

PROTOCOLS OF THE INTERNATIONAL LABOUR ORGANIZATION AND DOMESTIC LEGAL ORDER

PROCOLOS DA ORGANIZAÇÃO INTERNACIONAL DO TRABALHO E ORDEM JURÍDICA INTERNA

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Resumo

O objetivo da pesquisa é analisar a natureza jurídica dos protocolos da Organização Internacional do Trabalho e em que medida podem contribuir para ampliar o caráter protetivo das suas Normas no Brasil. A metodologia utilizada é a dedutiva, quanto aos meios; a pesquisa foi bibliográfica com uso de doutrina, legislação e protocolos da OIT. Quanto aos fins, a pesquisa foi qualitativa. O artigo analisa a necessidade de uma interpretação construtiva e democrática para viabilizar a utilização dos protocolos da OIT em nosso país. A adoção dos instrumentos denominados protocolos pela OIT é muito recente. Como são considerados tratados, devem ser internalizados da mesma forma que as convenções da OIT. A contribuição deste texto é apresentar subsídios para demonstrar a relevância dos protocolos da OIT e a necessidade que sejam internalizados para que, com suas forças normativas, possam auxiliar na melhor compreensão dos seguintes fenômenos: trabalho forçado ou obrigatório; inspeção do trabalho na indústria e no comércio; trabalho noturno em relação às mulheres; condições de emprego dos trabalhadores em fazendas; normas mínimas da marinha mercante; segurança e saúde dos trabalhadores. Apesar de existir uma enorme lacuna de estudos sobre o tema, os protocolos às convenções da OIT são de suma importância no cenário do Direito Internacional dos Direitos Humanos e, particularmente, no Direito Internacional do Trabalho. De fato e de direito, os protocolos atualizam e conferem flexibilidade às convenções, para que tenham garantia de efetividade no cenário nacional.

Palavras-chave: Organização Internacional do Trabalho; convenções; protocolos; natureza jurídica; internalização e efetividade.

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Abstract

The aim of the research is to analyze the legal nature of the International Labour Organization protocols and the extent to which they can contribute to expand the protective character of the ILO Standards in Brazil. The methodology employed is the deductive one, and with regard to the means, the research was bibliographical with the use of the doctrine, legislation and protocols of the ILO. As for the purposes, the research was qualitative. The article analyzes the need of a constructive and democratic interpretation in order to make the use of the ILO protocols viable in our country. The adoption of the instruments called protocols by the ILO is very recent. As they are considered to be treaties, they must be internalized the same way as the conventions of the ILO are. The contribution of this text is to present subsidies to demonstrate the relevance of the ILO protocols and the need for them to be internalized, so that, with their normative strength, they can help to better understand the following phenomena: forced or compulsory labor, labor inspection in industry and commerce; night work of women; working conditions of farm workers; minimum standards in merchant shipping; occupational health and safety. Although there is a huge gap of studies on the theme, the protocols and conventions of the ILO have a major importance in the scenario of the International Human Rights Law, especially in International Labor Law. De jure and de facto, the protocols update and confer flexibility to the conventions, so that they have the guarantee of effectiveness in the national scenario.

Keywords: International Labour Organization; conventions; protocols; legal nature; internalization and effectiveness.

1 INTRODUCTION

The International Labour Organization (ILO), created with the aim of promoting social justice, adopts conventions, which are instruments that establish guidelines for the policy and national actions of its Member States. Because of the changes produced by globalization, sometimes it is necessary to improve and update these conventions. In order to do so, the ILO adopts instruments called protocols, which confer greater flexibility to a convention or extend its obligations. Just as conventions, protocols are also international treaties, and are subject to ratification. They allow for the adaptation to changing conditions and the adjustment to practical difficulties that have arisen since the adoption of the Convention, thus making it more relevant and updated.

2 THE IMPORTANCE OF THE INTERNATIONAL LABOUR ORGANIZATION (ILO) IN THE GLOBAL SCENARIO OF LABOR RELATIONS

Created in 1919, as a part of the Treaty of Versailles, which ended the First World War, the International Labour Organization (ILO) is committed, among other purposes, to formulate and apply international labor standards: conventions, protocols, recommendations, resolutions and declarations. Being more than one hundred years old, it has performed its role in a remarkable way; its Nobel Peace Prize in 1969 only confirmed its distinctive participation compared to other international entities.

The ILO has performed an important role in historical moments all over the world - the American Great Depression, the decolonization much of the so-called Third World, the creation of *Solidarność* in Poland, the victory over *apartheid* in South Africa - and, today, in the construction of an ethical and productive template for a fair globalization. (INTERNATIONAL LABOUR ORGANIZATION, 2021).

The role of the ILO, of making standards and monitoring their compliance, has major importance in this globalized time, with technology potentially changing the lives of employers and workers in significant ways. Its conventions, which have an unequivocal legal nature of treaties, including treaties of human rights, constitute, at this beginning of the twenty-first century, a point of reference essential to knowledge, interpretation, application and improvement of Labor Law.

To date the ILO has adopted 190 Conventions, 206 Recommendations and six Protocols, some originating from 1919. Evidently, some of these instruments no longer fulfill current needs. In order to solve this problem, the ILO either revises the conventions, which replace the old ones, or adopts instruments called protocols, which add new provisions to conventions with the aim of improving and updating them, conferring on them greater flexibility. (INTERNATIONAL LABOUR OFFICE, 2021).

According to the ILO, through its Normlex website, a protocol (NORMLEX, 2021)

is a procedural device for adding extra flexibility to a Convention or for extending a Convention's obligations. Protocols are also international treaties, but which, in the ILO context, do not exist independently since they are always linked to a Convention. Like Conventions, they are subject to ratification. They allow adaptation to changing conditions and they enable practical difficulties to be dealt with which have arisen since the Convention was adopted, thus making the Conventions more relevant and up to date. Protocols are particularly appropriate where the aim is to keep intact a Convention

which has already been ratified and which may receive further ratifications, while amending or adding to certain provisions on specific points. (NORMLEX. WHAT IS A PROTOCOL, 2021).

Thus, a protocol is an instrument which partially reviews a convention rather than adopting of a new instrument, with the aim of updating it, since these important instruments of human rights were made in a different context from the current one.

3 THE FUNDAMENTAL NORMATIVE INSTRUMENTS OF THE ILO: CONVENTIONS AND PROTOCOLS

The ILO conventions are open multilateral treaties, of a normative nature, made by the International Labor Conference in order to regulate labor in an international scope, in addition to other issues that are related to it.

The ratified conventions have a compulsory application, but even the ones that are not ratified are important sources of Labor Law. In this respect, an understanding was crystalized in the I Jornada de Direito do Trabalho (“First Session on Labor Law”), which took place in the Superior Labor Court, in Brasilia, in 2007, through Precedent 3, II, on the sources of Labor Law, comparative Law and ILO conventions and recommendations:

ILO conventions and recommendations. The use of international standards, issued by the International Labour Organization, is an important tool of the enforcement of social law and it is not restricted to the direct application of the conventions ratified by the country. The other standards of the ILO, like non-ratified conventions and recommendations, as well as their experts’ reports, should serve as a source of interpretation of the national law and as a reference to reinforce court orders based on domestic legislation. (JUSBRASIL, 2021).

Article 19 of the ILO Constitution provides that, if the International Labor Conference decides to accept the proposals related to a subject on its agenda, it should decide if such proposals will be a convention or a recommendation (the latter being appropriate when the subject treated, or one of its aspects, does not allow the immediate adoption of a convention). In both situations, for a convention or recommendation to be accepted in a final vote by the Conference, it is necessary to have two-thirds affirmative votes of those present. The Director-General of the Office sends to every Member State a certified copy of the convention or of the recommendation.

All Member States will be informed of the convention for the purpose of ratification. The Member States are committed to submit the convention, within one year (to be counted from the closing of the session of the Conference) to the competent authority on the matter, so that such an authority can change the convention into a law or take action of another nature. In fact, the convention is a treaty-law of a multilateral character. It is a treaty-law because from this document legal rules of a general character are originated, without limits on their duration, enforceable in all the States that adopt it, that is to say, not requiring specific supplementary implementing regulations for application in concrete cases. It has a multilateral character because many States can adopt it (PLÁ RODRIGUEZ, 1965, p. 296).

From this double characteristic (multilateral/treaty-law) the elaborative unfolding of the convention takes place in two moments or acts:

a) the creation of international legal standards, that is, the rule-act carried out by the International Conference when approving the text of a convention by two-thirds of those voting;

b) the condition-act carried out by each Member State when ratifying the convention, through which it commits itself to be subjected to the act; the obligation of the rule is born from this moment, provided that the conditions establish in the rule-act have been fulfilled (a certain number of ratifications, a certain deadline, etc.): (PLÁ RODRIGUEZ, 1965, p. 296).

The distinctive configuration of the ILO, if compared to other international agencies, with its typical bringing together of antagonistic representatives of interests (States, employers and workers) and its tireless legislative production in the labor field, added to the originality in the control of enforceability and effectiveness of these standards in the Member States, places it in a position of prestige and credibility on the global scene.

The International Labour Organization Conference is held every year in Geneva, in June, and it gathers all Member States. As the ILO points out,

Each Member State is represented by a delegation consisting of two government delegates, an employer delegate, a worker delegate, and their respective advisers. (Employer and Worker delegates are nominated in agreement with the most representative national organizations of employers and workers). (INTERNATIONAL LABOUR ORGANIZATION, 2021).

The International Labour Organization Conference, also called "the international parliament of labor" has several duties:

First, there is the crafting and adoption of international labor standards in the form of Conventions and Recommendations. Conventions are international treaties that, once adopted by the Conference, are open to ratification by Member States. Ratification

creates a legal obligation to apply the provisions of the Convention in question. Recommendations, on the other hand, are intended to guide national action, but are not open to ratification, and are not legally binding. (INTERNATIONAL LABOUR ORGANIZATION, 2021).

According to the "Handbook of procedures relating to international labor Conventions and Recommendations", edited by the ILO, "Various means have been used by the Conference to ensure the flexibility of international labor standards. For example: (...) j) adoption of an optional Protocol to a Convention, either enabling ratification of the Convention itself with increased flexibility or extending the obligations of the Convention". (INTERNATIONAL LABOUR ORGANIZATION, 2021).

According to the website of the ILO Brazil, conventions and protocols are "international treaties which define standards and minimum floors to be observed and performed by all the countries that ratify them". (INTERNATIONAL LABOUR ORGANIZATION, 2021). The procedure to ratify a convention or a protocol of the ILO, by any of its 187 Member States, "is a sovereign act and it implies its full incorporation to the legal, legislative, executive and administrative system of the country in question, therefore having a binding character". (INTERNATIONAL LABOUR ORGANIZATION, 2021).

The ILO, when creating international standards and keeping track of their performance, expands the importance of the promotion and harmonization of Labor Law worldwide, and reaffirms its aim of achieving social justice.

4 THE LEGAL MEANING OF THE ILO PROTOCOLS

The legal nature of these normative instruments and their effects permit insights by jurists. Conventions and protocols are like international treaties, while recommendations are a source of legislative inspiration.

The Conference of the International Labour Organization adopted the first Protocol in 1982, concerning Convention 110, of 1958, on the conditions of employment of plantation workers (1958). Afterwards, Protocols were adopted to Convention 81, of 1947, on labor inspection in trade and industry (in 1995), to Convention 89, of 1948, on night work of women in industry (in 1990), to Convention 147, of 1976, on minimum standards for Merchant

Shipping (in 1996), to Convention 155, of 1981, on occupational safety and health (in 2002), and to Convention 29, of 1930, on forced or compulsory labor (in 2014).

As the ILO itself explains, in the "Handbook of procedures relating to international labor conventions and recommendations", in the chapter concerning the nature of revision of conventions,

The formal revision (including the "partial" revision) of one, or sometimes several Conventions, results in most cases in the adoption of an entirely new Convention. The Conference may also undertake the partial revision of a Convention through the adoption of a **Protocol** or of provisions in a new Convention, the acceptance of which brings to an end the obligations under the corresponding provisions of an earlier Convention. Certain Conventions also provide for specific procedures for the amendment of annexes. Finally, without formally constituting a revision, the updating of certain technical or scientific data is envisaged in certain Conventions through a technique of reference to the most recent data published on the subject. (emphasis added). (International Labour Office, Handbook of procedures relating to international labour Conventions and Recommendations. Geneva, Switzerland, 2019, p. 44).

As Jean-Michel Servais clarifies, the protocol procedure aims at revising some provisions, because it avoids the adoption of a completely new convention. From the legal point of view, it is seen as a form of convention, adopted in the same way and with the same effects. The author understands that evidently it does not prevent the original convention from ratifications; however, in each one of the other aspects, it generates the same effects as a revising convention. Thus, from the legal point of view, a protocol is a form of convention, since it is adopted in the same way and with the same effects. (SERVAIS, 2011).

Legally, "protocols have the same legal nature and value as conventions; therefore, they only bind the States that ratify them". (BEAUDONNET, 2011, p. 46).

In Brazil, protocols are internalized the same way as conventions. The text must be translated into portuguese, be screened by the brazilian Congress, and after being approved by the Legislative Branch it must be filed in the ILO (legislative decree). Next, the President of Brazil has to issue a decree to determine that such a treaty is to be observed, which is equivalent to the publication-enactment and enforceability of the international rule. Nonetheless, it must be highlighted that none of the six protocols adopted today by the ILO were internalized by Brazil.

Nowadays, the International Labour Organization has 187 Member States and so far has adopted 190 conventions, six protocols and 206 recommendations, totaling 402 instruments. (NORMLEX, 2021). Brazil has adopted seven out of the eight fundamental Conventions, three of the four that are considered priority, and 87 of the 177 of the instruments

that are technical. Of the 97 conventions ratified by Brazil, 79 are in force, 12 were terminated and four instruments were entirely repealed (GENERAL DIRECTION OF EMPLOYMENT AND LABOR RELATIONS OF PORTUGAL, 2021). No instruments have been ratified in the last twelve months. (NORMLEX, 2021).

In 1998, resolutions adopted by the tripartite framework of the ILO designated eight conventions as fundamental, which together constitute the ILO Declaration of Fundamental Rights and Principles at Work (1998). These conventions have to be ratified and applied by all Member States of the ILO. Among the fundamental conventions, the only one Brazil has not ratified yet is Convention 87, which deals with freedom of association and protection of the right to organize. Another four conventions refer to subjects of major importance and are considered priority. Among the priority conventions, Brazil has yet to ratify Convention 129, which concerns labor inspection in agriculture. (INTERNATIONAL LABOUR ORGANIZATION, 2021).

Conventions and their protocols represent the most relevant instruments of the ILO, due to their legal nature as international treaties of human rights that creates relevant obligations to the Member States.

5 SOCIAL RELEVANCE AND THE CONTENT OF THE ILO PROTOCOLS

None of the six ILO protocols in force was ratified by Brazil. On September 10, 2015, however, the Ministry of Labor published Administrative Rule 1.237, instituting a "Tripartite Working Group to analyze the instruments of the International Labour Organization (ILO) not ratified by Brazil, as approved in the meeting of May 13, 2015, of the 'Comissão Tripartite de Relações Internacionais' - CTRI (Tripartite Commission of International Relations)". Nothing concrete was found regarding the results of the work of this group.

According to the "Handbook of procedures relating to International labor Conventions and Recommendations",

Two Protocols so far adopted by the Conference effectively introduce greater flexibility into the two respective Conventions. They are:

- i) P 089 – Protocol of 1990 to the Night Work (Women) Revised Convention (n. 89), 1948;
- ii) P 110 – Protocol of 1982 to the Plantations Convention (n. 110), 1958.

Four other Protocols extend the obligations under the Conventions that they partially revise:

- i) P 081 – Protocol of 1995 to the Labour Inspection Convention (n. 81), 1947;
- ii) P 147 – Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention (n. 147), 1976;
- iii) P 155 – Protocol of 1981 to the Occupational Safety and Health Convention (n. 155), 1981;
- iv) P 029 – Protocol of 2014 to the Forced Labour Convention (n. 29), 1930. (International Labour Office, Handbook of procedures relating to international labour Conventions and Recommendations. Geneva, Switzerland, 2019, p. 19-20).

For didactic purposes, we will approach the protocols by the convention number, out of chronological order.

5.1 P 029 - PROTOCOL OF 2014 CONCERNING FORCED OR COMPULSORY LABOR, OF 1930

This protocol pertains to Convention 29 of the ILO, which was ratified by Brazil in 1957 and is still in force. It is considered to be one of the ILO's fundamental conventions. Protocol 29 was adopted in the 103rd Session of the General Conference of the International Labour Organization (June 11, 2014), along with Recommendation 203 on Forced Labor (supplementary measures), which brings normative guidelines on how to make the obligations of Convention 29 fully effective.

The adoption of Protocol 29 was welcomed all over the world as a milestone for the protection of human rights. The new Protocol confirms that the existing obligations under Convention 29, including those arising from human trafficking, include the obligation of prevention and protection of victims, besides the requirement of compensation from and punishment of the offenders.

Among other reasons, the preamble of Protocol 29 justifies its adoption by noting the need "to address gaps in the implementation of the Convention, and it is reaffirmed that measures of prevention, protection, and remedies, such as compensation and rehabilitation, are necessary to achieve the effective and sustained suppression of forced or compulsory labour". (MOVIMENTO AÇÃO INTEGRADA, 2021). In its article 2, the Protocol determines the measures that must be taken to prevent forced or compulsory labor, namely: education and information addressed to employers and to people considered to be particularly vulnerable, in order to

prevent their becoming victims of such a modality; efforts to ensure that the legislation on the theme and the control of its performance cover all sectors of the economy; strengthening of inspection services; protection of migrant workers against abusive or fraudulent practices in the recruitment and placement process; support to public and private sectors so that they operate with diligence, in addition to measures to confront the generative causes and factors that increase the risk of forced or compulsory labor. Apart from that, every Member State should take " effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support" (art. 3), and " cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour" (art. 5). Member States should also ensure that all victims of forced or compulsory labor have effective access to lawsuits and their respective compensation (art. 4).

In order to be legally binding for the Member States, the protocols have to be ratified by the signatory State of the convention it refers to. However, the ILO Declaration on Fundamental Principles and Rights at Work of 1988 says, in its item 1.a), "that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances"; and that "these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization" (item 1.b). (INTERNATIONAL LABOUR ORGANIZATION, 2021). Thus, it can be verified that even the ILO instruments that are not ratified impose obligations.

With regard to Protocol 29, item 2 of the ILO Declaration on Fundamental Principles and Rights at Work determines that all Member States,

Even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: a) freedom of association and the effective recognition of the right to collective bargaining; **b) the elimination of all forms of forced or compulsory labour;** c) the effective abolition of child labour; and d) the elimination of discrimination in respect of employment and occupation. (INTERNATIONAL LABOUR ORGANIZATION, 2021). (emphasis added).

It is important to highlight that, apart from Convention 29, Protocol 29 and Recommendation 203, the ILO also has Convention 105, on the Abolition of Forced Labor, of 1957, since, according to the agency, "For many governments around the world, the elimination of forced labour remains an important challenge in the 21st century. Not only is forced labour a serious violation of a fundamental human right, it is a leading cause of poverty and a hindrance to economic development". (INTERNATIONAL LABOUR ORGANIZATION, 2021)

New progress occurred in January 2017 when the Brazilian government sent to the Brazilian Congress a document "ratifying" Protocol 29 (MINISTÉRIO DO TRABALHO, 2021). However, it must be pointed out that the "ratification" as such has not occurred yet. What happened is that the Executive Branch, by means of the Ministry of Labor, sent a text of the treaty (translated into Portuguese) to the Legislative Branch. Only after approval, by the Legislative Branch, and registration at the ILO (which is equivalent to the ratification), the Executive Branch enacts and publishes the ratified international text - when it will become enforceable, internally, in Brazil.

In May, 2017, a campaign was launched, in the Brazilian Senate, for Brazil to adopt P029. (SENADO NOTÍCIAS, 2021). The event also served for the promotion of the webpage of the campaign "50 For Freedom", led by the ILO, supporters, the International Trade Union Confederation and the International Organization of Employers. The campaign seeks support from people worldwide to induce at least 50 Member States sign the protocol. Up to February, 2019, Protocol 29 had been ratified by 29 Member States: six from Africa, one from Asia and the Pacific, 19 from Europe and Central Asia and three from the Americas (Argentina, Jamaica and Panama). (50forfreedom, 2021). Anyone can join the campaign at the website <<http://50forfreedom.org/pt/>>.

5.2 P 081 - PROTOCOL OF 1995 CONCERNING THE CONVENTION ON LABOR INSPECTION IN INDUSTRY AND COMMERCE, OF 1947

This protocol was adopted in the 82th Session of the General Conference of the International Labour Organization, on June 22, 1995, and it refers to Convention 81 of the ILO, ratified by Brazil in 1989 and considered to be a priority convention. Every Member-State that ratifies this protocol will have to extend the enforceability of the provisions of Convention 81 to workplaces considered to be non-commercial. The instrument also allows the Member States

to create special conditions for the inspection of workplaces, as well as differentiated access to the agents that will inspect them, providing assistance in the "formulation of effective measures to minimize risks during training for potentially hazardous work and to participate in monitoring the implementation of such measures" (art. 6).

5.3 P 089 - PROTOCOL OF 1990 CONCERNING THE CONVENTION ON THE NIGHT WORK (WOMEN) (REVISED), 1948

This protocol was adopted in the 77th Session of the General Conference of the International Labour Organization (June 26, 2014), and it concerns Convention 89 of the ILO, ratified in Brazil in 1957. The Protocol stipulates that Brazilian legislation can provide variations regarding the period that is considered to be "night" in sectors, activities or establishments, always consulting the representative organizations of employers and workers. It also prohibits the application, to women workers, of the variations for a certain period before and after childbirth (sixteen weeks, with at least eight before the expected date of childbirth). It determines that the Brazilian legislation can allow exceptions to the prohibitions if the female worker expressly requests it, provided that her health or the child's health is not in danger. If a medical certificate is provided that demonstrates a threat to the mother's or child's health, the prohibition will be applied to other periods during pregnancy or during a certain period after childbirth. During this time, the female worker cannot be dismissed or given notice of dismissal, except for demonstrated good cause unrelated to the pregnancy or to the childbirth. Her income has to be kept at a level sufficient to ensure her livelihood and her child's, in adequate living conditions. The maintenance of the income should be ensured "through assignment to day work, extended maternity leave, social security benefits or any other appropriate measure, or through a combination of these measures" (art. 3).

5.4 P 110 - PROTOCOL OF 1982 CONCERNING THE CONVENTION ON THE CONDITIONS OF EMPLOYMENT OF PLANTATION WORKERS, 1958

This protocol concerns Convention 110 of the ILO, which is not in force in Brazil, since it was terminated in 1970. Protocol 110 was adopted in the 68th General Session of the International Labor Conference (June 18, 1982). It defines what the term "plantation" means, adding that the Member State, after consultation with representative organizations of employers and workers concerned, when such exist, can extend the application of the Convention to other undertakings. The Protocol also clarifies that

the term “plantation” normally includes services of primary processing of the products of the plantation, carried out on or in close proximity to the site of the plantation. Agriculture is still an important economic factor in many developing countries. According to the ILO, the Protocol also covers “the recruitment and engagement of migrant workers and affords protection to plantation workers with respect to employment contracts, wages, working time, medical care, maternity protection, employment accident compensation, freedom of association, labour inspection, and housing”. (International Labour Office, Rules of the games: An introduction to the standards-related work of the International Labour Organization. Geneva, Switzerland, 2019, p. 101).

5.5 P 147 - PROTOCOL OF 1996 CONCERNING THE CONVENTION ON MERCHANT SHIPPING (MINIMUM STANDARDS), 1976

This protocol was adopted in the 84th General Session of the International Labour Organization (October 22, 1996) and it concerns Convention 147 of the ILO, in force in Brazil since 1991. It brings observations on what is prescribed in the Convention of 1958 on Discrimination in respect of Employment and Occupation, regarding the meaning of the term “discrimination”. The Protocol also states that every Member State that ratifies this instrument will have to extend the list of Conventions, namely: Convention 111 of the ILO; the United Nations Convention on the Law of the Sea, 1982; International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, in its amended version of 1995, of the International Maritime Organization.

5.6 P 155 - PROTOCOL OF 2002 CONCERNING THE CONVENTION ON OCCUPATIONAL SAFETY AND HEALTH OF WORKERS, 1981

This protocol was adopted in the 90th General Session of the International Labour Organization (June 20, 2002) and it concerns Convention 155, which was ratified by Brazil in 1992. It aims to improve "recording and notification procedures for occupational accidents and diseases and to promote the harmonization of recording and notification systems with the aim of identifying their causes and establishing preventive measures". Such policy should be developed taking into consideration the national conditions and practice of each Member State. It defines the terms “occupational accident”, “occupational disease”, “dangerous occurrence” and “commuting accident”, and it determines the requirements and procedures for recording and notification systems; it also requires the publication of statistics with regard to such occurrences.

6 FINAL CONSIDERATIONS

In 2019, the ILO celebrated one hundred years. Initially, it formed part of the League of Nations, when the First World War ended. After the Second World War, it became part of the UN, as a specialized agency. It is the oldest international organization in the world, still demonstrating its vitality.

Even though there is a huge gap in studies on the theme, the protocols to the ILO conventions are of paramount importance in the context of International Labor Law. They update and confer flexibility to the conventions, so that the latter are effective in the international scenario.

None of the six Protocols of the ILO has been incorporated to the domestic order of Brazil. In view of the importance of such international documents, which make the ILO conventions they refer to more alive and socially relevant, greater speed is expected from the Brazilian Congress in their analysis and approval, at a minimum of the Protocol of 2014 concerning the Convention on Forced or Compulsory Labor (P 029).

According to the ILO, Brazil was one of the first countries to officially recognize openly before the international community the existence of forced labor in its territory, and that, from then on, the country adopted the terminology “slave labor” when instituting public policies that deal with this crime, and made efforts to eradicate it, setting a world standard in the fight against this serious violation of human rights. In this regard, "several actions developed in Brazil are considered to be good practices by the ILO and inspire the participation of other Member States, and it is also the object of the exchange of experiences between countries in the scope of South-South Cooperation Programs". (INTERNATIONAL LABOUR ORGANIZATION, 2021).

It is important to highlight that not only are States responsible for supervising the implementation of Protocol 29, but so are organizations of workers and employers. Nowadays, a global popular movement against modern slavery is extremely necessary.

It is expected that in the coming years the ILO will be more effective in litigating non-compliance with international labor standards by its Member States, especially with conventions and protocols, recognized as treaties of human rights.

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