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The Effects of International Human Rights Law on International Labor Law

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ABSTRACT

Since the outset of its advent, international human rights law has been evolving. Today, human rights law regulations encompass a wide range of binding rules regarding different areas ranging from right to life to right to access to the employment. International human rights law include various human rights which can be categorized into three generations of rights, namely civil and political rights (first generation), social and economic and cultural rights (second generation) and collective rights (third generation). This paper examines the rights which are economic and social rights and are more specifically labor-related rights in international human rights law and the effect of this system on international labor law. These rights include rights of the workers to have decent working conditions, right to access to employment, right to have equal treatment at occupation, right to have equal pay for equal work. Much of the labor standards found in international labor law today, have human rights dimensions such as access to the employment, non-discrimination, decent working conditions in occupation, etc. Thus, much of human rights regulations relating to labor are now found in domestic and international labor law. This paper also examines the dimensions of the effect of human rights law on the development and evolution of labor standards.

Introduction

Workers' rights at labor have been the center of labor law in national and international level. In national level, the rights of workers to live and work in dignity have been the core of labor law specifically by the developments made in Britain and some other industrial countries. Some highlight points in history of labor, such as 1911 Triangle Fire incident and its aftermaths helped the development of labor rights debate, and the two capitalist and industrialized countries of United States and United Kingdom had been the center of labor-rights activities.

Simultaneously, developments were taking place in human rights law. International human rights system incorporated a wide variety of rights ranging from political to economic and social rights. Working conditions in industrialized societies which resulted in danger to workers health were the concerns of human rights activists in those societies from the industrial times. The 1917 revolution in Russia which was originally workers revolution was a reflection of labor-rights struggle in communist societies.

Here we will examine some labor-related rights in human rights law and its effect on labor law in international level. Thus "access to the employment" which is found in article 23(1) of Universal Declaration of Human Rights had its effect on labor standards of International Labor Organization, which are mostly reflected in ILO conventions. Similarly, "non-discrimination in occupation" which is included in article 3 of the Covenant is incorporated in art.1 of convention 111 (1958). Again "decent working conditions" and "dismissal of workers" are incorporated in human rights documents such as Universal Declaration of Human Rights (UDHR), 1948 and Covenant of Social and Economic Rights of 1969. These are today found in ILO conventions and declarations. Likewise, decent working conditions for workers which are the subject of article 8 of the international Covenant of Social and Economic Rights are also incorporated into several ILO conventions and declarations since 1919.

Working Conditions

A great part of labor rights debate related to decent working conditions of workers in occupation rights of workers to have safe and healthy work place, right of workers to have equal pay for equal work, right to have decent and appropriate working time and right to have decent day-offs and holidays are all included in working conditions (Kevin Bales, 2007). The issue of working conditions is the concern of human rights documents such as Universal Declaration of Human Rights and Covenant of Social and Economic Rights.

Equality at work

Equality and non-discrimination are important principles of international and European human rights law systems and are recognized as the core of these systems. Non-discrimination regulations aim at preparing equal and fair opportunities for individuals to access to employment and also equal and fair treatment during the occupation (Politakis, George, 2006). According to World Conference on Human Rights Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Calls for a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, color, sex, religion, political opinion, national extraction or social origin. Eight Conventions have been designated by the ILO as embodying fundamental principles and rights. Two of them have the specific aim of promoting gender equality: Convention No. 100, of 1951, concerning equal remuneration between men and women for work of equal value, and Convention No. 111, of 1958, concerning non-discrimination in employment and occupation.

The main documents in EU level, regarding to the principle of non-discrimination are as follows: Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion, and working conditions. Council Directive 79/7/EEC of 19 December 1978 on equal treatment in social security; Council

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Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for women and men in occupational social security schemes; Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between women and men engaged in an activity in a self-employed capacity and on the protection of self-employed women during pregnancy and maternity. In European level, European Court of Human Rights (ECHR) is competent to tackle cases of discrimination. Of these cases the case of Sidabras[1] is well-known. As Virginia Mantouvalou mentions[2] the basis for discrimination in its judgment as the Court held, was the status of the applicants as former KGB employees, as opposed to those that were not employed by the KGB. This is not one of the grounds expressly provided for in Art.14, which is an "open-ended" provision. Nor is it one of the "sensitive grounds" of discrimination, like, inter alia, sex, religion, sexual orientation or nationality, where it is harder to justify different treatment. The fact that the Court approached the grounds of discrimination widely shows that it now feels more competent to tackle discrimination". (Mantouvalou, 2005).

It should be noted that without equality and non-discrimination, the right to work as a human right cannot be fully reached and fulfilled, because every kind of discrimination prevents enforcement of the right to work. It should be mentioned that equal in employment and occupation is in contrast with non-discrimination. That is, equality is a favorable condition that requires the full preparation of a state. The Utopian idea of "equality" which means "giving every person as he needs" was first adopted by Marx and his followers. The idea of "non-discrimination" in employment and occupation is only a pre-condition in reaching equality. With the help of non-discrimination, reaching equality would be possible. Article 3of the Covenant implies to non-discrimination.

In international labor law, rules related to equality and non-discrimination in employment and occupation is incorporated in ILO convention n. 111 (1958). It should be noted that equality and non-discrimination have been the concern of ILO from the begging of its creation and is now incorporated in 8 fundamental conventions. In ILO 111 Convention words " the term *discrimination* includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". ILO convention no.111 has mentioned non-discrimination in several fields. The first is non-discrimination in access to employment, which means equal opportunities for all, non-discrimination in working condition and education in occupation. Thus equality and non-discrimination is not confined to access to employment and encompass a wide range of fields.

Safe and health at work

The right of employees to have safe and healthy environment in workplace is considered as a human right belonging to the employees and breach of this right entails the responsibilities of the employer. In addition to the obligation of the employees, states are also obliged to adopt consistent policies regarding the safe and healthy environment in workplace. According to an ILO convention (convention no.155, Occupational Safety and Health Convention", 1981) every state is deemed to, after the consultation with workers and employers syndicates' representatives, adopt, design and enforce consistent policies regarding occupational safe and health.

Before 1981, Covenant of Social and Economic Rights had considered occupational safety and health at work. In article 7 of Covenant right to have safe and healthy environment is highlighted. It should be kept in mind that obligations under the Covenant are gradual obligations, obedience of which requires passing of time, in other words Covenant rights which are "second generation rights" (social and economic rights) are not prompt and obedience and enforcement of them requires time. But it appears that the issue of occupational safety and health is different. "It has been claimed that socio-economic rights have inherent flaws that render these rights non-justiciable, namely: the imprecision of the rights; the vagueness of the rights; and the positive obligations that arise from the rights. Furthermore, it has been argued[3] that any judicial enforcement of socio-economic rights would result in judicial policy making" (Brennan, Mariette, 2009). It is believed that social and economic rights such as rights of workers at work are not to be observed and enforced promptly, because of their nature. And "It has historically been argued and traditionally accepted that socio-economic rights are non-justiciable. Advocates of this position have asserted that, while rights to housing, health care, education, and other forms of social welfare may have value as moral statements of a nation's ideals, they should not be viewed as a legal declaration of enforceable rights"[4], but it should be kept in mind that although fulfillment of this obligation requires positive actions of the employers and the state, these measures should be done promptly (Ilias Trispiotis, 2010).

According to General Comment No. 14 (2000) of the Committee on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) "Health is a fundamental human right indispensable for the exercise of other human rights, Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programs developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable". In Europe, the European Agency for Safety and Health at Work, which is distributed on 1996 and is located in Spain, is the most important agency regarding occupational safe and health. Occupational safety and health have also been the concern of national legislation. In Sweden, obligation to observe safety measures at work is found in 1977 Act in which the primer responsibilities regarding occupational safety is on the employer, but at the same time the employee is required to cooperate respectably[5]. Some national laws relating to the issue

[1] - Sidabras and Dziautas Case, European Court of Human Rights, 2004.

[2] - Mantouvalou, Virginia, "Work and Private Life: Sidabras and Dziautas v. Lithuania", European Law Review Vol. 30,2005, p.3

[3] -Brennan, Mariette, "To adjudicate and enforce socio economic rights: South Africa proves that domestic courts are viable option", Vol. 9 No 1 (QUTLJJ), 2009, p.2.

[4] - Christiansen, Eric, Adjudicating non-justiciable Rights: Socio-Economic Rights and African Constitutional Court, Columbia Human Rights Law Review, 2007, p.322

[5] - Adlercreutz, Birgitta Nystrm, "Labour Law in Sweden", Kluwer Law International, Netherlands, 2010, p. 75-79

of occupational safety and health are as follows[6]: Occupational Health and Safety Act 1991 (Australia), Health and Safety at Work Act (United Kingdom), Indonesian Act No.1/1970 about Occupational Safety at Work 1970 (Indonesia), Occupational Safety and Health Act (United States), Occupational Safety and Health Act 1994 (Malaysia), Workplace Safety and Health Act, in Singapore, (Everly, G. S., 1986).

Decent Working time

Right to work is not fully enforced unless every person is entitled to have decent and human working time according to dignity. ILO 1919 Convention and some other international and regional instruments stipulate the rule of eight-hour work.

But it should be kept in mind that international rules on human rights law and labor law do not prohibit the employees to have excessive working time if he wishes so. According to a European Directive (2003 Directive on working time), the working time rules are not enforced where the working time is designed by the employee himself. Besides having decent working time, having appropriate leave is important in labor and human rights law. As an International Labour Office publication (ABC of women workers' rights and gender equality) mentions "The right to leave was reinforced by the explicit prohibition of dismissal during a woman's absence on maternity leave or at such time that the notice would expire during such absence. Employment security was thus seen as a vital aspect of maternity protection. The Maternity Protection Convention (No. 103), of 1952, retained the same principal elements of protection (i.e. the right to maternity leave, medical care and cash benefits), but the means and manner of providing these benefits were made more explicit:

•The 12-week minimum leave period was to include a period of mandatory post-natal leave of at least six weeks; additional leave was to be provided before or after confinement in the event of medically certified illness arising out of pregnancy or confinement.

•Medical benefits were to include pre-natal, confinement and post-natal care by qualified midwives or medical practitioners, as well as hospitalization if necessary; freedom of choice of doctor and of public or private hospital were to be respected.

•As regards cash benefits, a minimum income replacement rate of two-thirds of the woman's previous earnings was specified for those benefits derived from social insurance; payroll taxes were to be paid on the basis of the total number of workers employed without distinction of sex."[7]

It should be reminded that regulating of working time has human rights dimension and is perceived only when looking at industrial times. At that time, employers were free to regulating working time how they wish, and the employees were obliged to accept that (Jacquentine Jones, 1999).

Access to Employment

International human rights law rules stipulated that right to work entails free choice of employment. Thus besides providing decent working conditions freedom to choose employment is a part of the right to work. As it is mentioned at Vienna conference, ILO's Declaration of Philadelphia (1944) states that Labor is not a commodity; Freedom of expression and association are essential for sustained progress; and all human beings have the right to pursue their material and spiritual development in conditions of freedom, dignity, economic security and equal opportunity.

Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. This is a part of art. 23 of Universal Declaration of Human Rights (1948), which is made during the course of universal agreement reached due to the formation of UNO (1945). Since Second World War this right has been at the heart of social and economic rights (as the second generation of human rights). Access to employment entails free choice of employment. Freedom of employment may be classified into several kinds of freedom. The first freedom is freedom to access to employment, another type of freedom is freedom from compulsory work. The states also have the duty to prepare the grounds for the employment of people. This requires that states do some actions for that purpose. Right to access to employment also entails that states should not oblige people to work in certain jobs. In a case in European Court of Human Rights (Sidabras and Dziautas V. Lithuania, 2004), the court decide that by providing that KGB (Soviet Security Service) forces did not have the right to be employed in public sector and great part of private sector, the state has breached the right of people to access to employment.

Conclusion

International human rights law encompasses a wide range of rules in various fields of human life. The rules range from political rights (such as right to life) to social and economic rights (such as right to work). A great part of labor-right debate in twentieth century has been incorporated in international human rights system. Thus international human rights law includes various rights which are related to labor. Access to employment and equality and non-discrimination in occupation and employment and decent working conditions are among these rights.

At the same time, international labor law, thanks to the laborious activities of International Labor Organization (ILO) has developed a body of rules since the twentieth century. In this paper it was realized that much the labor standards of ILO have been affected by labor-related rights in human rights law. For example labor standard of "having a decent working condition in respect to health" is found in human rights instruments as "the right to the highest attainable standard of health". As stated in General Comment No. 14 (2000) on the right to the highest attainable standard of health "the right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health." It is concluded that labor standards which are mostly found in ILO conventions and declaration are to be found in human rights instruments as well and in many cases human rights instruments have affected these standards.

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