

THE PRINCIPLE OF PROTECTION AS A PRINCIPLE OF INTERNATIONAL LABOR LAW

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ABSTRACT

The aim of this study is to explore the Principle of Protection as a Principle of International Labor Law and its application to International Labor Contracts, given the precariousness of working conditions, under the current perspective issued by the International Labor Organization - ILO. We will base this principle on the grounds of the employee's inadequacy given the need to protect the most vulnerable part of the relationship in question, as means of safeguarding the dignity of the human person, in this case, the worker. This is intended to protect the worker from the employer's arbitrariness. Given the current deterioration in working conditions, it is important to understand its content as a guiding principle applicable as a General Rule of International Labor Law.

Keywords: *Labor, Law, Principle, Protection*

1. INTRODUCTION

The aim of this study is to explore the Principle of Protection as a Principle of International Labor Law and its application to International Labor Contracts, in the performance of the International Labor Organization - ILO. The technological domain and the phenomenon of globalization in the economy are real and, in the globalized world countries and their economies, are interconnected in such a way that labor relations deserve protection from universally imposed rules (Kolb, 2005). This reality demands the existence of minimum international standards to be applied in labor relations and the recognition of certain labor rights as the Universal Human Rights, being the Principle of Protection at the core of the labor sphere (Valticos, 2013). The reports and recommendations issued by the ILO indicate that several aspects, so far outdated, still need broad debate and insight. We no longer speak only of unemployment, but of decent employment for the human person as worker. Therefore, this article does not seek to conceptualize the well-known expressions of soft and hard law, but to recognize the needs of its rules - whether they are the result of law or not - *in natura* to labor law at international level (Kott, 2011). Importantly, in parallel with the evolutionary cycle of humanity, came the improvement of the concept and the importance of work within a structured society, especially in the most modern and evolved nations, which are based - mostly - on the Capitalist model, which aims at the accumulation of goods and capital. In this context, the initial figure of work, as the primary source of simple occupation and guarantee of subsistence, was superimposed, giving rise to labor as a vital social function and also with an important role in the development of the society in which the individual is inserted, especially under the premise of imprint of capital. In this light, we realize the importance of the Principle of Protection in labor relations and also the diffusion of the Norms of International Labor Law, strengthening and unifying the need for the constant maintenance of such Principle (Soares Filho, 2009).

As a major player and important instrument for the protection of workers, the International Labor Organization (ILO) acts with focus and specialization in labor issues, becoming an important inspector of compliance with International Labor Standards. Therefore, what will be left will be to understand its effectiveness.

2. PROTECTION PRINCIPLE: OUTLINES OF THE INTERNATIONAL PANORAMA

Concerning the founding principles of international labor law, these are laid down in the three central, and most important, existing International Labor Laws: (i) 1945: Article 2 of the United Nations Charter - Purposes and Principles - which outlines the General Principles of International Labor Law, with a focus on mutual cooperation, achievement of common goals, equality of its members and peaceful resolution of conflicts; (ii) 1919 and 1944: Constitution of the International Labor Organization, and more specifically the Annex the Philadelphia Declaration, created to reaffirm the ILO's central and protectionist objectives on the international scene; and (iii) 1998: Declaration on Fundamental Principles and Rights at Work, aimed at promoting sound social policies, with justice and the predominance of democracy in institutions (Sussekind, 1986). The Philadelphia Declaration is noteworthy because it sought to reinforce initial values and add new values to the ILO, branching out into two points, the first being the Human Rights as the central theme of social policies and the second the importance of implementing international economic planning. Thus, we sought to adapt the Organization to the new world reality without, however, altering its central and primary function, namely the access to "decent work" by men and women, based on the maintenance of employee protection in employment relationships (Delgado, 2011). Thus, the International Labor Organization acts as guardian of the Principle of Protection before the international community in general, having as its guiding principle the maintenance of social justice in order to reach its goals in the construction of increasingly equitable and fair working relations, adapted to the social and marketing variations of each historical moment, since its creation. In this context, the Principle of Protection, analyzed under an international bias, proves to be an important tool in the construction of an isonomic working relationship, in which formal equality is broken, as the issues that lead the parties inequality (employer and employee) are taken into account, seeking the parity of the relationship through the application of material equality (Sussekind, 2010). In other words, it can be concluded that the International Labor Organization - ILO stands for International Labor Law allied to the Principle of Protection, in the same proportion as the United Nations - UN stands for the Universal Declaration of Human Rights allied to the Principle of Dignity of the Human Person. Thus, in general terms, these two Principles together, seek to bring greater balance to labor relations on the most diverse continents of the Planet, under the most different social, climatic, political, economic, cultural, ethnic and religious conditions, with a point of intercession between them: the fragility of the employee before his employer (Alvarenga, 2007). Thus, the 1998 Declaration of Fundamental Principles and Rights at Work, as a guideline of International Labor Law, made effective the principles and minimum rights recognized as fundamental for the worker, which has the bias to recognize and adopt International Labor Conventions. Labor - recognized as fundamental because they deal with the Human Rights of Workers. The basic principles and rights within the Declaration of Fundamental Principles and Rights at Work cover four essential areas of the International Labor Organization, namely: (i) freedom of association and effective recognition of the right to collective bargaining; (ii) elimination of all forms of forced or compulsory labor; (iii) effective abolition of child labor; and (iv) elimination of employment and occupation discrimination. Contrary to what it suggests, the denomination of these Conventions as a kind of "pact" is - in fact - a true rule, whose content obeyed the purpose of giving greater effectiveness to the 1948 Universal Declaration of Human Rights itself. So much that for example in Brazil, with the approval of Decree No. 10.088, of November 5, 2019, the theme was the object of consolidation

of the ILO Conventions, ratified by the Federative Republic of Brazil -therefore characterized as hard law. Another appropriate legal perspective for the analysis is that all Member States must comply with the principles of fundamental rights of international declarations, whether or not they have been ratified in the Core Conventions, precisely because they are principles already in force, the ILO Constitution and its Annex, the Philadelphia Declaration, and establishes obligations to the International Organization itself, which should assist Member States in the effective enforcement of such Fundamental Rights (Baptista, 2012). It is also worth remembering the understanding of the norm under analysis as soft law, since it demonstrates the concern with which international society faces labor issues, in order to create flexible normative mechanisms that tend to seek answers, besides delineating a Thinking and guiding state actions, also sign of the future normative stance towards the implementation of a hard law norm, if it is interesting for the international and internal relations of states. Because they are universal values capable of providing a minimum standard of protection for work and human dignity, international guidelines are important instruments to be observed by the Member States of the International Labor Organization. Thus, it is of utmost relevance to develop an analysis and reflection on the importance, as well as a note on the necessity and effective application, of the Principle of Protection as a Standard of International Labor Law. The strong argument for respecting the Conventions should be the fist that supports and rejects their implementation and concretizes their application. The ILO needs to go beyond its original frontiers, influencing and demanding from Member States the effective practice of acts consistent with the establishment of a fairer society, thus nourishing the normative tendency of the Organization.

3. NEED FOR ILO SANCTIONING POWER

In this context, it is essential to promote a debate around the current configurations of labor relations, constituted for many decades as the main mechanism of integration and socioeconomic participation, in the face of increasingly complex and unpredictable dynamics, such as causes and consequences of globalization; the constant change of society and workers to the technological changes of work; the growing precariousness and randomness as structuring factors of current experiences; the disregard of the pillars of social models; and the difficulty in reconciling social and economic dictated between equity and competitiveness. These various aspects put the debate on poverty and employment on nowadays' forefront. To this end, the international body must have a sanctioning capacity to express and punish governments and their rulers, in order to encourage change of posture. It is also important to remember that international organizations seek peace as an alternative to the use of military force. Thus, the regulation of guidelines - issued by the International Labor Organization - is the focal point to sow the balance between peoples and promote equality between individuals, even in the face of the dynamic and accelerated transformation of our daily lives today. On a regular basis, the ILO produces reports containing reviews and complaints about the work landscape in the world. However, its disclosures are not repressive, nor does it have an effective court that promotes the trial when it finds any breach in the international labor sphere, which cooperates to mitigate the level of action of the Organization. In line with the ILO's 2019 Global Employment Trends Report - published in February of this year - unemployment is falling globally; however, working conditions have not improved, warning that some businesses - driven by new technologies - are threatening the social achievements of the last decades. The 2019 Report assessed the impact of new and old challenges on the global labor market. It also considered the recommendations contained in the Report of the Global Commission on the Future of Labor (also ILO Report, 2019), which calls for by a new focus on changing the nature of employment, both in the economic and social spheres. According to the International Labor Organization (ILO), more than 3.3 billion people employed in the world as of 2018 did not have adequate levels of economic security, material well-being or career advancement opportunities.

Thus, it can be inferred that the ILO regularly examines the application of the world's norms and employment situation and indicates their improvement. The Organization has the function of supporting the countries involved through social dialogue and technical assistance, but its sanctioning character is not yet accepted internationally, promoting the relativism of noncompliance, with the argument of prevailing national sovereignty. Today's only possibility of imposing sanctions on labor rights would be through the International Court of Justice, when a complaint or claim brought by one Member State to another State arrives to court. However, such a possibility, beyond its exceptional character, is not allowed to individuals (Cenci, 2015). In the same line, they explain that if dialogue with the violating state has no effect, the only way would be to promote moral coercion by presenting and discussing the case and exposing the situation vis-à-vis to all other EU Member States' International Labor Organizations. Considering, therefore, the perspective - which aims to bind more imposing characteristics in the ILO's control activities - it must be vested with jurisdictional power, which could contribute to the effectiveness in the applicability of the Conventions and to the establishment of jurisprudence on Universal Labor Rights. Another factor that would undermine the endowment of such power would be to allow workers' associations, non-governmental organizations and the wronged worker himself to be able to lodge complaints with the Organization and have his case tried internationally, in effect erga omnes. It remains clear, then, that the moral strength derived from the Conventions and Recommendations and the Organization's attempt to universalize labor law standards in such different countries - as regards economic and social conditions - are not enough to maintain justice in the international labor market (Barrientos, 2008).

4. APPLICATION OF THE PRINCIPLE OF PROTECTION AS A STANDARD OF INTERNATIONAL LABOR LAW THROUGH THE ILO

As in the Brazilian legal system, the legislation itself admits the incidence of the General or Fundamental Labor Principles as a formal source of application of Labor Law, as evidenced by the provision contained in Article 8 of the Consolidation of Labor Laws. For the majority doctrine, the Fundamental Principles of Labor Law are those that guide and promote its existence, based on the assumption of the inequality of the parties at the time of the employment contract and during its development (Carrion, 2012). It should be noted, therefore, that the Brazilian labor law expressly admits the existence of the Principles of Labor Law and International Labor Law, as well as their existence as a formal source. For international labor law, while respecting the fundamental laws of the state, boundaries are weighed within the limits of their sovereignty and their welfare. Armed with this ideal, we enter into the ILO's rules, whose aim is not only to improve working conditions, but also the human condition as a whole, emphasizing the fight against inequality, aiming at material progress and security as the defense of the values of dignity and equality - in particular equal opportunities, regardless of race, belief or sex (Delgado, 2015). The action of the Organization briefly insists on the need for a concentrated effort - international and national - to promote the common good, ensuring the material and spiritual well-being of humanity (Sussekind, 2010). These founding principles of the Labor Organization underline that action to improve the social conditions of humanity, in the broadest sense of the term, should not constitute a separate sector from national policies or international action, for they represent the very object of internal economic and financial programs. The ILO's overriding proposal lies in international legislative action on labor issues, with political and social justification. Thus, the policy consists in ensuring a solid foundation for universal peace, while the social one aims at implementing social justice and universalizing the dignity of the human person, which are central to the effective operation of international labor law. International labor law is committed to ensuring the promotion and expansion of social achievements already attained by workers.

All the ILO's objectives are to establish basic criteria, exclusively for worker protection, to regulate them at the international level, in order to ensure more consistent standards of dignity and social welfare. Therefore, international labor law does not only deal with the specific rules or sources (whether formal or material) arising from the ILO International Labor Conference, but also with all international diplomas containing social provisions and influencing in some way by ensuring the protection and promotion of human rights of workers on an international scale (Delgado, 2005). Thus, it is inconstant to assert that International Labor Law is the branch of law that promotes the implementation of the Principle of Protection arising from universally imposed rules, given that applying only the internal legal system, historically, has not presented the fullness of the necessary results. Several international documents, considering the Dignity of the Human Person and the idea of decent work, propagated internationally, have led to the conclusion that there is currently a list of universally recognized and enforceable Labor Rights, including part of national sovereignty of each state. As well, it is not enough, however, to regulate rights that guarantee the minimum civilizing standard; an institution capable of enforcing them in the international / transnational community will be necessary. Although the International Labor Organization has sought to fulfill this role, it is necessary to advance the mission of this Organization through policies to be carried out internally within the institution and others to be implemented externally with the Member States (Cenci, 2015). The right to work is a human right, inserted in the international sphere, and a fundamental right, in the legal scope of each country, always seeking social justice (Salvatori, 2010).

5. CONCLUSION

For the completion of the Social and Protective Rights of Workers, which represents an important instrument for the realization of Fundamental Human Rights in the context of labor relations, it must be lost in order to eradicate poverty and marginalization, to reduce social and regional inequalities and, above all, for the recognition of the social value of work. From this perspective, it is essential to realize - increasingly - the urgency of the need for the adoption of a new paradigm for labor relations: to serve to guarantee the worker a dignified existence in this unequal relationship. For this reason, the main factors that contributed to the emergence of the International Labor Organization (ILO), as well as its substantial relevance and the achievements of the Declaration of Fundamental Principles and Rights at Work, were analyzed. These, therefore, are historical and legislative moments or records that have shed light on the path taken to secure and solidify the process of recognizing and enforcing the Human Rights of Workers at the international level. There is no need to talk about human rights, even to affirm their real existence in the lives of men and women, without, in fact, such well-developed international protective standards for workers being effectively respected and applied internationally, which it requires all active and vigilant workers and organizations, inserted in this work of the Labor Law field, with extreme attention and firm determination. For it must be even more protective of his noble mission. Although the International Labor Organization has been striving to fulfill its international function, it is necessary to advance the function of this Organization by broadening it through policies to be carried out and implemented externally, together with the Member States, with a view to effective dignity of all human work.

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