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Fundamental Labor Rights in the light of The European Court of Human Rights

Seyed Behnam Mehrdel[1], Karen Rouhani[2*], Iraj Rezainejad[3]
[1, 2*]Department of law, Qaemshahr Branch, Islamic Azad University, Qaemshahr, Iran
[3] Department of law, Chalous Branch, Islamic Azad University, Chalous, Iran

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Abstract:
The European Court of Human Rights (ECtHR) is at the forefront of the Council of Europe's development of fundamental human rights, and its practice of developing human rights has been outside Europe's borders as it now plays a key role in the conceptual development of human rights. The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence. Although there is no specific right to protect labor rights, in particular the fundamental rights of labor, in the European Convention on Human Rights (ECHR) and the Additional Protocols but, the Court has developed an important method of referring to and interpreting the rights of the Convention in interpreting the rights of the ECHR to a lot of international sources. One of the most important international sources is the International Labor Organization (ILO) Fundamental Conventions in The ILO Declaration on Fundamental Principles and Rights at Work (FPRW), adopted in 1998, which identified four fundamental principles as fundamental labor rights. In this respect, this study investigates the ECtHR procedures, to examine the hypothesis that "The Court has played a role in the conceptual development of Fundamental Labor Rights." The present study is a descriptive-analytical study with a qualitative strategy.

Keywords: Discrimination in employment; European Convention on Human Rights; European Court of Human Rights; Forced labor; Freedom of association and The right of workers to bargain collectively; Working Children.

Introduction

The ECHR was not adopted as a charter of social rights, let alone workers' rights. Unfortunately, despite the continued efforts of labor rights activists in Europe, there is no specific right to protect labor rights, in particular the fundamental labor rights, in the ECHR

*Corresponding Author's Email: karanrohani@yahoo.com

and the Additional Protocols. Initial appeals to the European Commission on Human Rights were also rejected in some cases for violations of labor right due to their incompatibility with the ECHR, but over time these requests were accepted due to unfavorable human rights conditions at work.

The ECtHR, recognizing its fifty-year challenges in this regard, emphasizes that civil, political, and social rights also have social dimensions. Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. Therefore, the Court considers, like the Commission, that "the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation". Emphasizing this approach, the Court has developed an important method of referring to and interpreting the rights of the Convention in interpreting the rights of the ECHR to a lot of international sources and standards that enable the Court to exercise its rights of non-compliance.

Hence, The Court has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined there. It has long stated that one of the main principles of applying the Convention provisions is that it does not apply them in a vacuum. As an international treaty, the Convention must be interpreted in the light of the rules of interpretation set out in *the Vienna Convention of 23 May 1969 on the Law of Treaties*. Under that Convention, the Court is required to find out the ordinary meaning to be given to the words in their context and in the light of the object and purpose of the provision from which they are drawn. The Court must have regard to the fact that the context of the provision is a treaty for the effective protection of individual human rights and that the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions. Account must also be taken of any relevant rules and principles of international law applicable in the relations between the Contracting Parties and the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part. The object and purpose of the Convention, as an instrument for protecting individual human beings, requires that its provisions be interpreted and applied to make its safeguards practical and effective.

On the other hand, in constitutional law, fundamental rights are rights that are enshrined in the constitution for individuals and citizens. Conceptually, fundamental rights are referred to as rights that are beyond the legal hierarchy that are intended for individuals in the community. Undoubtedly, the ILO principles, goals, procedures, and conventions are one of the most important sources of regulating labor law relationships and because of their consistency and clarity as a proof of their obligations, are of particular importance in international law.

Therefore, "The ILO Declaration on Fundamental Principles and Rights at Work (FPRW)", adapted in 1998, to strengthen apply four fundamental principles. The Declaration commits member states to respect these principles regardless of whether they have ratified the relevant Conventions. In this study, the definition of fundamental labor rights, the following four principles were adopted the International Labor Conference in 1998.

In this study, examining the hypothesis that, "given the many opinions of the Euro-

pean Court of Human Rights on fundamental labor rights and their enforcement by states, these ideas have an impact on the progressive development of fundamental labor rights have been".

Freedom of association and the effective recognition of the right to collective bargaining

The first element of workers' rights emphasized in The FPRW, is "Freedom of association and the effective recognition of the right to collective bargaining." This right is so important that, for the ILO, other fundamental rights to the work are almost impossible without it. All people, groups, associations, unregistered associations, legal entities, corporations, etc.., Can benefit from this right. The three main components of the freedom of assembly considered in court proceedings are the provisional, organized and specific purpose of this right.

The notion of a "*worke*r" seems paramount in delimiting the scope "*rationed personae*" of the right to organize. Inevitably the question arises which persons can be construed as workers for the sake of delimiting the scope of the right to form and join trade unions. It is worthwhile interpreting the notion of trade unions under Article 11 ECHR in a way consistent with the scope *"rationed personae*" of the right to organize in more specialized international instruments. ILO Convention No. 87 (1948) defines "workers' and employers' organizations" within the meaning of the Convention as "any organization of workers or of employers for furthering and defending the interests of workers or of employers". Employers are unambiguously included within the scope of the right to organize. Article 5 of the Revised European Social Charter expressly applies to employers and workers alike. Like the Convention, Article 11 of the ECHR does not make clear who holds the right to organize. In this respect, it could be argued that the right to form and join trade unions is also applicable to employers. In other words, the notion of trade unions "*sensu lato*" could refer both to employer associations and to trade unions "*sensu stricto*" (Jepsen, 2013, 8).

Whereas the Court in its various opinions on the complaints of trade unions and labor rights activists states that Article 11 "presents trade union freedom as one form or a special aspect of freedom of association, but does not secure any particular treatment of trade union members by the State, such as the right to the refractivity of benefits, for instance salary increases, resulting from a new collective agreement" (National Union of Belgian Police v. Belgium, 1975, para 38; Manole and Farmers Direct v. Romanian, 2015, para 57). Therefore, the right of a trade union must be examined in the context of a general review of the rights of other members of society.

The concept of "*assembly*" is an autonomous one; it covers, in particular, gatherings which are not subject to domestic legal regulation, irrespective of whether they require notification or authorization or whether they are exempt from such procedures. Thus, the Court found Article 11 applies to a peaceful "walkabout" gathering whereby groups of persons acted in a coordinated and purposeful way, to express a political message; the applicant did not consider them "marches" or "meetings" subject to notification under the applicable national law. To avert the risk of a restrictive interpretation, the Court has refrained from formulating the notion of an assembly or exhaustively listing the criteria which would define it. Assembly is defined, in particular, by a common purpose of its participants and is to be distinguished from a random agglomeration of individuals each

pursuing their own cause (Navalny v. Russia [GC], 2018, para 36).

The requirement of a narrow interpretation of the exceptions to the right to freedom of assembly applies also to the legitimate aims enumerated in Article 11 (2). In particular, "the prevention of disorder" – one of the most commonly cited permissible grounds for the restrictions placed on the exercise of the right to freedom of assembly – must be interpreted narrowly, in line with the expression "*la défense de l'ordre*" used in the French text. The Court would usually accept that the measures in question had pursued the aim of "prevention of disorder", or "the protection of the rights of others" or both, although if the cited aim is clearly irrelevant in the specific circumstances it may be rejected. The Court did not accept, in particular, the aim of prevention of disorder in relation to events where the gatherings were unintentional and caused no nuisance. An interference with the freedom of an assembly involving its disruption, dispersal or the arrest of participants may only be justified on specific and averred substantive grounds, such as serious risks provided for by law. In particular, where irregular demonstrators do not engage in acts of violence, the Court has required that the public authorities show a certain degree of tolerance towards peaceful gatherings so as the freedom of assembly, guaranteed by Article 11 of the Convention is not to be deprived of all substance (Ibid, 2018, para 99).

Article 11 of the ECHR protects both the right to freedom of peaceful assembly and the right to form trade unions subject to specific restrictions "in accordance with the law" and "necessary in a democratic society". The Court considered that "the freedom to take part in a peaceful assembly – in this instance a demonstration that had not been prohibited - is of such importance that it cannot be restricted in any way, so long as the person concerned does not himself commit any reprehensible act on such an occasion" (Ezelin v. France, 1991, para 78).

The Court defines "association formed for other purposes, including those protecting cultural or spiritual heritage, pursuing various socioeconomic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy" (Gorzelik and others v Poland, 2004, para 92). Although definite, certain forms of assembly are concerned, the court declares that "The right to freedom of peaceful assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively" (Djavit A v. Turkey, 2003, para 56).

The link between Article 10 (the freedom to express) and Article 11 is particularly relevant where the authorities have interfered with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in a demonstration or members of an association (Primov and et al, 2014, p. 92; Stankov and the United Macedonian Organization Ilinden v. Bulgaria, 2001, para 85).

The opinions of the Court also show that the legal frameworks for freedom of assembly have been interpreted at any time in the ECtHR in favor of the exercise and enjoyment of this freedom in accordance with Article 11 of the Convention (Tufekci, 2014, para 30). In other words, this right is guaranteed by governments at all meetings, private, public, static, marching, etc. (Kudrevičius and et al v. Lithuania [GC], 2015, para 56 Djavit a v. Turkey, 2003, para 91). Thus, in general, the court procedure has a broad defi-

nition of "Freedom of association" and includes any planned and unforeseen association. The Court's interpretation of the definition of "association" is not narrow and confined to the definition of most existing member states' laws.

The prohibition of a strike must be regarded as a restriction on the trade union's power to protect the interests of its members and thus discloses a restriction on the freedom of association (Veniamin and et al v. Ukraine 2017, para 77). While restrictions may be imposed on the right to strike of workers providing essential services to the population, a complete ban requires solid reasons for the State to justify its necessity (Ognevenko v. Russia, 2018, para 72-73). According to the court opinion "The impact of any restriction on the unions' ability to take strike action must not place their members at any real or immediate risk of detriment or of being left defenseless against future attempts to downgrade pay or other work conditions" (Unison v. The United Kingdom (Dec.), 2002).

The case of *Danilenkov and Others v. Russia* Concerned members of the Dockers' Union of Russia who had been dismissed as a result of the structural reorganization of the seaport company after taking part in a two-week strike calling for salary increases and better working conditions and health and life insurance. The court declares "Violation of Article 14 (prohibition of discrimination) in conjunction with Article 11 of the Convention, the State having failed to provide clear and effective judicial protection against discrimination on the grounds of trade union membership" (Danilenkov and Others v. Russia, 2009, para 62-99). Also the case of *Kaya and Seyhan v. Turkey* concerned teachers disciplined for taking part in national strike action organized by their trade union.

Concerning the right to collective bargaining, the court believes that "A State's positive obligations under Article 11 do not extend to providing for a mandatory statutory mechanism for collective bargaining" (Wilson, National Union of Journalists and Others v. The United Kingdom, 2002, para 44). Although the Court noted in particular that "The essence of a voluntary system of collective bargaining is that it must be possible for a trade union which is not recognized by an employer to take steps, including, if necessary, organizing industrial action, with a view to persuading the employer to enter into collective bargaining with it on those issues which the union believes are important for its members' interests" (Wilson, National Union of Journalists and Others v. The United Kingdom, 2002, para 61).

While recognizing that trade unions have the "freedom to protect the occupational interests of trade union members by trade union action", the Court held that the States had "a free choice of the means to be used towards this end". As a consequence, the Court found in two early cases of 1976 that neither the right to collective bargaining nor the right to strike were protected by the ECHR. In none of these cases, the Court considered ILO Conventions No 87 and 98 nor did the Court examine the relevant reports of the ILO supervisory bodies (Ebert, 2012, para 10).

This approach was substantially reversed in the landmark cases *Demir and Baykara, 2008, and Enerji Yapi-Yol Sen, 2009, both v. Turkey*, respectively. These judgments are not only remarkable due to the shift in the Court's case law and the substantial increase in workers' rights protection, but also because the Court justified this shift to a large extent with references to other international legal instruments, in particular with the relevant ILO Conventions. This aspect, whose

importance for the protection of workers' rights under the ECHR has been underscored by a number of scholars.

The *Demir and Baykara* case concerned the legal status and collective bargaining rights of a civil servant's union. When the trade union brought legal action to enforce the collective agreement concluded with the local municipal council, the Turkish judiciary refused to recognize both the union's legal personality and its right to collective bargaining. The case was subsequently taken to the ECtHR who's Chamber and, further, to the appeal of the Turkish government, Grand Chamber found a violation of Article 11 of the ECHR regarding the refusal to recognize the validity of the collective agreement and the trade union's legal personality (Demir and Baykara v. Turkey, 2008, para 141-143). The -Court relied on international instruments when examining whether the right to collective bargaining was actually covered by the ECHR. In this regard, the Court pointed out that it had, to that date, not recognized the right to collective bargaining as an essential element of Article 11 of the ECHR. In the Court's view, these essential elements also had to be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights. (Demir and Baykara v. Turkey, 2008, para 145-146).

The elimination of all forms of forced or compulsory labor

The second element of the fundamental labor rights is "The abolition of forced labor". The first attempts at countering forced labor were made at the end of the 19th century with adopting documents condemning slavery. In 1926, to denounce slavery was passed by the League of Nations, the most widespread form of forced labor that human society was subjected to, where the human being saw not only his own work, but his own life as other human decisions. The problem when was the significant growth of forced labor in the colonies. The colonial countries, using their political and military power, forced the indigenous people of the colonized countries to serve them. In the 1990s, what focused mostly on forced labor was exploited by women and children, especially for sexual abuse. Globalization has introduced a form of forced labor to the world (Iraqi et al, 2012, para 67).

In interpreting the concepts under Article 4 of the Convention, the Court relies on international Instruments such as *the 1926 Slavery Convention* (Siliadin v. France, 2005, para 122), Supplementary *Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (C.N. and V. v. France, 2012, para 90), *ILO Convention Forced Labor No. 29* (Van der Mussele v. Belgium, 1983, para 32), *Council of Europe Convention on Action against Trafficking in Human Beings, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* and supplementing *the United Nations Convention against Transnational Organized Crime, 2000* (Rantsev v. Cyprus and Russia, 2010, para 282).

Article 4 (2) of the Convention prohibits forced or compulsory labor. However, Article 4 does not define what is meant by "forced or compulsory labor" and no guidance on this point is to be found in the various Council of Europe documents relating to the preparatory work of the ECHR. The Court had recourse to ILO Convention No. 29 concerning forced or compulsory labor. For the purposes of that Convention the term "forced or compulsory

labor" means "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". The Court has taken that definition as a starting point in its interpretation of Article 4 (2) of the Convention (Van der Mussele v. Belgium, 1983, para 66).

It is true that the English word "*labor*" is often used in the narrow sense of manual work, but it also bears the broad meaning of the French word "*travail*" and it is the latter that should be adopted in the present context. The Court finds corroboration of this in the definition included in Article 2 (1) of ILO Convention No. 29 ("all work or service", "*tout travail ou service*" in French), in Article 4 (3) (d) of the ECHR ("any work or service", "*tout travail ou service*" in French) and in the very name of the ILO, whose activities are in no way limited to the sphere of manual labor (Van der Mussele v. Belgium, 1982, para 33). In order to clarify the notion of "*labor*" within the meaning of Article 4 (2) of the Convention, the Court has underlined that not all work exacted from an individual under threat of a "*penalty*" is necessarily "*forced or compulsory labor*" prohibited by this provision. Factors that must be taken into account include the type and amount of work involved. These factors help distinguish between "forced labor" and a helping hand, which can reasonably be expected of other family members or people sharing accommodation (Van der Mussele v. Belgium, 1983, para 78).

The first adjective "*forced*" brings to mind the idea of physical or mental constraint. As regards the second adjective "*compulsory*", it cannot refer just too any form of legal compulsion or obligation. For example, work to be carried out in pursuance of a freely negotiated contract cannot be regarded as falling within the scope of Article 4 on the sole ground that one of the parties has undertaken with the other to do that work and will be subject to sanctions if he does not honor his promise. What there has to be is working "exacted... Under the menace of any penalty" and also performed against the will of the person concerned, that is work for which he "has not offered himself voluntarily" (Van der Mussele v. Belgium, 1983). The Court noted that in the global report "The cost of coercion" adopted by the International Labor Conference in 1999, the notion of "*penalty*" is used in the broad sense, as confirmed by the use of the term "any penalty". It therefore considered that the "penalty" may go as far as physical violence or restraint, but it can also take subtler forms, of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal (C.N. and V. v. France, 2012, para 77).

Article 4 of the Convention requires States Parties to carry out any act aimed at the punishment and trial of persons for the protection of a person in conditions of slavery, servitude or forced labor or forced labor. In addition, governments are required to provide training to law enforcement and others on the prohibition of forced labor (Rantsev v. Cyprus and Russia, 2010, para 285). Article 4 requires that member States penalize and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labor. Article 4 of the Convention may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of treatment in breach of that Article. Article 4 of the Convention entails a procedural obligation to investigate where there is a credible suspicion that an individual's rights under that Article have been violated

(C.N. v. The United Kingdom, 2012, para 36-99).

Article 4 (3) (b) excludes from the scope of "forced or compulsory labor" prohibited by Article 4 (2) "any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service" (Bayatyan v. Armenia [GC], 2011, para 100). It further found support for this interpretation in ILO Convention no. 29 (ECtHR: 2019). The Court departed from the above interpretation of the Commission and considered that the limitation under Article 4 (3) was aimed at military service by conscription only and did not apply to career servicemen (Chitos v. Greece, 2015).

Article 4 (3) (c) excludes any service exacted in case of an emergency or calamity threatening the life or well-being of the community from the scope of forced or compulsory labor (ECtHR, 2019b). Article 4 (3) (d) excludes any work or service which forms part of normal civil obligations from the scope of forced or compulsory labor (Van der Mussele v. Belgium, 1983, para 38). In a case, a physician's obligation to participate in an emergency, the Court considered relevant, in particular, (I) that the services to be rendered were remunerated and did not fall outside the ambit of a physician's normal professional activity; (II) the obligation at issue was founded on a concept of professional and civil solidarity and was aimed at averting emergencies; and (III) the burden imposed on the applicant was not disproportionate (Steindel v. Germany (Dec.), 2010).

In the absence of a sufficient degree of consensus in Europe on the issue of the affiliation of working prisoners in the retirement-pension scheme, obligatory work performed by prisoners without their being affiliated to the scheme is to be regarded as "work required to be done in the ordinary course of detention" within the meaning of Article 4 (3) (a) of the Convention. Thus, in *Stummer v. Austria*, the Grand Chamber ruled that the work performed by the applicant did not constitute "forced or compulsory labor" within the meaning of Article 4 (2) (Stummer v. Austria, 2011).

The court states that trafficking in human beings, by its very nature and aim of exploitation, are based on the exercise of the powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labor, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions. It is described in the explanatory report accompanying the Anti-Trafficking Convention as the modern form of the old worldwide slave trade (M. And et al v. Italy and Bulgaria, 2012, para 63-89).

The effective abolition of child labor

The third issue of the FPRW emphasizes "The effective abolition of child labor". The term 'child labor' is used to denote children who are working outside the international legal framework specifically envisaged for children in employment. It can involve many types of work, including work in the agricultural, construction, industrial, manufacturing and retail sectors as well as domestic service (Brown, 2011).

Unlike the European Court of Justice, the ECtHR does not have extensive articles on children's rights. For many years, Article 4 of the ECHR lay bereft of interpretation, reflecting the hidden nature of many of the practices which were yet to emerge as modern ma-

nifestations of the traditional notions of slavery and labor abuse that it was intended to address. Initial case law of the former European Commission on Human Rights was concerned mainly with testing the limits of permissible work obligations for adults in professional fields of employment. It was not until the case of *Siliadin v France* that the ECtHR had to assess the application of Article 4 in any case concerning a child. In that case, the applicant was a 15-year-old Togolese girl who had been brought to France with the consent of her family to work as a housemaid and to look after 4 children for 15 hours a day, 7 days a week, without pay for several years. She claimed before the ECtHR that Article 4 ECHR had been violated in her case since the only penalty imposed on her employers was a civil one to pay compensation. The Court appears to have been reluctant to ensure that the positive obligations extended beyond the adoption of criminal law measures to ensuring compensation for victims. The Court noted that, with regard to certain Convention provisions, such as Articles 2, 3 and 8, the fact that a State refrain from infringing the guaranteed rights does not suffice to conclude that it has complied with its obligations under Article 1 of the Convention (*Siliadin v France, 2005).*

Although, the ECHR does not contain a definition of a child, but its Article 1 obliges states to secure Convention rights to "everyone" within their jurisdiction. Article 14 of the ECHR guarantees the enjoyment of the rights set out in the Convention "without discrimination on any ground", including grounds of age (Schwizgebel v. Switzerland, 2010). The Court has accepted applications by and on behalf of children irrespective of their age (Marckx v. Belgium, 1979). In its jurisprudence, it has accepted the Convention on the Rights of the Child (CRC) definition of a child (Güveç v. Turkey, 2009) endorsing the "below the age of 18 years" notion (FRA, 2015, para 19). The analysis and approaches of the ECtHR on child labor are mainly prioritized by the main conventions and programs of the ILO and human rights institutions (ECHR, 2019 b).

The ECtHR mainly decides on individual applications lodged in accordance with Articles 34 and 35 of the ECHR. The court jurisdiction extends to all matters concerning the interpretation and application of the ECHR and its Protocols (Article 32 of the ECHR). So the ECtHR Rights has extended many cases to children's rights in the context of Prohibition of torture (Article 3), the Right to a fair trial (Article 6) and the Right to respect for private and family life (Article 8). In addition to the specific rights listed in the Convention, other rights such as life, the prohibition of slavery and forced labor violate "the worst forms of child labor" have been repeatedly invoked in court.

Before examining the Review court's procedure on child labor, it should be noted that in interpreting the Convention's rights, the court typically outlines a variety of methodological approaches. These approaches are well-known and include laws and standards related to the interpretation of the ECHR, the principle of effectiveness that emphasizes the importance of impact and the purpose of the "Practical and effective" rights that the evolutionary approach or "living instrument" emanates from the take. The latter technique has been adopted by the court in the famous *Tyrer* case the ECtHR observed: "the Convention is a living instrument which… must be interpreted in the light of present-day conditions" (Tyrer v. United Kingdom: para 162).

This statement marks the introduction of the so-called evaluative doctrine. The Court

rejected a static or originalism approach – whereby one would continue to interpret the Convention as it was understood by its drafters in 1950 – as this would lead to undesirable results. Such a 'frozen' attitude could not guarantee the continued relevance of the Convention as our societies develop. A dynamic approach would surely be in keeping with the preamble of the Convention, which refers to "the maintenance and further realization of human rights and fundamental freedoms".

Therefore, in the case of *Ireland v. United Kingdom*, the court declares that by applying Article 3, its assessment of whether the case under consideration is within the scope of Article 3 will be relative, depending on the circumstances of the case, including the nature of the case. And the context of the case, its duration, its physical and psychological effects, and in some cases the sex, age and health status of the victim. Another example of the use of these approaches in child-related case, in which the court declares that in order to comply with the requirements of a "fair trial" in Article 6 of the Convention, age, maturity and level of maturity must be tried. Take full account of the child's intellectual and emotional capacities and take measures to enhance his or her ability and understanding (of Ireland v. United Kingdom, 2014).

The process of relying on international law and human rights instruments, in particular with regard to the rights of the child, has been identified in particular with regard to access and custody in the interpretation of Article 8 of the Convention. Although some ambiguities about the best interests of the court prevail, it continues to use the principle that in all cases involving children, their best interests should be important. As Judge *Beuren* points out, all States Parties to the Convention are parties to the Convention on the Rights of the Child, and the ECHR can be invoked in court as an additional tool to protect the human rights of children. Given the depth and scope of child labor in the CRC, the Court's use of "the principle of best interests" can obviously have a positive effect on child rights cases (Beuren, 2007, para 19). Also under international law, Article 40 of the CRC acknowledges that every child alleged as, accused of, or recognized as having infringed the penal law is entitled to be treated fairly and in a manner that takes into account his/her age (FRA: 2015, para 200).

In the absence of child protection laws, States must be held accountable under Article 2 of the Convention. Positive obligations of states differ from their primary task, among other things. Ensuring effective protection of children from violence and various forms of abuse is a positive obligation of states. Positive obligations include the task of enacting effective criminal law. States should also adopt special measures and safeguards to protect and prevent child labor (O'Keeffe v. Ireland [GC], 2014).

The ECtHR has also ruled that violence against children by private individuals, private homes or institutions run by non-state actors may result in government liability. Most importantly, the court declares that a state may delegate the task of child protection for the management of important public services or private individuals to evade accountability. When it comes to determining the extent of the state's responsibility, the court generally distinguishes between states. The obligation to protect states arises when the risk is not clearly identifiable. In reviewing the cases, the court analyzes whether the state's failure to intervene has led to a real risk of violence to the child victim. According to the court, states are also conducting effective investigations into allegations of

risk to the right to life without regard to the actions of public officials or private individuals (O'Keeffe v. Ireland [GC], 2014, para 146).

Overall, concerning the use of child laborers in its worst forms, it has been the Court's finding that Articles 4 and 8 of the Convention has been violated. Article 4 of the Convention's interpretation of modern and even traditional concepts related to child slavery (Siliadin v. France, 2005), sexual exploitation of child labor (MC v. Bulgaria, 2003), exploitation of children by human trafficking (CN and V. v. France, 2012), the use of children in the sex industry (Söderman v. Sweden, 2013), and so on, have been cited by the court as one of the worst forms of child labor.

The elimination of discrimination in Respect of employment and occupation

Equality and non-discrimination for all is one of the key requirements of the rule of law. According to Council of Europe rules, protection against discrimination by states is envisaged in all areas, especially employment. Access to jobs, conditions of employment, dismissals and pay, access to vocational training for all, the creation and non-limitation of workers 'and employers' associations and implement, monitor and ensure non-discrimination.

Article 14 of the ECHR enshrines the protection against discrimination in the enjoyment of the rights set forth in the Convention. According to the Court's case-law, the principle of non-discrimination is of a "fundamental" nature and underlies the Convention together with the rule of law, and the values of tolerance and social peace (S.A.S. v. France [GC], 2014: para 149; Străin and Others v. Romania, 2005: para 59). For Article 14 to be applicable it is necessary, but also sufficient, for the facts of the case to fall within the wider ambit of one or more of the Convention Articles (Konstantin Markin v. Russia [GC], 2012, para 124). Furthermore, this protection is completed by Article 1 of Protocol No. 12 of the Convention, which prohibits discrimination more generally, in the enjoyment of any right set forth by law (ECtHR, 2019c:1). However, because of the non-accession of the States Parties to the Protocol, the practical importance of this new Article is limited. As of now, only 20 countries have ratified it. The ECtHR rarely cited this article, due to the majority of states not adhering to this protocol.

In order for an issue to arise under Article 14, there must be a difference in the treatment of "persons in an analogous or relevantly similar situation". Equally, references to traditions, general assumptions or prevailing social attitudes in a particular country were considered to be insufficient justification for a difference in treatment on grounds of sex.

According to the case-law of the ECtHR, the claimant must be able to show that "these actions directly affected him". Although Article 14 does not provide a definition of what constitutes direct discrimination. The expression "*direct discrimination*" describes a "difference in treatment of persons in analogous, or relevantly similar situations" and "based on an identifiable characteristic, or status" (Biao v. Denmark [GC], 2016: para 89).

"*Indirect discrimination*" may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, has a particular discriminatory effect on a particular group. Indirect discrimination does not necessarily require a discriminatory inte*/nt (Ibid, 2016: para 103). "Discrimination in respect of employment and occupation" may be triggered where States, without an objective and rea-

sonable justification, fail to treat differently persons whose situations are significantly different.

"*Multiple Discrimination*" describes a situation in which discrimination occurred in several contexts, which led to another discrimination. "*Intersectional discrimination*" describes a situation in which different contexts exist, interacting with one another at the same time, and creating separate types of discrimination. For example, In *B.S. v. Spain*, a female sex worker of Nigerian origin and legally resident in Spain alleged that the Spanish police abused her physically and verbally on the basis of her race, gender and profession. The Court considered that the decisions made by the domestic courts failed to take account of the applicant's particular vulnerability inherent in her position as an African woman working as a prostitute and found a violation of Article 14 in conjunction with Article 3. The Court has dealt with a number of cases of racist violence committed by the police (B.S. v. Spain, 2012: para 63-114). The court appears to believe that the worker was subject to "Intersectional discrimination".

As the Court's role is not to substitute the competent national authorities in assessing whether and to what extent differences in otherwise similar situations justified differential treatment, States enjoy a certain "*margin of appreciation*". The scope of that margin will vary according to the circumstances, the subject-matter and the background of the case. On the one hand, the Court has indicated some areas where the State's margin of appreciation remains rather wide. The Court has held that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is manifestly without reasonable (Stummer v. Austria, 2011).

There is no right to social security under the Convention, though it is clear from the Court's case-law that some forms of social security, such as benefit payments and pensions may fall within the ambit of Article 1 of Protocol No. 1 (Protection of property) because they can be deemed as "*possessions*" within the meaning of that provision or within the ambit of Article 8, particularly when social benefits help the family unity (Gouri v. France, 2017).

When it comes to discrimination on grounds of sex, the Court has repeatedly stated that the advancement of gender equality is today a major goal in the member States of the Council of Europe. The Court has held that references to traditions, general assumptions or prevailing social attitudes in a particular country were insufficient justification for a difference in treatment on grounds of sex (Konstantin Markin v. Russia [GC], 2012: para 127). Gender stereotypes, such as the perception of women as primary child-careers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, ethnic origin, color or sexual orientation (Ibid, 2012: para143).

The Convention organs have found that measures resulting in a difference in treatment between men and women were justified in order to compensate women for existing inequalities. In *Andrle v. The Czech Republic*, the applicant complained that, unlike for women, there was no lowering of pensionable age for men who had raised children. The Court found that this measure was objectively and reasonably justified so as to compen-

sate women for the inequalities (such as generally lower salaries and pensions) and the hardship generated by the expectation that they would work on a full-time basis and take care of children and the household. It further held that the timing and the extent of the measures taken to rectify the inequality in question had not been manifestly unreasonable and that, consequently, there had been no violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (ECtHR, 2019, 13). The Court has, for instance, recognized that a difference in treatment between men and women in the State pension scheme was acceptable as it was a form of positive measures aimed at correcting factual inequalities between the two genders (Andrle v. The Czech Republic, 2011, para 60).

The ECtHR regards secularism, religious pluralism, gender equality, public order and religious neutrality as essential elements for ensuring democracy and human rights. In this case, the court has granted member states broad powers so that they can coordinate their actions with what they consider to be a democratic society (Zamani et al., 2016, 74). Along with the protection against discrimination on the grounds of religion provided by Article 14, the Convention contains a substantive provision expressly providing for the right to freedom of thought, conscience and religion enshrined in Article 9 of the Convention. According to the "court Religion and belief are essentially personal and subjective, and need not necessarily relate to a faith arranged around institutions" (Hassan and Chaush v. Bulgaria [GC], 2000). In conjunction with the freedom of religion under Article 9, concerning disciplinary measures against employees for refusing to perform duties they considered incompatible with their religious beliefs. That duty was incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs were expressed. The Court has found that the difference in treatment on grounds of religion had not been sufficiently justified, the prohibition for employees of a private company to wear religious symbols, although they did not cause any health or safety concerns (Eweida and Others v. The United Kingdom, 2013).

Protection against discrimination in the realm of employment has also been guaranteed by the Court in relation to the freedom to join or not to join a trade union under Article 11. For example, In *Danilenkov and Others v. Russia*, the State failed to afford effective judicial protection against discrimination on the ground of trade-union membership to employees on strike who were fired by their employer. So the Court also found that the State had failed to fulfil its positive obligation to afford effective and clear judicial protection against discrimination on the ground of trade-union membership in this case (Danilenkov and Others v. Russia, 2009).

Conclusions

At the beginning of this study, it was hypothesized that, "given the many opinions of the ECtHR on fundamental labor rights and their enforcement by states, these ideas have an impact on the progressive development of fundamental labor rights have been." Thus, the main question of this study is: "To what extent has the ECtHR has been instrumental in the gradual development of fundamental labor rights?"

To answer the question of the research, it had to consider all rights-related court cases that were in some way related to the fundamental labor rights, which do not allow for the scope of the research. Available in libraries, documents, reviewing court decisions

and procedures, and so on, it can be concluded that court opinions have played an important role in the progressive development of fundamental labor rights. On the other hand, the opinions of the ECtHR have improved many of the indicators and legal concepts related to the right in question.

Court procedures show that ILO standards are increasingly being addressed by the court, and the findings of the investigation can represent an important step in documenting these trends. It is anticipated, however, that in the future more cases will be adjudicated by the judges of the tribunal, and we will see a greater impact by the ECtHR in the gradual development of these rights. In light of the increasing awareness among individuals, organizations, and enterprises of the benefits of regional litigation, it seems likely that opportunities for litigating labor rights cases in human rights forums will continue to rise.

Thereby, international instruments a key role in the development of Court case law. The Court did not seem to be confident when dealing with the workers' rights contained in the Convention due to its lack of expertise in this area, the Court seems to have deliberately filled this supposed lack of expertise by extensive reference to international bodies specializing in this field. This development also impacts the consistency of the Court's case law with the interpretations of other international supervisory bodies. Contrasting with the Court's earlier case law, which had been criticized for deviating from the approaches taken by the relevant ILO Conventions and the ESC, the Court's most recent case law is coherent with the relevant principles developed by the ILO supervisory bodies. Hence, the *Demir and Enerij* cases have led to a new dynamic regarding the Court's approach, towards a more pro-active interpretation of the workers' rights by opening its case law at the same time for the influence of international labor law instruments.

According to the judgments of Article 11 of the ECHR, some form or particular aspect of the freedom of assembly is an integral part of human society and workers can enjoy this right and it is not an independent right for particular persons. ECtHR judges believe that while collective bargaining is not necessary to effectively enjoy the freedom of trade unions, it may be one of the ways that trade unions take steps to protect the interests of their members. The court cites a number of international instruments as evidence of the "legitimacy of collective bargaining" and states that the general policy of limiting the number of organizations with which collective bargaining agreements are itself free the trade union is not incompatible and is at the "*margin of appreciation*". They concluded that Article 11 of the ECHR does not provide for "the right to collective bargaining". Also reviewing the Court's procedure, The ECtHR does not guarantee the right to strike.

Extension of forced labor to those who are exposed and affected by force migration, human trafficking, sex industry, etc., have been the result of the ECtHR judges interpreting Article 4 of the ECHR as one of the most important gains in conceptual development. It has been forced to eliminate labor. The Court has made good progress in developing legal concepts related to modern slavery, as emphasized by the ILO.

The Court's interpretation of the "principle of best interests" deriving from the CRC has clearly provided positive results in cases involving child labor. In sum, the ECtHR's approach, without addressing the issue of children's age, provides the framework of the rights enshrined in the CRC, and has had a positive impact on the conceptual development of child labor rights.

The ECtHR ' judgments on discrimination in employment and occupation are so well developed that discrimination in employment is based on race, color, gender, nationality, political opinion, social class, etc. It has repeatedly stated the importance of these issues, but on the principle of equality of remuneration under collective agreements such as the number of States which have acceded to Article 1 of Protocol No. 12, the Council of Europe has now defended these rights in its social charter, and National levels of compliance. This is an issue on the agenda of all European states. On the other hand, public discrimination can be said to be a gradual development of the role of the ECtHR in equality between men and women. It is forbidden to employ some people in public office and in the values of democratic societies. Therefore, what has been identified as discrimination in the employment and occupation in the ECtHR has yielded numerous opinions that have contributed to the gradual development of these rights, but to public discrimination, in particular wage and salary, benefits, rewards, etc... No significant votes have been issued by this court that would promote the conceptual development of this fundamental right at work.

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