



## Research Article

### SOME ISSUES OF IMPLEMENTATION OF CONVENTIONS OF INTERNATIONAL LABOR ORGANIZATION INTO NATIONAL LEGISLATION

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#### ABSTRACT

The article examines the significance of the norms of the fundamental conventions of the International Labor Organization on the abolition of forced labor, the prohibition of discrimination in labor relations, equal pay for equal work, freedom of association and the right to collective bargaining, as well as their implementation in national legislation. The ways of implementing the recommendations of the control body of the International Labor Organization, the Committee of Experts on the Application of Conventions and Recommendations on the Application of International Labor Standards are analyzed. Proposals have been developed to bring national legislation in line with international standards, taking into account the norms of ILO conventions and recommendations of the Committee of Experts.

#### KEYWORDS

Principle, convention, representative body, forced labor, equal labor, freedom of association, implementation, collective bargaining.

#### INTRODUCTION

The international legal basis of the cooperation of the Republic of Uzbekistan with the ILO is its membership

in these organizations, agreements concluded with it, as well as decisions made within the ILO. During the



period of mutual cooperation of the Republic of Uzbekistan with the ILO, a number of international and national documents were adopted, which can be divided into the following groups according to the subject of regulation:

- Documents aimed at determining the spheres of cooperation (memorandums, cooperation programs);
- Documents on accession to international agreements (ratification laws);
- Documents aimed at the implementation of international agreements and cooperation programs (laws, by-laws, action plans, etc.).

Joining the conventions and recommendations of the ILO can be considered as one of the forms of cooperation.

In international public law, the term "realization" is widely used to express the concept of "implementation" of international law norms. This can be seen in many resolutions of the UN General Assembly, decisions of other international organizations regarding the implementation of international agreements in the humanitarian sphere [1, P.159]. According to A. Borodich: "The essence of the mechanism of implementation of international law norms is the legal tools available in certain legal and organizational forms used by the subjects of international law to ensure the achievement of the goals of international legal regulation at the international and domestic levels" [2, P.133].

A broad understanding of the term "implementation" includes considering the implementation of international law as a process of implementation of international law provisions at the international and national level. In addition, this approach is characterized by understanding the concepts of

"implementation", "applying", "realization" as uniform terms. Russian jurist I.I. Lukashuk understands the implementation of international law as the general process of applying international law to life. According to V.Y. Suvorova, the term "implementation" has the right to exist as a synonym of the term "realization", that is, it means the embodiment of norms in the practical activities of states and other subjects [3, P.159].

The implementation of international legal norms is often unthinkable without the implementation of additional legal measures at the international and national levels. In this sense, the process of implementation of international law is divided into two interdependent stages: legal and organizational-operational. In addition, these stages exist regardless of whether the implementation of international obligations is carried out directly by states or within the framework of specially created interstate bodies and legal instruments [4, P.161].

States can fulfill their international obligations by ratifying international treaties or following international customs. However, there are no special requirements in international law that provide for the implementation of norms of international treaties or international customs into domestic legal systems [5, P.98].

According to E. Beenakker, states enjoy wide freedom in choosing the means and methods of fulfilling their obligations under international law. However, sometimes implementation requires the participation of a state body with legislative authority [6].

The unique aspect of the norm-creating function of the ILO, which differs from other organizations, is that in addition to the adoption of ILO conventions and recommendations, due to the fact that they lose their



relevance over time, they adopt the ILO Charter, the Regulations of the Administrative Council, the final parts of the conventions and Conventions 80 and 116 are under regular revision. According to N. Valtikos and J. Potobsky, changes in social needs and conventions or difficulties in the implementation of some documents lead to the need to revise them to adapt to the changed conditions [7, P.21].

The 29th Convention on Forced Use or Forced Labor, adopted by the Republic of Uzbekistan on June 28, 1930, entered into force on May 1, 1932 [8, B.188] and adopted on June 25, 1957, 1959 Both of the 105th Convention on the Abolition of Forced Labor [9, P.199], which entered into force on January 17 and consists of 10 articles, have been ratified. It should be noted that among the 15 conventions ratified by Uzbekistan, the implementation of the 105th Convention is the most discussed document by the ILO bodies [10].

One of the main principles of the state policy in the field of employment in Uzbekistan is the discretion and freedom of choosing the type of employment [11]. The first element of forced labor is that it is carried out against the individual's will. The concept of forced labor given in Article 7 of the Labor Code of the Republic of Uzbekistan does not cover all aspects of the concept given in the 29th Convention of the ILO, and it is appropriate to state it in the following version: "Forced labor, that is, forcing a person to perform work without expressing his free will and by threatening to apply any punishment (including as a means of maintaining labor discipline) is prohibited."

The above article of the Labor Code mentions situations that are not considered forced labor, and we can see that it is not fully covered when compared with the 29th Convention. In particular, cases such as "ordinary civic duties" and "minor services of the community (public works)" are not reflected in Article

7 of the Labor Code, but the reference norm such as "must be performed in other cases provided for by law" is cited. In our opinion, based on the documentation of the Labor Code of the Republic of Uzbekistan, which contains the most important norms in the field of labor relations, exceptional cases, which are not considered forced labor, are not in other legal documents, but their full and complete list is in Article 7 of the Labor Code. In order to avoid the danger of forced labor, it is necessary to exclude the mandatory norm.

Each member of the ILO that has ratified Convention 105 undertakes to end forced or compulsory labor and not to observe any of the forms listed in Article 1 of the Convention. According to the Convention, the following forms of forced labor are mentioned:

a) as a means of political influence or education or as punishment measures for the existence or expression of political views and ideological beliefs contrary to the established political, social and economic system; b) as a method of mobilizing and using labor force for the needs of economic development; c) as a measure to maintain labor discipline; g) as a punishment for participating in strikes; d) as measures of discrimination based on signs of racial, social and national affiliation or religious belief. Prohibition of forced labor and ending all its forms is one of the global problems discussed all over the world. But today, it has changed its form and manifests itself in forms ranging from slavery to human trafficking. That is why, in the 1998 ILO Declaration on Fundamental Rights and Principles in the Field of Labor, the elimination of all forms of forced and compulsory labor is an obligation of member states, regardless of whether or not they ratify the main conventions on this issue, were shown as the



obligations of compliance, implementation assistance and implementation [12].

Article 7 of the Labor Code of the Republic of Uzbekistan mentions one of the prohibited forms of forced labor in Article 1 of the Convention on the Abolition of Forced Labor of 1957, that is, the use of forced labor as a means of maintaining labor discipline is prohibited. The article does not provide information on other forms of forced labor. We mentioned above the ratio of the international agreement, conventions and labor law documents of the Republic of Uzbekistan stipulated in Article 10 of the Labor Code of the Republic of Uzbekistan. If we proceed from the second norm strengthened in this article, the obligation not to use prohibited forms of forced labor is also applied to labor relations in our Republic, because these forms of forced labor are not directly regulated in Article 7 of the Labor Code of the Republic of Uzbekistan and other legal document on labor regulations.

The principle of non-discrimination in the field of work and training is based on the fundamental rights of the International Labor Organization and reflected in the 100th Convention "On equal remuneration of men and women for equal work" ratified by the Republic of Uzbekistan on June 29, 1951 and the 111th Convention on Discrimination in Employment and Occupation, adopted on June 25, 1958.

Article 1 of the Convention on equal remuneration of men and women for work of equal importance defines terms.

The term "remuneration" includes the usual basic or minimum wage or the basic or minimum wage and any remuneration paid directly or indirectly, in money or in kind, by an employer to an employee for the performance of any work. The term "Equal remuneration of men and women for work of equal

importance" is included in the remuneration rates determined without discrimination based on gender characteristics [13, P.123].

Each member of the International Labor Organization, which has ratified the Convention, shall award rates in accordance with the specified methods using tools compatible with the current methods of determining award rates, undertake to ensure the application of the principle of awards for equal work to all workers. These principles can be applied in the following way: a) national legislation; b) the awarding system established by law or recognized; c) the use of collective agreements between entrepreneurs and workers or the various methods mentioned above.

According to the Constitution of the Republic of Uzbekistan, women and men have equal rights (Article 46). Equality applies to all areas in which they operate. Article 6 of the Labor Code of the Republic of Uzbekistan states that all citizens have equal opportunities to obtain and use labor rights, regardless of gender, age, race, nationality, language, social origin, property status, and professional status, religion. Any restrictions or preferences in the field of labor relations based on the attitude, beliefs, membership of public associations, as well as the working abilities of employees and other results unrelated to the results of their work are not allowed and are considered discrimination. In Article 153 of the Labor Code, the form of remuneration for labor is strengthened, according to which "the form of labor remuneration and systems, bonuses, additional payments, bonuses, incentive payments are defined in collective agreements, as well as work determined by the employer in agreement with the trade union committee or other representative body of the employee in other local documents. As a rule, wages are paid in cash. It is prohibited to pay wages in the





form of alcoholic beverages and tobacco products, as well as wages in kind”.

Another of the fundamental conventions of the ILO is the 111th Convention on Discrimination in Employment and Training, adopted on June 25, 1958. International labor standards are aimed at protecting the interests of general labor subjects and conditions of special categories of workers: children and youth, women, working migrants, disabled people, and others.

According to Article 1 of Convention 111, the term "discrimination" includes: a) based on race, color, sex, religion, political beliefs, national origin or social origin, and employment and occupation any difference, exclusion or advantage leading to loss or violation of equality of opportunity or treatment in the field; b) any difference, exception or advantage that results in the loss or violation of equality of opportunity or treatment in the field of work and training, if these are authoritative organizations of representatives of entrepreneurs and workers, such exist and other relevant determined by the interested member of the Organization based on consultation with the bodies. The Convention also provides for exceptions, meaning that any difference, exception or preference based on the specific requirements associated with a particular job is not considered discrimination.

Based on the provisions established in the Convention, the labor legislation of the Republic of Uzbekistan also establishes standards aimed at prohibiting discrimination in the field of work and training. In particular, Article 6 of the Labor Code of the Republic of Uzbekistan lists exceptional cases. Discrimination in the field of labor related to the requirements specific to a certain type of work or the state's special care for persons in need of higher social protection (women, minors, disabled, etc.) is not considered discrimination.

From the norms established in the Labor Code of the Republic of Uzbekistan, it can be seen that the international norms defined as obligations in the 111th Convention are defined in our labor legislation more widely than those specified in the convention, for example, although the convention does not specify the age factor, Article 6 of the Labor Code defines age among other discriminatory factors.

In the 2015 report of the Expert Committee on the Application of Conventions and Recommendations [16, P.306], the opinion on the application of the 100th Convention by the Republic of Uzbekistan and the state of national legislation was cited. According to him, the prohibition of discrimination in the Labor Code does not fully reflect the principle of equal remuneration in the convention. Therefore, it is recommended to amend the Labor Code in this matter.

If attention is paid to Article 2 of Convention 100, the principle of equal treatment is national legislation; a system of awarding established or recognized by law; it is determined that it will be implemented by collective agreements between entrepreneurs and workers or by the use of the various methods mentioned above. In the content of each method, normative strengthening is provided. Also, the Committee of Experts explains that the issue of "equal remuneration for work of equal importance or work under equal conditions" must be reflected in the legislation. Based on this, it is proposed to amend Article 153 of the Labor Code of the Republic of Uzbekistan (Determining the amount of wages) as follows: "The amount of wages is determined according to the agreement between the employer and the employee. Men and women are paid the same amount of work for work of equal importance or under equal conditions. The wage cannot be less than the



minimum amount established by law, and its maximum amount is not limited in any way”.

One of the fundamental conventions of the International Labor Organization is the Convention No. 87 on Freedom of Association and Protection of the Right to Organize Trade Unions (July 9, 1948), which provides for the right of individuals to freedom of association and collective bargaining, and the 98th Convention on the Application of the Principles of the Right to Organize and Conduct Collective Bargaining (July 1, 1949) was adopted.

Article 1 of the Convention obliges the countries that have ratified this document and which have entered into force with respect to it, to comply with the provisions of the Convention. Ensuring freedom of association is seen as a right not only of employees, but also of employers. That is, employers also have the right to join certain unions. According to the Convention, the right of workers and employers, without any restrictions, to form a specific organization and to join the organization of their choice without obtaining prior permission from any institution, subject only to the rules of this organization, has been strengthened.

We can answer the question of the importance of ensuring this right as follows: firstly, strong and independent associations of workers and employers serve as one of the main means of effective regulation of the labor market; secondly, it serves the function of strengthening social communication between workers and employers, preventing possible conflicts; thirdly, civil society plays the role of an institution that helps in improving working conditions, ensuring decent work and in the implementation of human rights in general [14, P.87].

According to information published by the ILO, there are almost no cases aimed at limiting the establishment of certain representative structures of employees and employers in the practice of the countries of the world. According to the report of the Secretary General of the ILO, in the past, the existence of the obligation of the government to define a certain organization in advance and for all workers to be members of it was one of the most common forms of prohibiting the right to association in the practice of states. The most important thing is that joining certain organizations is not a right, but an obligation, and other organizations established without agreement with the state are declared illegal [15, P.11]. Freedom of association is a principle reflected in the fundamental conventions of the ILO, and the adoption of separate international documents on it shows the importance of this right in regulating labor relations.

In general, the Republic of Uzbekistan has been implementing large-scale measures to implement international standards developed and accepted by the International Labor Organization in the field of labor into our national legislation, thereby adapting the legal documents regulating labor relations to world standards. It should be noted that the fulfillment of obligations under international agreements depends on the mutual coordination of international and national legal systems, which is achieved through the implementation of an effective national implementation mechanism. The procedure for implementing international agreements into national legislation is regulated by national legislation, its features are related to law-making in the Republic of Uzbekistan, which positively affects the implementation of international agreements.

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