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REGULATION OF INTERNATIONAL LABOUR ORGANIZATION ON FORCED LABOUR

Alina-Paula LARION¹

Abstract

The phenomenon of forced or compulsory labour is one of the most important problems faced by the international community. The most important international body that is in a position to adopt legal rules on combating this phenomenon is the International Labour Organization (ILO). In this respect, this organization has adopted since 1930 some legal instruments that deal with forced or compulsory labour. The basic ILO conventions in this field are: Convention No. 29/1930, Convention No. 105/1957 and Convention No 182/1999, conventions to which we will refer in this paper.

Also, on June 11, 2014, was adopted the Protocol to Convention No. 29, which is another international instrument aimed at strengthening international efforts to end all forms of forced or compulsory labour. Together with the adoption of this Protocol, the International Labour Organization Conference also adopted Recommendation No. 203.

By adopting these international standards, the International Labour Organization has sought to ensure the respect for fundamental human rights, in particular the right to work.

Keywords:

International Labour Organization, forced labour, modern slavery.

JEL Classification: J83, K33

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INTRODUCTION

The concern of the international community on forced labour is growing, as forced or compulsory forms of labour have changed, and trafficking for forced labour is increasing.

The International Labour Organization (ILO) was founded in 1919 by the Treaty of Versailles and aims to respect human rights, mainly the right to work, internationally recognized, and to promote social justice. As regards the International Labour Organization, social justice implies respect for human rights, decent living standards, human labour conditions, positive employment prospects and economic security.

This organization has tried to respond, through international labour standards, to a growing number of needs faced by workers and employers around the world. The ILO's Governing Board has also established 8 fundamental conventions that regulate the areas that are considered as fundamental principles and workers' rights, grouped into four categories: freedom of association and the right to collective bargaining, the elimination of forced labour or abolition of child labour and the elimination of discrimination in employment and occupation.

THE REGULATION OF FORCED OR COMPULSORY LABOUR

Next, we will highlight some aspects of forced labour and the legal instruments governing this form of employment, namely Convention No. 29/1930 on Forced or Compulsory Labour and Convention No. 105/1957 on the Abolition of Forced Labour. It is also possible to add to this the Convention No. 182/1999 on the Prohibition of the Worst Forms of Child Labour and the Protocol to the Convention No. 29/1930 on Forced Labour, which was adopted at the International Labour Organization's General Conference in June, 2014. This Protocol was adopted, as it was found that the transitional period provided for in the Convention had expired, and paragraphs 2 and 3 of Article 1 and Articles 3 to 24 no longer apply [10].

Since 1930, there have been concerns about this issue, when the ILO elaborated the first convention on forced labour. In this respect, Article 2 of the Convention no. 29/1930 states that "forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself

voluntarily” [3]². “All work or service” refers to all types of work, services and employment in any industry or sector of activity, including the informal economy [11: p. 60]. Moreover, this Convention also refers to cases where work is not considered to be forced, namely:

- Work meant for military works;
- Work claimed to an individual as a result of a conviction pronounced by a court of law;
- Work done in cases of emergency [8].

All Member States have the obligation to “respect, promote and realize” the elimination of all forms of forced or compulsory labour. Of the 187 member states of the International Labour Organization, there are states that have not ratified the Convention No. 29/1930, such as China, Korea and the USA [10].

Forced labour also exists on all continents and manifests itself in different forms, and sometimes it is also used as “modern slavery” which denotes poorly paid work.

According to the latest estimates of the ILO there are over 20.9 million people subject to forced labour globally. Thus, 18.7 million people (90%) are included in the private economy and 2.2 million (10%) in labour imposed by the state in the form of forced labour. At the same time, 4.5 million people are victims of sexual exploitation, and 14.2 million people are exploited in agriculture, domestic work, and constructions [8]. Of this number, about 11.4 million (55%) are women and 9.5 (45%) are men [8]. Asia is the region with the largest number of forced labour workers (56% at international level), followed by Africa with 18%, and Latin America with 9%. There are over 1.5 million people in Europe, and the countries of the South and South-Eastern Europe are the most affected.

For example, in India, we find the most publicized case, the case of Myanmar (formerly Burma) where the army or authorities resort to forced labour under the pretext of building development goals, and in South Asia there is slavery for debt payment [1: p. 27].

In a global report on forced labour, debated at the 2005 International Labour Organization Conference, a global alliance against forced labour was proposed [8] and it was highlighted that forced labour can be combated with the condition that both national institutions and governments strengthen the national legislation to eliminate this phenomenon. This report explains the term “forced labour” as defined in

² Article 2 (2) from Convention No. 29/1930;

international law, given that this term is often misunderstood and it analyses the assistance provided by the ILO and other international organizations to Member States for the eradication of forced labour.

The Convention No. 105/1957 supplements Convention No. 29 and calls for the “immediate and complete abolition of forced or compulsory labour” [11: p. 60]. Once a state ratifies this convention, it must eliminate forced labour and not resort to it in any way:

- as a measure of coercion or political education, or as a sanction against people who have expressed certain political opinions;
- as a method of mobilizing and using the workforce for the purpose of economic development;
- as a work discipline measure;
- as a punishment for participating in strikes;
- as a measure of racial, social, and religious discrimination [4]³.

According to Article 5 (1) of this Convention, “A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force”. In this regard, there have been situations where some states have ratified this convention, then denounced it, such as Malaysia and Singapore, and others have not ratified it, for example: China, Japan, Korea, Myanmar, and Vietnam.

Forced labour affects both adults and children, and in this respect, the Convention No.182 / 1999 on the prohibition of the worst forms of child labour, was adopted. The first international debate on child labour took place in Geneva in September 1866 at the congress of the first international workers’ association [9: p. 229].

According to Article 7 of the Convention no. 182/1999, each Member State must take effective measures to:

- prevent the hiring of children in the worst forms of child labour;
- provide the direct aid to evade children from forced labour and to ensure their social rehabilitation and reintegration;
- ensure their access to basic education [5]⁴.

This legal instrument obliges the Member States that have ratified this Convention to take all necessary measures to cooperate and to assist each other in implementing the provisions of this Convention. Thus, at international level, there is the International Program for the Elimination of Child Labour, a program that is operational in several countries and which

³ Article 1 from Convention No. 105/1957;

⁴ Article 7 from Convention No. 182/1999.

provides assistance to states in the development and implementation of programs and projects with specific objectives.

Child labour is a hidden phenomenon and can take many forms. In this respect, UNICEF identified several categories of child labour, namely:

- work at home;
- activity in industry and plantations (rice, coffee);
- work in the street (collection of waste for recycling);
- sexual exploitation of children for commercial purposes.

In fact, education plays a very important role in the fight against children, so a child who goes to school regularly is less likely to be forced to work, and if families do not have a source of income, child labour will continue to grow.

At the General Conference of the International Labour Organization from June, 2014, the Protocol to Convention No 29/1930 was adopted to address some gaps in the implementation of the provisions of this Convention. Thus, each Member State must develop, together with workers' and employers' organizations, a national policy and a plan of measures to combat forced labour. These measures taken to prevent forced labour must include:

- educating and informing people in order to prevent them from becoming victims of this type of work;
- educating and informing employers in order to prevent them from engaging in forced labour;
- protecting people, especially immigrant workers, from possible abusive practices during the recruitment and placement process [6].

It can be seen that there is a link between trafficking in human beings and forced labour, since most of the people who are subjected to this form of work come from immigrants. The lifting of work restrictions in certain states facilitates the trafficking of human beings and their forced labour. For example, at European level, freedom of labour has increased the number of trafficked persons, victims have been attracted by promises of a job abroad.

At the same time, trafficking of human beings and their exploitation through forced labour can be a business for those who submit to this type of work. In a publication of the International Labour Organization, it is estimated that the gain from forced labour worldwide is 150.2 trillion dollars [2: p. 84].

This Protocol is innovative because it does not establish a “one-size-fits-all” recipe for forced labour eradication, but requires for States to engage

in developing their own plans to eradicate it. Till now, this legal instrument has been ratified by 22 Member States of the ILO.

CONCLUSIONS

Although there are international legal norms forbidding this type of work, forced labour forms persist and have continued to evolve, and even new forms have emerged, such as the work of domestic workers subjected to coercion, for example the use of physical or sexual violence or detention of identity documents. This form of work is present in all economic sectors and affects people who work both in formal and informal work, whether in the private or public domain.

The International Labour Organization has set an important goal, namely to eliminate the worst forms of child labour, considering that the elimination of child labour is one of the organization's priorities. The abolition of this form of work must also be progressing in agriculture, because agriculture has been a sector that has been neglected by the ILO as regards the fight against children.

International law considers the use of forced labour to be a crime, and should be punished by harsh sanctions, and governments, together with workers' and employers' representatives, must develop effective policy measures to combat this form of work.

The international community must consider the challenge of freeing the world of forced labour over the next decade and develop economic and social programs to reduce poverty. Adopting the appropriate legislation and concrete measures can lead to the eradication of forced labour and, above all, to respect the fundamental human rights.

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