educated women with husbands who earn enough to provide financially for them and their children, who prefer to stay at home to take care of the children and are supposedly spending their time in the gym and in cafés sipping mint tea with their friends. See *Munttheemoeders*

While there are cultural changes, and men are performing more tasks in the household, women still spend more time on domestic work than men and less in waged labor.¹⁴ Domestic work is still designated women's work. With the growth of women's paid labor, domestic work is more often put out to other women. However, transforming domestic work into paid work by other women does not correct the undervaluation of domestic work. We will see below what that means for the labor status of domestic workers.

Given the cultural and economic context of domestic work, it is not surprising that Dutch labor law includes a specific arrangement for domestic work, the *Regeling Dienstverlening aan Huis* (*Regulation on Domestic Services*; hereinafter: Regulation).¹⁵ This Regulation embodies a legal framework for domestic work that is put out by the household and regulates the relationship between the employer and the domestic worker. In the context of this Regulation, domestic work is work for which "an individual hires another individual to perform tasks he usually performs himself."¹⁶

The Regulation was introduced as part of a tax reform. It combined, coordinated and summarized the existing rules and thus set up a system of rules which covered domestic work.¹⁷ It repeated the earlier explanations for the existing rules: the special treatment of the relationship between a domestic worker and her employer was justified time and again by reference to the special nature of the employment relationship. This relationship was considered to deliver a part-time, extra income as a supplement to the breadwinner's income. The domestic worker is, in this view, always a married woman whose husband provides for her income. Moreover, the personal, intimate character of the paid work the domestic worker performs was assumed to entail particularly lenient rules.¹⁸

[*Mint Tea Mothers*], OPZIJ (May 25, 2011); Lara Aerts, *De Gelukkige Huisvrouw* [*The Happy Housewife*], HET PAROOL, Mar. 21, 2015, at PS20.

14 MARJOLEIN KORVORSTEN TANJA TRAAG, *DE VERDELING VAN ARBEID EN ZORG TUSSEN VADERS EN MOEDERS* [THE DISTRIBUTION OF LABOR AND CARE BETWEEN FATHERS AND MOTHERS] (2010).

15 Stb. 2006, 22.

16 Letter of the Sec'y of Labor to Parliament (Mar. 10, 2011), Kamerstukken II [Parliamentary Records of Second Chamber of Parliament], 29544, 281. Note the "he" which is used in the definition, while it is about cooking, cleaning, etc. Wet van 4 februari 1994, Stb. 1994, 99.

17 Stb. 2006, 22, arts. IV, XIV-XX.

18 See, for example, earlier discussions in Parliament: Kamerstukken II 1986/7/8, 19 810 No. 4, 5 [Parliamentary Records of Second Chamber of Parliament, 1986/7/8/, 19 810 No. 4, 5], repeated in the Letter from the Sec'y of Labor, *supra* note 16.

The Regulation concerns part-time work by an individual performed for another individual in and around the house, like cleaning, cooking, washing and ironing, taking care of children and animals, picking up drugs from the pharmacy, and simple care tasks. The domestic workers who perform these tasks are excluded from part of the labor laws and all of the social security system. The Regulation is a kind of umbrella, arranging that an individual falling under its scope is excluded from legal protection; it changes the scope of other acts. Individuals who hire someone to perform domestic tasks are exempt from paying employers' social security contributions and taxes, but the domestic workers have to pay taxes on their earnings. Domestic workers are entitled to the legal minimum wage and to the legal minimum holiday leave. Their paid sick leave is restricted to six weeks (as opposed to two years for other workers).¹⁹ There is no protection against dismissal.²⁰ Due to a special clause in the Unemployment Benefits Act,²¹ domestic workers are excluded from the unemployment schemes.²² Access to disability schemes is excluded through a similar clause in the Act on Illness Benefits.²³ Domestic workers are thus not part of the social security system and are not insured against illness or unemployment. Neither do they pay for old age pensions and are therefore not insured.

Part-time within this Regulation means less than four days a week for a single employer. Consequently, if a domestic worker is employed by several employers, adding up to four days a week, the employment is still considered part-time as long as the weekly duration of each labor contract does not extend over and above four days (thirty-two hours).²⁴ Although formally the contract between the employer and the domestic worker is an employment contract, albeit with special rules, the Regulation leads in fact to a charwoman's contract, delivering less protection than a labor contract.

19 Burgerlijk Wetboek [BW] art. 7:629 (Neth.).

20 BUITENGEWOON BESLUIT ARBEIDSVERHOUDINGEN ARTICLE art. 2, ¶ 1(d) (1945), http://wetten.overheid.nl/BWBR0002014/geldigheidsdatum_13-05-2015 (Exceptional Resolution of Labor Relations, given by the Minister of Labor, containing rules on dismissal).

21 Wet van 6 november 1986, tot verzekering van werknemers tegen geldelijke gevolgen van werkloosheid, Stb. 1986, 567.

22 WERKLOOSHEIDSWET, art. 6, ¶ 1(c) (1986), http://wetten.overheid.nl/BWBR0004045/geldigheidsdatum_13-05-2015 (Act on the Unemployment Benefits).

23 See jointly Disability Act art. 8 (Neth.) and Ziektewet art. 6, ¶ 1 (Neth.).

24 For an extensive legal analysis of the Regulation, see EVA CREMERS & LEONTIEN BIJLEVELD, *EEN BAAN ALS ALLE ANDERE?! DE RECHTSPPOSITIE VAN DEELTIJD HUISHOUDELIJK PERSONEEL [A JOB LIKE ALL OTHERS?! THE LEGAL POSITION OF PART TIME DOMESTIC WORKERS]* (2010).

In 1986 the difference between the legal protection of domestic work and “ordinary” work was justified by parliament by arguing that most women who worked as domestic workers worked only a couple of hours per week and thus provided only a small supplement to the salary of their husbands and breadwinners.²⁵ In 1990 the Dutch highest court of law again confirmed that the “specific character” of domestic work justifies the differences in labor status between domestic workers and other workers.²⁶ This referred not only to the intimate, personal character of domestic services, but also to the personal circumstances of the domestic worker, conceived here as being protected through marriage. Domestic work is simply not considered real work.

The similarity in the way the law regulates the employment of domestic workers to the position of (married) women in labor and social security law is striking. Domestic work is not only women’s work, but *married* women’s work, performed by women who are protected and secure through their marriages. Sometimes, domestic work is performed within their own homes and unpaid (or indirectly paid through husbands sharing their earnings with their wives), and at other times it is performed in the houses of other wives and then underpaid. Insurance against illness or unemployment is provided for through a husband. Some among the group of women working as domestic workers in the Netherlands are indeed married (Dutch) women, looking for a little extra on the side, so they do fit this image. However, as will be demonstrated below, not all domestic workers in an employment relationship fit this image, but the legal reasoning does not adapt itself to their situation.

The Netherlands is not alone in this viewpoint. Elsewhere, I have analyzed European case law on the definition of a “worker,” an important component in constructing the concept of European citizenship. I concluded that while soccer players and prostitutes easily fit within the concept of a worker, a housewife does not, and has none of the economic citizenship rights that are essential to constituting EU citizenship.²⁷

25 See Letter from the Sec’y of Labor to Parliament, *supra* note 16, and the following discussion in parliament Kamerstukken II [Parliamentary Records of Second Chamber of Parliament], 29544, 281.

26 HR 23 november 1990, NJ 1991. Here it is made explicit that domestic work is paid less and protected less since it is women’s work and thus does not need protection. See MARGRIET KRAAMWINKEL & MARI MARTENS, *DECENT WORK FOR MIGRANT DOMESTIC WORKERS* 5 (2009).

27 Margriet Kraamwinkel, *The Imagined European Community: Are Housewives European Citizens?*, in *LABOUR LAW IN AN ERA OF GLOBALIZATION: TRANSFORMATIVE PRACTICES AND POSSIBILITIES* 321 (Joanne Conaghan, Richard Michael Fischl & Karl Klare eds., 2002).

While on the one hand, this view of domestic work impeded the legal struggle for the recognition of domestic work as “ordinary work,” it also interfered with the work needed to be done within the trade union where similar views prevail. There, too, people thought domestic work is not real work. Domestic workers were seen as “housewives working for other — rich — housewives.” Co-members would recognize the importance of union activity and solidarity with cleaners, but did not see why domestic workers should be included too. This made it difficult to organize solidarity with the domestic workers. But the domestic workers joined the strike and campaign of cleaners for ten euro an hour and respect in 2010. This led to mutual recognition between the groups of workers and forged a first step towards recognition of domestic work as real work within the union. Further grounds for mutual support between the migrant domestic workers and the cleaning workers were identified in the possibility of mobility from domestic work to employment in the cleaning sector. A domestic worker who would gain a residence permit, through marriage for instance, would generally find legitimate work in the cleaning sector, because a residence permit affords access to the common regulatory framework. Thus the two groups — cleaners and domestic workers — connected with and supported each other. Still, other groups within FNV Bondgenoten found it more difficult to accept domestic work as “ordinary, real work.” However, the full support of the board of FNV Bondgenoten for the representation of domestic workers secured their position in the trade union.

II. THE DILEMMA OF THE IN/VISIBILITY OF DOMESTIC WORKERS

The second set of problems the trade union encountered in advocating for domestic workers concerns the in/visibility of domestic workers. Invisibility is necessary but also a problem, as is visibility. To fully understand how in/visibility plays a role and is both sought after and avoided, we need to account for the diversity among domestic workers.

There are roughly two groups of domestic workers in the Netherlands. The first group consists of the “housewives working for housewives”: low-educated married Dutch women who work a few hours per week or more as a cleaner in private households, thus enabling the women and men of these households to obtain paid employment outside the house. Generally they tidy the house, clean it, and do the laundry and the ironing. They are mostly interested in keeping the employment relationship informal, receiving cash (“black”) money, and avoiding paying tax or contributions to social security. If they work, they earn money, if not they don’t. They consider their income

as an extra to provide for luxuries such as holidays or a bigger car. Their income security is provided for by their husbands. They find legalizing their employment to be in contradiction with their interests, which they define as earning as much as possible without too much fuss or taxes. Consequently, they prefer to stay as invisible as possible. For them, invisibility is a resource.

The second group consists mainly of migrant domestic workers, from the Philippines, Indonesia, Latin America and African countries like Ghana. Most of them live in the Netherlands without a residence permit and are more dependent on their employers than the other group. The fact that they do not have a residence permit and more often than not speak no or limited Dutch and/or English narrows their possibilities in the labor market.²⁸

Domestic work is done in private houses and therefore not visible and thus easier to obtain and keep than work in, for instance, agriculture, where immigrant men worked in the past. This group of domestic workers — both male and female²⁹ — desperately wants to become full citizens. They want residence permits, full labor rights, and to pay taxes as part of a formal employment relationship. For them, visibility is necessary to obtain a residence status and full labor rights, and to protect them from abuse. Nevertheless, for them invisibility is necessary as well, since as long as they don't have a residence permit they may be deported from the Netherlands if confronted by a police officer. In/visibility is therefore Janus faced — a resource and a threat. Members of this group were the ones to approach the trade union and ask to become union members, first with ABVAKABO FNV, the union for care workers, but after a few years in the FNV Bondgenoten, then the largest Dutch trade union in the private sector.³⁰ Representing this group, the trade union needs to acknowledge their need for visibility to gain labor rights and invisibility to protect their residence status.

Invisibility of domestic workers carries two meanings. The first aspect of invisibility is the fact that their work is not recognized and seen as “real work,” and is therefore invisible. This problem concerns both groups of domestic workers, but its effect on the two groups is different. Since domestic work is not valued, it remains hidden, thus enabling the first group to stay in the

28 BOTMAN, *supra* note 1, at 100-09.

29 Since labor without a residence and work permit is more strictly addressed by the government than before, more (African) men are found to be working as domestic workers. However, the group of domestic workers discussed here is predominantly women, and I will therefore keep referring to its members as “women” and emphasize the importance of the gendered nature of this job.

30 For a description of this switch, see SYLVIA GÜNTHER, *STRUGGLING FOR RECOGNITION: THE UNIONIZATION OF (UN-)DOCUMENTED MIGRANT DOMESTIC WORKERS IN THE NETHERLANDS* (2011).

shadows, but keeping the second group from obtaining full labor rights and thus also residence rights.

The second aspect of invisibility concerns the need to stay invisible due to residence barriers. The domestic workers became union members at the same time that the public debate on immigration toughened, particularly with regard to immigrants without residence permits (“illegal aliens”), depicting them as somewhere between a profiteer and the devil. This debate also took place within the FNV. The expansion of the EU with Central and Eastern European countries in 2004 and 2007 led to an influx of labor migrants. In agriculture, the meat industry, and later in logistics (distribution centers), Polish workers worked for lower wages and were seen as “job thieves.” Through more or less legal constructions, employers hired Polish workers outside the scope of the collective labor agreements in the sector.³¹ The Polish workers rightly regarded this as unequal pay and FNV Bondgenoten started a campaign under the heading of Equal Pay for Equal Work. These Central and Eastern European workers stayed in the Netherlands legally, based on their status as EU citizens. Still, the atmosphere and public debate was very negative about migrants in general and migrants without a residence permit in particular. The government responded by tightening the net. Proposals to criminalize residence without legal status were debated in Parliament, as was the criminalization of organizations that helped people without residence status.

Against this background, organizing domestic workers became more difficult. We can discern several aspects of handling these issues.

A. Finding the Invisible

While cleaners, another target group of the trade union, are easily found in large offices, domestic workers are harder to discover. They work in private houses and avoid talking with strangers, especially if they don’t have residence permits. Most domestic workers are not live-ins. Those without residence permits are more insecure in negotiating labor conditions and wages than domestic workers with residence permits, and still more reluctant to join unions.³² This demanded new organizing tactics for the sector. First, we needed to develop a system to get in touch with the women. FNV Bondgenoten

31 Nathan Lillie, *The Right Not to Have Rights: Posted Worker Acquiescence and the European Union Labor Rights Framework*, 17 THEORETICAL INQUIRIES L. 39, 52, 57 (2016).

32 Petra Broers, *Schoonmaken voor een schijntje “You Don’t Work, I Don’t Pay” [Cleaning for a Dime, “You Don’t Work, I Don’t Pay”]*, CONTRAST, Oct. 2008; Sarah van Walsum, *Op de ILO agenda: Decent Work for Domestic Workers*. Nu

worked together with self-organizations like the CFMW (Commission of Filipino Migrant Workers). This made first contacts possible. But to be able to reach out to more domestic workers, more personal tactics were used, like asking women to bring a friend to a meeting or joining services in churches the women attended. Women became interested by word of mouth and through friends or acquaintances that talked about the trade union. The organizer who was assigned by the cleaning sector to work for the domestic workers spoke English and Spanish and was able to talk with large groups of domestic workers.

B. Making the Invisible Visible and Vice Versa

The group of domestic workers was classified by the trade union as cleaners and thus belonged to the cleaning sector, part of the private services sector within FNV Bondgenoten.³³ The cleaning sector had started a large organizing campaign to prepare for the collective bargaining on the new labor agreement at the sector level.³⁴ The domestic workers joined the strike and campaign and became an active part of the cleaning sector. One of the domestic workers — an immigrant woman who had obtained a Dutch passport — was chosen to the board of the cleaning sector, which consists of active members in the sector. In this way, the domestic workers became visible, as union members and as coworkers. They made themselves and their demands more visible and thus obtained recognition within the trade union. The new collective labor agreement in the cleaning sector contains a provision on domestic work, and within its scope is the work performed in private households. All this made the domestic workers visible, integral to the cleaning sector, within the union.

Since workers without a residence permit do not have working bank accounts in the Netherlands, a cash payment of membership fees system was devised, its administration done by handwriting, making it possible to avoid putting an address in the computerized membership system. This required a kind of shadow administration, separate from the regular one, thus keeping the migrant domestic workers invisible, separated from “ordinary” workers. For the domestic workers, this was necessary. They should not be found easily within the administration of the trade union.

Nederland nog, [On the Agenda at the ILC, *Decent Work for Domestic Workers: Now the Turn of the Netherlands*], 24 *MIGRANTENRECHT* 404 (2009).

33 For its current status within the union, see *Domestic Workers*, SCHOON GENOEG, <http://www.schoongenog.nl/afdeling/domestic-workers/> (last visited May 10, 2015).

34 See GÜNTHER, *supra* note 30.

Also, FNV representatives talked with the police in large cities. The organizing campaign focused on domestic workers in cities like Amsterdam, Rotterdam and The Hague. The meetings were publicly announced and could therefore be targeted by police raids, since it was known that a large part of the attendants would have no residence status. But through good contacts with the local police and the position of the mayors — formally heads of police — who did not want to see a hunt for people without a residence permit who are not a threat to the public order, the union was able to freely meet with migrant domestic workers, with or without a residence permit, and organize them within the union. The police supported this. The trade union could visit hearings in Parliament with domestic workers who had a residence permit and freely talk to employers. On November 2, 2013, 400 domestic workers and their supporters marched through Amsterdam demanding full labor rights, with a police escort, just like any other demonstration.

These strategies accommodated a delicate balance between the domestic workers' need to remain in the shadows and at the same time their need to step out into the light. The shadows are a resource, a safe haven, but also the place where abuse happens. They need to get out of the shadows in order to explain their position on their labor rights, but stepping into the spotlight also means increasing their vulnerability due to their residence status.

III. THE INTERSECTIONALITY OF LABOR AND MIGRATION LAW

The third set of problems is caused by the intersectionality of labor and social security law and immigration law. The migrant domestic workers who became union members had one thing on top of their wish list: a residence permit. Time and again they would make this clear. The union, however, is better equipped to arrange for better labor conditions than to deliver residence permits.

From a more theoretical perspective, this is a question about citizenship.³⁵ The general rules on residence in the Netherlands are — in summary — as follows. For third-country nationals (non-Dutch, non-EU, or equated with EU nationals) the only way to receive a residence permit, apart from marriage or asylum, is through a combined working/residence permit. The employer has to apply for such a permit for a specific job and for a specific person. The combined working/residence permit will only be granted if there is no

35 Several articles in this volume discuss citizenship. See Albin & Mantouvalou, *supra* note 5 (on domestic workers); Lillie, *supra* note 31 (on migrant (posted) workers within the EU).

domestic supply of labor for that specific job. When considering domestic supply, the authorities look at the supply of labor from the EU as well, and not only of Dutch nationals. But as domestic work has been exempted from ordinary labor law, it is not possible to receive a residence permit for that kind of work. Thus, from a legal perspective, for domestic workers to obtain residence permits, domestic work needed to be changed into “ordinary” work.³⁶

This short presentation of immigration law indicates that in the case of the domestic workers, there is a gap between political citizenship (residence) and industrial citizenship (labor rights). This renders the exercise of labor rights more difficult for domestic workers. As noted in the previous Part, to exercise labor rights, visibility is necessary, but visibility also endangers the residence status. The trade union considered resolving this dilemma by connecting its strategies of representation in the Netherlands with developments that took place at the time in the International Labour Organization (ILO).

At the time domestic workers organized in the Netherlands, the ILO was preparing a Convention and Recommendation on domestic work under the heading *Decent Work for Domestic Workers*.³⁷ The ILO wrote extensive country reports, conducted in-depth research, and is still campaigning among its members to ratify the Convention and improve the position of domestic workers worldwide. The ILO’s website has a specific portal for domestic work where all publications, research reports and other information can be found.³⁸ I was asked to represent FNV in the working groups on domestic work at the International Labor Conference in 2010 and 2011. Preparing for the conference, we discussed draft texts with the group and decided on a strategy which consisted of three steps:

1. Contribute to the ILO Convention and make sure the Dutch employers and government would not vote against it, so that they would be committed to the Convention;
2. Campaign for the Dutch ratification of the Convention and abolish the existing Regulation;
3. After ratification, apply for work/residence permits, including some kind of hardship clause for those who had already worked as a domestic worker in the Netherlands.

36 *See* Wet Arbeid Vreemdelingen van [Act on Labor by Aliens], Stb. 1994, 959; *Working as an Employee*, MINISTRY OF SECURITY AND JUSTICE, <https://ind.nl/EN/business/employer/working-as-employee/Pages/default.aspx>.

37 ILO Convention 189, *supra* note 6.

38 *Domestic Workers*, INT’L LABOUR ORG., <http://www.ilo.org/global/topics/domestic-workers/lang--en/index.htm> (last visited Dec. 19, 2015).

The first step, though a lot of hard work, seemed to work out fine. Employers, mainly those representing the temporary work agencies and cleaning businesses, supported the trade union because they wanted to expand their business to the market of personal, domestic services, where they expected a lot of growth due to the increasing participation of women in the labor market. After the Convention was passed in the ILO, the trade union organized several expert meetings in which employers' organizations fulfilled an active role in supporting the ratification of the Convention. The larger companies wanted to legalize domestic work as soon as possible.

The Dutch government voted in favor of the Convention, but informed the trade union that this did not imply an intention to abolish the Regulation and its counterparts in social security. They voted in favor because they recognized the importance of the Convention worldwide, but they considered the Dutch Regulation as adequate protection for domestic workers in the Netherlands.

We started the campaign to abolish the Regulation while the negotiations within the ILO were still being held. In several hearings we found Parliament responsive to our claims, but eventually they did not want to change the legal arrangements governing domestic work. There were two kinds of hesitations. First, there was a concern that abolishing the Regulation would make the employment of domestic work more expensive and complicated, since part of the publicly financed care for the elderly is done by domestic workers within the scope of the Regulation. The second concern was that new legal arrangements would require legally admitting the women and men who are working without residence permits. This did not appeal to Parliament, since the public discussion on migrants without residence permits was becoming sharper every day. Also, for some political parties, the "housewives working for housewives" argument still held.

While the trade union's strategy was to disentangle the labor and residence issues, this was only successful in the negotiations with the employers, but not in the campaign that was aimed at government. Generally, Dutch employers hold a rather liberal view on migration: migration provides them with cheap labor and is thus welcome. However, government, which is responsible for migration policies, was a more difficult partner in negotiations.

As a result of pressure from unions, self-organizations of domestic workers and employers, the government established a commission to advise on the position of domestic workers in light of the ILO Convention; the so called Commissie Kalsbeek.³⁹ After a year of deliberations, the commission published

39 Officially it was called Commissie Dienstverlening aan Huis (Commission on Domestic Services). It was named after Ella Kalsbeek, a former member of Parliament of the Labor Party, who served as the commission's chair.

its report in which it concluded that domestic work needed to be fully covered by labor and social security law insofar as it is paid for by government. This is the case when the Regulation is used to exempt public care for elderly people from the protection of labor and social security law, thus making official governmental publicly financed care more expensive. A large part of the care for elderly people is done by domestic workers, but they generally have an employment contract with a company that provides care for the elderly. Domestic workers employed by such companies should enjoy a full-fledged labor contract. In December 2015, the Dutch government announced formally that the special contract for the group of publicly financed care workers (“alpha helpers”) would be abolished and replaced by “ordinary” labor contracts. This was part of negotiations with trade unions and employers on problems in the care sector in general.⁴⁰ However, for domestic work in private relationships, the Commission did not see sufficient grounds to change the rules.⁴¹ The necessary changes are yet to be made.

IV. CONCLUSION: CHARWOMAN’S CONTRACT FOR “HOUSEWIVES” AND “ILLEGAL ALIENS”

Domestic workers in the Netherlands work in the shadows in two ways: not having a residence permit forces them to stay invisible, and not being protected by labor and social security law renders them invisible. As a trade union, we started working for a better labor position, thus trying to achieve broader acceptance of domestic work as valuable and real work and planning to achieve changes in Dutch immigration law in the slipstream. The undervaluation of domestic work played a role in shaping the current legislation on domestic work and in accounting for the difficulties we encountered when trying to change the legislation. Furthermore, we did not account for the connectedness of immigration law and labor and social security law. While residence permits were the most urgent problem for the domestic workers we represented, we focused on labor law instead. The result of our campaign is that a group of publicly financed care workers will be better protected, but the group of domestic workers that fought for ILO 189 will still be excluded from our labor and social security law and not be able to qualify for a residence permit.

40 Letter to Parliament, from Secretary [staatssecretaris] of Health (Dec. 4, 2015).

41 Dienstverlening aan huis, wie betaalt de rekening? [Domestic Services, Who Pays the Check?], published as an annex to the Letter from Sec’y of Labor, to President of Parliament (Mar. 28, 2014).

We succeeded in drawing attention to the problems the women encountered. We attended several hearings in parliament and succeeded in organizing the support of a large part of the employers. Several of our members spoke out in public, were interviewed in national papers, and thus found more supporters of the women's case. The visibility of the group was greatly enhanced, and with that came the change in public opinion. Walking into the spotlight helped to form positive images of their position. But despite these notable achievements, the actual position of our domestic workers did not improve.

The charwoman's contract continues to exist for the Dutch women trying to earn a bit on the side and for women without a residence permit; that is, it exists for both the "housewives" who work under male protection (through their marriages), thus fulfilling their classical feminine, role and for "illegal aliens" whom society would prefer that they remain invisible. The "housewives" do not see this as a problem, but the "illegal aliens" who became union members do. These groups stay in the shadows and have to rely on either male protection or their charwoman's contract for security.

