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THE ACTIVITIES OF UN HUMAN RIGHTS BODIES IN 2019

Traditionally this review for the last 4 years was dedicated to the activities of the UN committees created under the Human rights Covenants – International covenant on civil and political rights and its counterpart – the International Covenant on economic, social and cultural rights. In the present review we will step from this tradition and will review first the case considered under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) **(I)**, then proceeding with consideration of relevant to labour law activities of the UN bodies under the mentioned Covenants **(II)**.

I - COMMITTEE ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

A very important case was considered in 2019. The applicant claimed that Moldova violated her rights under article 3 and article 11 (2) (c) of the CEDAW, by not taking into account, for the purpose of calculating her social insurance pension¹, the period of 13 years when she provided permanent care for her disabled daughter. She pointed to the traditionally attributed to women roles in the Moldovan society as the main caregivers for their children with disabilities, and alleged that the State should have ensured an opportunity for women to combine childcare obligations with work responsibilities.

The Committee found the violation and stated that the exclusion of the period of caregiving constituted indirect discrimination against women, because they were the primary caregivers for their children with disabilities and had no supporting social services to enable them to combine childcare with work. Thus they were deprived of the opportunity to contribute to the social insurance fund. In the conclusions the CEDAW asked Moldova to recalculate the author's social insurance pension, taking into account 13 years of caregiving, award the author adequate compensation for the violations suffered during the period in which she was denied her right to her social insurance pension and the compensation of the non-pecuniary damage. It also urged the state to ensure remedy to other women who provided care for their children with severe disabilities in the period between 1 January 1999 and 31 December 2016 when under the legislation in force such periods were not calculated².

This is a remarkable decision as provides an opportunity of remedy for supposedly thousands of women whose right to decent pension was violated by the social security

1 Provided by the under the provision of the Act on Public Social Insurance Pensions adopted on 1 January 1999.

2 CEDAW, *Natalia Ciobanu v. Republic of Moldova*. CEDAW/C/74/D/104/2016, 04 Nov. 2019.

legislation of the country. This case can also be seen as an example of discrimination by association, perhaps the first case of such a kind related to social security.

II - THE COMMITTEE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

In 2019 the CESCR held 2 sessions in 2019 and considered the reports of 11 states³ and individual communications in respect of 3 countries⁴. None of the individual communications related to labour law was found admissible. Turning to the issues considered in the concluding observation of the countries' reports three points of interest will be analysed.

A - BUSINESS AND HUMAN RIGHTS

The consideration of the concluding observations demonstrates that the CESCR is pushing the developed states towards implementing in national legislation and practice the UN Guiding Principles on Business and Human Rights 2011 and the UN Sustainable Development Goals. This is a remarkable step in the promotion of these purely voluntary initiatives and in convincing states to take seriously the human rights violations of the MNC abroad.

Due diligence has become the issue for national law rather recently⁵ and inclusion of the recommendation to develop these systems into the concluding observations by the CESCR might be the way for making such laws rather a rule than an exception.

Thus in respect of Denmark the Committee was concerned that an obligation of human rights due diligence on companies domiciled in its jurisdiction is not imposed and recommended the state to adopt a framework that: (a) Requires business entities to exercise human rights due diligence in their operations and in their business relationships, at home and abroad; (b) Holds business entities liable for violations of economic, social and cultural rights; (c) Enables victims to seek remedies through judicial and non-judicial mechanisms in the State party.

Switzerland was criticized for introducing the due diligence on a voluntary basis only and recommended to undertake almost the same measures as to Denmark above. In the same time in respect of developing countries CESCR was concerned with the lack of comprehensive data on the framework established to ensure that business entities apply human rights due diligence (Kazakhstan). Cameroon was recommended to evaluate the impact on human rights of economic development projects, including those implemented by private actors. Basically such an approach is intended to ensure the participation of both host and recipient states of the MNC's investments in the processes of due diligence and

3 Session 66: Denmark, Ecuador, Israel, Senegal, Slovakia, session 65: Switzerland, Bulgaria, Cameroon, Estonia, Kazakhstan, Mauritius (https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CES CR).

4 Spain, Italy, Luxembourg.

5 See British Modern Slavery Act adopted in 2015, French Law no. 2017-399 *relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* adopted in 2017, Dutch Child Labor Due Diligence Act adopted in 2019 and finally EU the non-financial reporting Directive 2014/95/EU.

compliance of their activities anywhere with international human rights norms. These norms are now thanks to the promotional work of different human rights bodies (cross-referencing of international instruments and the conclusions of relevant bodies, for example) represent now a kind of unified block of norms even though they are spread in different international instruments.

This unity is clearly seen in the concluding observations of the CESCR as they tend to refer to other UN Conventions, to ILO Conventions. It should also be noted that the Covenant has no provisions on due diligence, therefore all the comments of the CESCR related to this topic are a kind of « evolutionary » interpretation in line with the development of human rights initiatives in the UN.

B - TRADE UNIONS' RIGHTS

The rights of trade unions, the safety of trade unionist as well as the realization of the right to strike was another common point in the concluding observations in 2019. In Senegal, for example, the CESCR pointed that the right of the Ministry of the Interior to issue a receipt recognizing the existence of a union after ensuring that its members are of good moral character and are not in conflict with the law is not in conformity with the Convention.

In Cameroon the Anti-Terrorism Act prohibits acts likely to disrupt the normal operation of public services or essential services (death penalty is the sanction) and thus, in the opinion of the Committee, places a significant restriction on trade union activities. The CESCR urged both countries to amend the legislation in line with the ILO Convention no. 87.

Developed countries were criticized for not allowing civil servants to exercise their right to strike or to take part in other collective pressure actions (Estonia)⁶. In respect of Slovakia the CESCR noted with concern that workers dismissed for the participation in trade union activities were not entitled to reinstatement. It is interesting to note that this issue was never brought to the attention of the ILO Committee on the freedom of association.

The consideration of the concluding observations demonstrates that CESCR revealed anti-trade union practices and norms in the majority of developing countries whose reports it reviewed in 2019. It seems that these restrictions remain to form a part of competitive advantage of the states for attracting international business.

C- THE HUMAN RIGHTS COMMITTEE

During 2019 the Human Rights Committee (HRC) held 3 sessions (125-127) considering in total 13 reports of the states and a number of individual communications. None of these communications had relevance to labour law. In the concluding observations, however, traditionally there is a block which has very direct relevance to labour law - the measures taken by the states to combat human trafficking.

6 The ILO Committee on freedom of association has considered the claim on such a prohibition recommended Estonia to ensure that public servants, who do not exercise authority in the name of the State, enjoy the right to strike, in 2007. It seems that nothing had changed since then. See ILO CFA, Definitive Report - Report no. 350, June 2008, Case no. 2543 (Estonia) - Complaint date: 31-Jan-07.

Reviewing the activities of the HRC for a number of years I can conclude that it has always been an issue for all the states, in particular for the developing ones. In 2019 the HRC again urged a number of states to step up the efforts to prevent, combat and punish trafficking in persons. It found that in Mexico migrants are particularly vulnerable and lack efficient protection and assistance from the state. Senegal was urged to provide civil society organizations with the ability to initiate civil actions in the courts and guaranteeing that legal assistance is provided to all victims of trafficking. In respect of Angola⁷ HRC pointed the need to take measures to eliminate forced labour and child labour, in particular in the mining sector, including by increasing the capacity of labour inspectors and allocating appropriate resources to labour inspection. Viet Nam, which was downgraded to the Tier 2 Watch List in the US report on human trafficking in 2019⁸, was criticized for the limited access of victims to social service.

Paraguay was urged to combat the practice of « criadazgo » - a form of modern day slavery where children are exploited for domestic work. It is an « invisible work » as was once noted by UNICEF⁹. HRC recommended the state to adopt regulatory instruments and policies for eliminating this, including support for the family of origin, the development of awareness-raising campaigns and educational and vocational training programmes for children and adolescents from vulnerable families throughout the country.

Concluding this brief review I would like to underline that within all the sessions there was a number of countries which did not provide the reports for the relevant committees in spite of its international obligations. It means that the international community should find the way to strengthen the compliance of the states with reporting obligations, perhaps using the pressure of IMF or World Bank.

7 Tier 2 Watch List, 2019, Trafficking in Persons Report (<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>).

8 *Ibid.*

9 Niñez y adolescencia trabajadora en Paraguay. UNICEF. 2004 (<https://www.unicef.org/paraguay/media/2046/file/ninez-trabajadora.pdf>)