Social dialogues as a component of competent labor in Iranian law

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ABSTRACT

ILO protocols contain fundamental values of labor laws. Since labor laws are devised by human identity and non-ideological to support workers and to mitigate real inequalities in legal relationship between client and workers, such protocols can be used as efficient criteria to measure and value labor laws domestic norms. In this vein, radical ILO protocols on labor associations and their negotiations with clients are highly important due to their natures. Studying radical protocols on “collective negotiations and treaties” and “expanding collective negotiations” indicates that it is sufficiently attempted in Iranian legal system to execute general principles of such documents in labor laws related issues. Some attempts have come to conclusions while others are yet far from achieving relevant standards

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Introduction

Social dialogues are seen as one of the components of competent labor in collective negotiations and treaties that are necessary for a democratic society and are the tools to resolve unavoidable conflicts of interests between two classes with often conflict of interests. Naturally, such dialogue is followed by reforming the relations and, as a result, progress and justice. By such components, democratic space is manifested in labor laws and workers experience the right of determining their fate in workplaces. “Such dialogue occurs in three levels: between workers and clients on work time and conditions, between management and workers on the performance of the firm and between social partners and governmental authorities on social and economic policies” (Amiri et al., 2005, p. 22). On this basis, there are three kinds of dialogue and negotiation on social and economic policies of which two kinds are on direct relationship with labor issue and labor community: the dialogue between workers and clients on job conditions and also workshop performance. What considered by present study is the former: negotiations between workers and clients to improve work conditions. By such negotiations, the parties have the opportunity to make their relations proportionate and supply their interests in a win – win equation. “Consequently, workers and clients find that how positive relations between workers and clients create a proper ambience to promote, change and innovate” (Sepahri, 2010: 64). Since the main aim of negotiations is final agreements, the important point is the results of negotiations namely collective treaties concluded to regulate such relations.

As obvious, collective treaties are the important and valuable result of establishing labor associations and collective negotiations. Since in ILO protocols, how to establish labor entities by respecting necessary standards is paid attention and in domestic laws, there are admired main measures for labor associations by removing current problems, therefore one can achieve this relative confidence that in dialogue step, there is no fear of formalization of collective negotiations and treaties. Additionally, since both parties are looking for their and their colleagues’ interests and are seen as rivals, they would achieve such confidence in terms of competition requirements and seriousness and preciseness in negotiations.

Studying dialogues by workers and clients and their results are considered as a part of social dialogue components in competent labor in Iranian Labor Laws as the main goals of present research and due to the importance of the issue, the main reliance is upon collective treaties. To this end, considered criteria by ILO protocols are extracted and legal provisions relevant to our domestic laws are measured. Obviously, recommendations are provided at the end of the paper by using existing measures to improve the studies issue.

Principles of collective negotiations and treaties

Initially, it is necessary to provide a definition on collective negotiations and treaties. “Collective negotiation or bargaining is a process in which different and often conflicted attitudes of workers and clients are always discussed and, finally, a mutual agreement is achieved upon paramount discussion and investigations” (Abadi, 2013: 100). Therefore, these are to interdependent issues. Negotiations result in treat and treaty is the result of negotiation. Article 2 of protocol 154 (1981) reads: “collective negotiation includes all negotiations between clients on the one hand and one or more labor organizations on the other hand for relevant purposes. Determining job conditions, regulating the relations between clients and workers and regulations the relations between clients or their organizations and one or more labor organization” (Sepahri et al, 2003: 949). Despite of respecting necessary standards in establishing associations for executing relevant competencies, below principles should be considered in selecting and performing the tasks by representatives.

a. Real representativeness: the issue which should be considered is bow to select representatives by workers and confirm their real representativeness. Some points are necessary. First, the criteria for selecting workers’ representatives should be based on admirable legal norms and resources such as national laws and regulations. Article 4 of protocol 135 (1971) asserts that “national laws and regulations, collective treaties, judgment votes or judicial decisions can determine type(s) of representatives” (Speheri et al, 2003: 843). Second, it is important to know how select and recognize representatives in
order to enter collective negotiations. Article 3 of protocol 135 reads: “the term workers’ representatives means those people who are selected whether they are the representatives of labor association or assigned by them or representatives selected directly by workers in terms of national regulations freely (with any intervention by labor organizations and associations) (Sepehri et al, 2003: 843).

b. protection and support: as mentioned, workers’ representatives are entering serious and complicated negotiations with clients and both parties attempt to acquire the highest interests. Under such circumstances, it is necessary that the representatives of different labor levels who are supposed to enter the negotiations are granted protection and effective and necessary supports despite of the independence of labor association mentioned before. Article 1 of protocol 135 asserts that “workers’ representatives should enjoy effective supports against decisions which may hurt them such as firing due to the characteristics of their representativeness or activities related to workers’ representativeness in syndicate or their contribution in organizational operations” (Sepehri et al, 2003: 842). Therefore support and protection against firing is a necessary tool to prevent formalization of such negotiations.

c. access to facilities: among other facilities which should be prepared by workers who enter negotiations, one can point out their accessibility to necessary tools and documents. Article 2 of protocol 135 states: “the representatives in workshops should be provided with facilities which make it possible for them to do their tasks effectively and quickly even though such facilities should not make any barrier in the effective performance of the workshop” (Sepehri et al, 2003: 843).

d. expanding collective negotiations: another principle respected in protocols is that measures should be taken to use the existing potential in collective negotiations for the intervention of workers in their fate in workshops and their job affairs and to define necessary norms for all labor problems by negotiations and collective treaties and to decide on their approval. In this line, article 5 of protocol 154 states: “to expand collective treaties, appropriate initiatives with national conditions should be adopted to achieve below goals: (a) collective negotiation for all clients and for all labor groups, (b) negotiation for all issues already mentioned in the definition of these negotiations and treaties in article 2, (c) encouraging to expand negotiation between workers and clients, (d) entities and recipes to resolve work disputes so that they can be shared in collective negotiations (Sepehri et al, 2003: 950). Thus, it is seen that by making these measures practice, one achieve the maximum usage of current potentiality.

Negotiations and collective treaties in Iranian labor laws

In its 7th chapter (labor negotiations and collective treaties) and in 8 articles (139 – 146), labor law has addressed negotiations and collective treaty. Before discussing on this issue, it necessary to say that in article 139 and its relevant clauses, lawmaker has only addresses negotiations and their scope irrespective of collective treaty and in next articles, one collective treaty is addressed. Below, several paragraphs on negotiation and treaty, representatives who enter this process and conduct it, legal effects and the continuance of treaty and the right conditions of collective treaties in labor law and regulation are addressed.

a. Themes of negotiations and treaties: themes which can be the center of negotiations and collective treaties are considered by article 139(1); “any item in labor relations which imply to adopt regulation and norms through collective negotiations can be the theme of negotiation.” thus, all labor relations issues are discussable in negotiations. However, lawmaker has limited the scope of collective treaty in article 140 and has considered it as a written treaty to determine labor conditions between workers on the one hand and clients on the other hand. Thus, collective treaty relates to issues such as work hours, off times, salary and workplace health and security (Arsghi, Seyed Ezatollah and Ranjbarian, Amir Hussein, 2012: 81).

b. Representativeness: concerning those representatives of workers who can participate in negotiations, article 140 of labor law involves a huge range of workers’ independent representatives as well as the representatives of labor Islamic councils and the representatives of syndicates who can enter negotiations and collective treaties. Although article 13 of labor Islamic councils has addressed the tasks and competencies of such councils, such competency is not observed for councils and their members as the representatives of workers. Although article 21(11) of the recipe on how to establish workers’ syndicates reads that “participation in professional negotiations and concluding collective treaties with clients or client associations”, once can conclude that in our domestic laws, those individuals who negotiate with clients in collective treaties should be essentially representatives from labor syndicates.

c. Legal effects and continuance of treaty: next point which is necessary to be pointed put is the legal impact of such treaties and their continuance overtime. According to article 146, these treaties are based on single contracts after concluding the treaties and the advantages in such treaties for workers will be also included in single treaties. Additionally, they would govern the conditions of workers’ labor before their contracts. Otherwise, single contract would include more advantages in salary for worker by which the advantages of single contract are independent and without influenced by collective treaty. Besides, the legal impacts of such treaties exist until when the treaty is executed and all works of that workshop are influenced by the treaty. According to article 145, one should say that in the case of any legal changes in the situation of the workshop, if the work is continued, new client would be the deputy of previous one in doing contractual commitments. Even, based on article 16 on the recipe determining the scope of tasks and authorities and the performance of job associations, their legal impacts are kept on even if the job associations that have created them are liquidated.

d. The right conditions of collective treaties: lawmaker has considered two conditions in this regard. According to article 141, these treaties should not be in contrary to current laws and regulation and domestic decisions and legal approvals. Likewise, the advantages should not be lower than what predicted by labor law for workers.” Noteworthy, concerning the right conditions of collective treaties, the approval of ministry on adopting the provisions of such treaties should be

1. Article 140: collective treaty is a written treaty to determine the conditions of work between one or more parties (council or association and/or legal representative of workers) on the one hand and one or more clients and/or their legal representatives on the other hand and/or between forums or labor/client excellent forums.
2. Article 145: the death of client and/or his/her ownership changes have no impact on executing collective treaty and if the work is continued, client will be considered as the new client of the old client.
done by laws and regulations. The approval of the Ministry is highly emphasized by lawmaker so that it has announced that the credibility and execution of them should be approved by the Ministry. The same confirmation by Ministry can be an excuse for governmental officials to enter the scope of collective treaties and their interventions. Although a 30-day limitation on this task of the government can be fruitful in doing the job and achieving their goals by collective treaty parties, since there is no guarantee on the decisive performance of public organizations’ performance in these treaties, it is possible to release from the issue through huge efforts by parties. On the other hand, one cannot determine a certain time for similar cases so that the monitoring entity states and after a while it can be seen as plausible since under such circumstances, the national interests which should be protected from national laws and regulations will be rapidly and extremely influenced by personal interests. On this basis, adaptability or at least the lack of conflict with national laws and regulations and its disrespect can have social and economic destructive impacts on the society. Thus, it is seen that the necessity of the attendance by the Ministry in this process is a hole for the intervention by governmental entities in collective treaties which can be in conflict with collective interests of workers and clients. Concerning disputes on collective treaties, the law asserts that in the case of any conflict on these treaties, it should be initially resolved by determination board and then by dispute solution board. If these proposals were not accepted by parties, the head of labor organizations submits the case to Ministry in order to make necessary decision. It seems that the process of resolving previous treaties and/or requests by parties to conclude new treaties paves the ground for governmental officials to intervene in collective treaties scope. An important point which should be noted here is the necessity of paying attention to these treaties to regulate labor relations. On this basis, In article 142, lawmaker accepts that if disputes are raised to conclude and approve collective treaties or in executing them, such disputes should be immediately resolved by competent authorities. Resolving such disputes and/or building new treaties are too emphasized by lawmaker that it has recognized the right of objection by workers: “stopping the work while workers attend in workshop and/or intentional reduction of work by workers.”

1. Adapting labor internal laws with international standards
a. Real representativeness: concerning the criterion to enter negotiations and collective treaties, article 140 of labor law has allowed councils and direct representatives of workers to conclude collective treaties. As mentioned before in details, due to the structure, goals and competencies determined for councils, they are actually the relevant syndicates to attempt to improve social and economic situation of workers in workshop level. To the same reason, their representatives are not the actual representatives of workers so that they cannot be relied upon in entering treaties to improve workers’ conditions which would naturally increase its relevant costs.

b. Protection: concerning protecting and supporting participative workers, one should say that the relevant norms assert that only the right of settling job associations is mentioned is article 13 of the recipe and there is no word on cancelling the membership of workers. In the case of settling job associations, however, investigations by an impartial entity such as judicial authorities can be a fruitful and trusted forum for labor association in protecting and supporting workers from aggression by powerful groups. Concerning cancelling the memberships, there is no evidences in law for the members of Labor Islamic Council. Thus, since syndicate is a private entity and there are only guardianship supervisions by governmental organizations on these entities and since such supervision need legal permissions and legal texts have issued no permission in this regard, no entity is allowed to cancel the membership of individuals in job associations. Firing can be potential threat for attending representatives in negotiations. Although the issue of justified or unjustified firing is generally mentioned in article 27 and 165, it can be obviously seen in next article on supporting the representatives of workers who relate clients and act as workers’ representatives. According to article 28(1 & 2), if there is any dispute between workers’ independent representatives or the representatives of Islamic labor councils and clients, determination board and dispute solution board would investigate the case and announce their final verdict immediately and out of official procedure. Obviously, when the verdict is not

3 Article 145(c): the lack of conflicts with treaty subject(s) to paragraphs a & b should be approved by the Ministry of Labor and Social Affairs.
4 Article 142: in the case that different disputes concerning this law or past treaties or other requests by parties to conclude new treaty have stopped the work while workers attend in workshop and/or intentional reduction of production by workers, then determination board is obliged to investigate the case immediately and to decide based on the requests by each parties or labor and client organizations.
5 Article 142: in the case that different disputes concerning this law or past treaties or other requests by parties to conclude new treaty have stopped the work while workers attend in workshop and/or intentional reduction of production by workers, then determination board is obliged to investigate the case immediately and to decide based on the requests by each parties or labor and client organizations.

6 Noteworthy, in social dialogue, the second level of such dialogues is between management and workers on the performance of the firm which is not covered by current research. The negotiations on workers and clients to improve the performance of the workshop are through Labor Islamic Council established for the same reason.
7 Article 28: the legal representatives of workers and members of Islamic labor councils and also competent candidates of the representatives of worker and Islamic labor councils would keep on their activities in the same unit similar other workers in the steps of selection before final decree by determination board (article 22 of Islamic labor council law) and dispute solution board’s verdict.
Paragraph 1: determination and dispute solution boards would investigate the case and announce their final verdict immediately and out of official procedure. In any case, dispute solution board is obliged to investigate the case one (1) month upon receiving the complaint.
Paragraph 2: in workshops where Islamic labor councils are not yet established or in the regions where determination boards (article 22 of Islamic labor council law) are not founded or the relevant workshop is not covered by Islamic labor council law, workers’ representatives and/or the representatives of job association would keep on their activities in the same unit similar other workers before final decree by determination board (article 22 of Islamic labor council law) and dispute solution board’s verdict.
c. issued by the board for these representatives, they would keep on doing their tasks. Noteworthy, these two paragraphs cover those problems occur for workers’ representatives during discussions. Under such circumstances by which they may be exposed of firing due to their constant complaints, the lawmaker has tried to support them through several initiatives. The only problem is to highlight the representatives of Islamic labor councils already explained and will be described more in below who are called as the representatives of workers while they are actual representatives of workers in social dialogues to improve work conditions.

d. The scope and efforts to improve negotiations: concerning the normative rule on improving the scope of negotiations and collective treaties, one should say that in article 139 and concerning the aim of negotiations, the lawmaker asserts that the aim of collective negotiations is to prevent or resolve professional problems or to improve production conditions or welfare of workers through determining norms to combat the problems and to prepare the conditions for parties’ participation in their solution or determining or changing the conditions in the level of workshop, profession and industry through mutual agreement. Parties’ requests should be relied upon necessary documents and evidences.” Paying attention to term prevention in article 139 adds a wide scope to wide range of issues in negotiations and collective treaties. On the other hand, one can point out treaty issue in article 140 and relate it to determine job conditions which include a remarkable scope. Thus, concerning both articles, one can consider any issue in labor relations in association to negotiation and treaty.

Conclusion and recommendations

ILO protocols contain fundamental values of labor laws. Since labor laws are devised by human identity and non-ideological to support workers and to mitigate real inequalities in legal relationship between client and workers, such protocols can be used as efficient criteria to measure and value labor laws domestic norms. In this vein, protocols on “negotiations and collective treaties” are investigated. Important principles were extracted from the provisions of protocols as below: real representativeness, protection and expansion of negotiations and treaty on all job condition related issues and in negotiations and collective treaties. Inserting these principles in the internal norms of labor law can be reported in several paragraphs.

Negotiations and collective treaties, the real representativeness of those individuals who enter negotiations is damageable. Based on existing norms, in addition to syndicates’ representatives, the representatives from Islamic labor councils and free representatives can attend in negotiations. Since the members of councils include representatives of both workers and clients, they cannot be considered as actual representatives. Likewise, workers’ free representatives cannot be successful individuals in work since they have no organizational support. Creating and approving is too emphasized by lawmaker that it has recognized the right of objection by workers and has entered and accepted it in legal system. However, by using different terms, lawmaker has tried to relate negotiations and collective treaties to labor issues.

- Deployed representatives by Islamic labor councils for the first layer of social dialogues between workers and clients to improve job conditions are not suitable since those representatives who enter collective negotiations should be workers’ real representatives and enjoy organizational support to attend in negotiations. To the same reason, article 140 of labor law should be modified as: “collective treaty is a written treaty concluded to determine job conditions between the representatives of syndicate on the one hand and clients’ representatives on the other hand.” To this end, it is necessary for workers to establish their job syndicate as soon as possible.

- Confirming the collective treaty by the Ministry would pave the ground for the interventions by governmental officials. To confirm the collective treaty and its adaptability to laws and regulations as an administrative issue, the Ministry can be the incumbent in the first layer but in next step (i.e. objection of one party against refusal), the verdict by judicial authority can close the case. Additional, it eliminates suspicion on the intervention by governmental official in such verdict.

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