



International labour standards and their growing significance in the judgments of the European Court of Human Rights

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- Comparison of ILO standards on freedom of association and the articles of the European Convention of Human Rights (ECHR)
- ILO supervisory bodies, their authority and legitimacy in addressing the world of work
- Evolution in the interpretation of the ECHR by the ECtHR: Reference to ILS and their supervision
- Future possibilities for universal rights

The ILO, the ECHR and Freedom of association



Convention No. 87 (1948): Article 2
Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation

Art. 9 The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations

1950 ECHR: Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State

Further development of freedom of Association standards



Convention No. 98 on the protection of the right to organize and collective bargaining

- Article 6: does not deal with the position of **public servants engaged in the administration of the State**, nor shall it be construed as prejudicing their rights or status in any way.

Convention No. 151 on labour relations in the public service

- Applies to all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them
 - Protection of the right to organise, procedures for determining terms and conditions of employment and settlement of disputes

Convention No. 154 on the promotion of collective bargaining

- All branches of economic activity and public service (albeit special modalities may be fixed)

ILO application of freedom of association standards and principles



- Committee of **Experts** (Independent)
 - Examines the application of **tripartite-adopted** Conventions and Recommendations through constant dialogue with governments/social partners, as well as General Surveys
 - Derives persuasive value from the legitimacy and rationality of its work based on its impartiality, experience and expertise
- Tripartite Committee on the Application of Standards
 - Discussion, debate and conclusions for action based on CEACR report in an international forum at the ILC
- Tripartite Committee on Freedom of Association
 - Complaints-based mechanism, regardless of ratification
 - Decisions compiled to raise awareness and guide reflections for the effective respect of the fundamental principles of freedom of association and the effective recognition of collective bargaining

Importance of an integrated approach to the ECHR as a living instrument



- Standards of the ECHR are directly applicable and the court decisions are binding
- Traditionally restrictive view of the reach of the ECHR in its coverage of economic and social rights
- Nascent steps (Wilson/NUJ vs. UK - 2002)
- Movement to “dynamic” or “evolutive” interpretation in the light of present-day conditions

Interpretative shift on freedom of association



2008 – Demir and Baykara v. Turkey

- Reversal of previous restrictive view of freedom of association
- Essential elements of freedom of association subject to evolution depending on developments in labour relations: living instrument
- Internationally oriented interpretation methodology with binding character
 - must take into account elements of **international law**, their **interpretation** by competent bodies and the **practice** of European States (87/98 fully ratified; PS and CB) reflecting common values; international consensus, a common ground in modern societies (Evolution: EU Charter of Fundamental Rights)

New paradigm for freedom of association



- Collective bargaining is an essential element of freedom of association (Cs98/151 and CEACR) and essential means to promote and secure interests of its members
- While restrictions may be acceptable, Government failed to show **necessary in a democratic society** nor **public servants engaged in administration of state**

Further developments of freedom of association: right to strike



- Enerji Yapi-Yol Sen (2009): while the right to strike is not absolute and the right of certain categories of civil servants may be restricted this does not justify a global restriction; no case for the needs of a democratic society
- RMT v. UK (2014) – References to ILO supervisory body development of the right to strike; CEACR on notice and secondary action, including in general survey and CFA principles; comparative law.
 - Restriction is an interference in article 11 right, but in light of the broad nature of secondary action and its potential for disruption, the ban imposed by Parliament pursued a legitimate aim and the restriction was not unjustified

November 2018: further reinforcement of a universal right to strike



- **Ognevenko v. Russia**
 - Strike action intrinsic corollary to right to organize; transport and railway not an essential service
 - References to CFA decisions and Russia case
 - Parliamentary Resolutions on the right to strike
 - No reason for the court to deviate from the international approach to the definition of essential services (regular criticism from ILO and ECSR of the legislation); no showing of necessity for a complete ban; no assessment of risk or consideration of alternatives (ILO advice on **minimum service**) or **compensatory safeguards**

The influence of other ILO instruments Articles 8 (respect for private life) and 14 (prohibition of discrimination)



- Convention No. 111 on the Discrimination (Employment and Occupation)
 - Addressing political issues (Lithuania)
- Convention No 156 (R. 165) on Workers with Family Responsibilities
 - Evolving nature of parental leave (*Konstantin Markin v. Russia*)
- Recommendation No. 200 on HIV and AIDS in the World of Work (2010)
 - Justifying reversal of preceding jurisprudence (*Kiyutin v. Russia*) – 2011
 - Addressing situations not envisaged (*I.B v. Greece*) - 2013

Universality of labour norms



- Human rights, including labour rights, inherently indivisible and global
- Reflected in regional and domestic court interpretation of labour rights – growing international consensus
- 1998 ILO Declaration of Principles and Rights at Work
- 2030 SDG 8 and its indicator 8.8.2 (Increase in national compliance of labour rights (freedom of association and collective bargaining) based on **International Labour Organization (ILO) textual sources** and national legislation, by sex and migrant status)

The application of ILS at regional level in the future



- Respecting the specificities of the treaties while avoiding incompatible interpretations
- Fostering effectiveness of ILS and its supervisory mechanism
- Increasing impact on labour rights at national level by acknowledging evolution through growing international consensus



- Thanking you for your kind attention