2498-5473/USD 20.00
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HUNGARIAN JOURNAL OF LEGAL STUDIES 60, No 2, pp. 173–184 (2019)
DOI: 10.1556/2052.2019.00011

The International Labour Organisation and the EU – Old Friends with New Goals

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Abstract. The centenary celebration of the International Labour Organisation (ILO) is an ideal occasion to look at its current position, possibilities and challenges from the perspective of its long-lasting relation with the EU. This paper looks at the current state of affairs and how it has been achieved. It looks at the history of good cooperation of ILO and EU from the legal point of view highlighting some moments, when the ILO law has been ahead in social protection of workers, whilst showing that currently the EU is taking the lead in many fields. By commenting on recent basic documents of both the EU and ILO, the conclusion can be made that the solid and real interaction between both 'legal systems' can significantly contribute to more solidarity and decent work around the world.
Keywords: ILO, EU law, equal treatment, social law, social protection, harassment

1. INTRODUCTION

In 2018, Paul van der Heijden, was somewhat skeptic about the International Labour Organisation (ILO), which was about to turn 100 years old.[1] He argued that in recent years, the ILO had somehow lost its power and drive, by its incapacity to adopt any important new Convention. Other organizations, like the EU, UN, OECD, have taken over the lead. The centenary year of ILO is a good occasion to provide some reflections on the current ILO's position and its future perspectives. In this article, this is done through the perspective of the ILO-EU relationship and collaboration, which lasts for more than 60 years.

The International Labour Organisation is one of the oldest international organisations. The ILO is definitely unique due to its tripartite representation and its original and functioning creation of international legal documents. Another unique attribute is the number of honourable body of international conventions and recommendations (190 conventions and 206 recommendations). The International Labour Organisation is respected around the world and its conventions keep on be ratified. Without any doubt, it has made massive contributed to social growth and well-being of many women and men in the globalised world and it has been promoting social justice for 100 years.

This paper looks at the current state of affairs and how it has been achieved. It looks at the history of good cooperation of ILO and EU from the legal point of view highlighting some moments, when the ILO law has been ahead in social protection of workers, whilst showing that currently the EU is taking the lead in many fields. By commenting on recent basic documents of both the EU and ILO, the conclusion can be made that the solid and real interaction between both 'legal systems' can significantly contribute to more solidarity and decent work around the world.

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This article has been kindly supported by the Czech Science Foundation – GACR through its project N. 17-03398S 'The International Labour Organisation and its role in the development of social law in Europe'.

[1] Van den Heijden (2018) 203.

2. THE EU AND ILOA RELATIONSHIP 60 YEARS IN THE MAKING

EU and ILO are in many aspects like an adult daughter and mother. In fact, the ILO is 40 years older and its social ideas have been for a long time a strong source of inspiration for EU legislators, as well as source of relevant legal arguments for the CJEU's interpretation of the EU law. As the EU daughter is already an adult, it has found its own ways, even if many ideas are still shared by both organisations.

The EU – ILO cooperation dates from 1953 and the EU origins. The cooperation between the EEC and the ILO was firstly officially confirmed in 1958 through an Agreement concerning Liaison between the ILO and the EEC. The partnership between the two institutions continued to enlarged, keeping pace with the evolution of the responsibilities, policies and activities of the European Commission, the emergence of the EU as a global player and the convergence of the strategic objectives and values of the EU and the ILO. Today, EU and ILO have a lot in common.

Especially at its beginnings, the EU took over some aspects from the ILO. An example is that the EU, as well as the ILO, incorporates tripartite representation into parts of its policy making.[2]

Also, the EU's social dimension is very much connected with its collaboration with ILO. Kissack recalls that EU expressed its commitments to promoting the social dimension of globalisation through closer cooperation with the ILO in its 2001 Communication on promoting core labour standards and improving social governance in the context of globalisation.[3]

An exchange of letters between the Commission of the European Communities and the International Labour Organization was published in June 2001.[4] In those letters, EC and the ILO agreed that it would be of benefit to both organizations to develop their cooperation by focussing on some priority areas. These include as labour standards, set out in the 1998 ILO Declaration on Fundamental Principles and Rights at Work; promotion of employment, through experience on the European Employment Strategy and the ILO's efforts to create employment opportunities for women and men; social dialogue, with a view to the possible dissemination of the lessons from the European experience with social dialogue to other regions of the world and social protection, and development cooperation.

Already that time, it was clear that the ILO and EU represent sources of inspiration. On topics like labour standards and social dialogue, the ILO was slightly ahead whereas the EU experience in the field of employment policy and social protection was somewhat richer.

At the same time, as Kissac recalls, the progressive expansion of Community law since 1990s changed the way the European institutions and EU Member States strategically used the ILO to promote labour standards. EU Member States began to coordinate their positions more systematically and sought at times to upload EU policies into ILO standards. The European Commission meanwhile began representing the international legal personality of the European Community in its relations with the ILO.[5]

[2] Some directives have been adopted as a fruit of agreement between social partners, including the Parental Leave Directive, which is being substituted by the Work-Life Balance Directive.

[3] Kissack (2014) 76–78.

[4] Official Journal 2001 C 165/23.

[5] Kissack (2014) 76–78.

The todays cooperation is based for the ILO on Art. 12 of the ILO Constitution and for the EU on Art. 151 and 220 TFEU.[6] Pons-Deladriere notes that although the EU is not a member of the ILO, the ILO and the EU have in practice applied a pragmatic approach, so that Member States of the EU may coordinate and express their positions in the International Labour Committee and Governing Body according to the topic addressed. Brsakoska Bazerkoska observed that 'the features of the EU's observer status have changed and advanced over years.'[7]

In fact, the EU has recently actively taken part in the negotiations of significant new ILO conventions (Maritime Labour. 184 Occupational Safety and Health, 187 Safety and Health in Agriculture, 189 Domestic Workers), and also recommendations (HIV/AIDS, Social Protection Floors).[8] The impact of the EU can be noted in the most recent documents, especially in the C190 Violence and Harassment Convention.

Promoting the EU values through the ILO gives them greater legitimacy because they are shared by the international community as a whole. In this way, the EU defends also its own interests because countries should not profit from low labour standards to have unfair competitive advantages. Developing a middle class in emerging economies means creating markets for goods and services in which the EU has a comparative advantage.[9]

It can be therefore seen that, as in beginnings of their relationship, the ILO Conventions served as inspiration and legal argumentation source for the EU[10] but at the same time, EU as a subject, has been strengthen in its position during the negotiations and has significantly influenced the wording of recently adopted ILO Conventions. There is a mutual influence, EU and ILO are interlinked. However, the EU, in last period seems to be more effective at influencing the ILO than the opposite way. This confirms Ferri who states since Lisbon treaty, which provided the EU with legal sovereignty, the EU is within the ILO recognised as a hybrid – an international organisation and group of governments at the same time. The trend is towards a recognisable voice of the EU.[11] EU's long term participation in and loyalty to the ILO has increased its voice therein, despite informal position of the EU in the ILO − the EU's interventions and recommendations are seriously taken into account.[12]

The informal position of the EU within ILO has been confirmed by Advocate general Trstenjak in case C-214/10 KHS, where she provided an interesting interpretation of the relation between EU law and ILO:

'Despite long cooperation between the European Union and the ILO in the field of economic and social policy and the fact that many Member States are members, the European Union itself, as a supranational organisation, does not have the status of either a contracting party or an observer at the ILO. Hence, the compatibility of EU legislation with ILO law can as a matter of principle be judged only according to the criterion of the binding effect determined by the Union itself. … ILO conventions merely lay down minimum international standards which EU law itself may surpass.'

In fact, there are some examples in the history of EU-ILO relationship, when the EU law provided stronger rights, which sometimes caused a conflict of both legal systems.

[6] Ferri (2015) 79.

[7] Brsakoska Bezerkoska (2013) 142.

[8] Pons-Deladriere (2015) 96–98.

[9] Ferri (2015) 80.

[10] In fact, EU makes reference to ILO standards and values in its external action. EU promotes human rights, including labour rights in all aspects of its external action.

[11] Ferri (2015) 92.

[12] Xiarchogiannopoulou, Tsarouhlas (2014) 126–31.

3. EU LAW IN CONFLICT WITH ILO

The relationship between mother and daughter is not always sunny and ideal; likewise the relationship of EU law and ILO standards has seen some conflicts during the long history of cooperation. These conflicts were never about fundamental rights and values, with one exception – the equal access of men and women to work. (in fact, as early as in Defrenne case equality was defined by the ECJ as fundamental principle of the EU law). Still, a common goal of social justice and solidarity has been always followed by both institutions.

4. THE EU'S REACTION ON ILO CONVENTIONS, WHICH FALL UNDER SHARED COMPETENCES

A possible conflict, which is in fact most frequent, derives from the EU disposing of some competences in several fields, including social areas. The main competences of the EU in the fields covered by the ILO are connected with antidiscrimination (Art. 19 of the TFEU), free movement of workers (Articles 45, 46 and 48 of the TFEU), working conditions and labour law rights (Art. 153 of the TFEU) and equal pay for men and women (Art. 157 of the TFEU). ILO conventions might engage EU competences that go beyond the social chapters of the TFEU.[13]

For cases, EU member states, due to competences in social policy shared with the EU, partly lack the competence for the ratification or for the implementation of ratified ILO conventions, a legal reaction of the EU had to be found. The solution came in form of EU's authorisation, or even encouragement towards the member states to ratify conventions when they contain issues falling under the competence of the EU.

ILO Convention No. 189 on Domestic Work[14] has been included in the list of international instruments addressing trafficking in human beings and the Commission urged EU Member States to ratify them in the context of the EU Strategy towards the Eradication of Trafficking in Human Beings adopted in 2012.

Following a proposal from the Commission, the Council also adopted a similar Decision as regards the Chemicals Convention (N°170) in November 2012.

There are three other ILO Conventions adopted over the last decade, parts of which fell under the competence of the EU. The Council has already authorised Member States to ratify, in the interests of the Union, in respect of those parts falling under Union competence: The Seafarers' Identity Documents Convention (N° 185), the Maritime Labour Convention 2006 and the Work in Fishing Convention (N° 188).

The quite active approach of the EU probably goes hand in hand with the EU succeeded in influencing the wording of recent ILO conventions.

The old, but still quoted ECJ opinion 2/91 concluded that the adoption of Union legislation in the social field in the form of minimum requirements does not lead to

[13] According to Ferri, it derives from the EU law as well as from the settled CJEU case law, that the EU law does not affect the right of the member states to define the fundamental principles of their social security systems. The EU law also must not significantly affect the financial equilibrium thereof and must not prevent any member state from maintaining or introducing more stringent protective measures compatible with the Treaties – see Ferri (2015) 81.

[14] In 2014, EU's Council of Ministers issued a Decision authorising Member States to ratify the International Labour Organisation (ILO) Convention on Domestic Workers. Other authorisations went also through the Decision of the Council of Ministers.

exclusive external competence for the Union. Since this landmark opinion, it is clear, that in order not to have a conflict of laws, the standard in question has to fall under shared or exclusive competences of the EU law and at the same time, it must not be a minimum standard e.g., social security coordination is not about minimum standards and is therefore not in conflict with ILO standards for migrant workers.[15]

Therefore, the conflict is solved when EU standards are more favourable. However, when ILO standards are more favourable, a conflict might arise if EU standards are not minimum standards.

5. CONFLICT OF PROTECTION

For Conventions ratified before the creation of the EU or before a state's membership of the EU, the limited competence of EU Member States to ratify some ILO Conventions and conflicting obligations have to be solved by the State in question by taking all appropriate steps to eliminate the incompatibilities.

Convention 89 on night wok of women and Convention 45 on women's underground work are two cases of ILO conventions where the conflict of laws arose and had to be solved by the EU member states in question. The EU nor the ILO could not solve the issue. EU Member States have had a solution stemming from the primary EU law on their disposal. ECJ provided its interpretation of the EU law in relation to ILO Conventions in question.

5.1 Night work of women

Both the *Levy* case and the *Minne* case were referred to the Court of Justice for a preliminary ruling. In both cases the national referring court was seeking for ECJ's interpretation of the principle of equal treatment of men and women in relation to the ILO Convention. In the Levy judgment,[16] it was the national court itself which drew the attention of the Court of Justice to the applicability in France of the ILO Convention.

In both cases, the Court held that, while it is true that equal treatment of men and women constitutes a fundamental right recognised by the Community legal order, its implementation has been gradual and has been achieved by means of directives. Those directives allow, temporarily, certain derogations from the principle of equal treatment. That possibility of derogation was however not applicable at a national legislation, which prohibited night work to women in general, because of legal obligation of the Member State taken through the ratification of the ILO Convention No. 89.

In the *Minne* case, which followed after *Levy* and *Stoeckel* cases, the ECJ held, that Article 5 of Council Directive 76/207/EEC precludes a Member State from adopting legislation limiting night-work for women unless it also provides similar limits for men. In this and the previous case law, the Court concluded, that

'whatever the disadvantages of nightwork may be, it does not seem that, except in the case of pregnancy or maternity, the risks to which women are exposed when working at night are, in general, inherently different from those to which men are exposed.'

[15] Ferri (2015) 82.

[16] Case C-158/91 *Criminal proceedings against Jean-Claude Levy* [1993] ECR I-04287.

The general prohibition of night work of women has, according to the Court, not found any objective reasoning.[17] However, a national court is not under an obligation to set aside domestic legislation which is contrary to Article 5 of that directive in the case where the application of that legislation is necessary in order to ensure compliance with international obligations assumed by the Member State in question vis-à-vis third countries under a convention, such as ILO Convention No 89, concluded prior to the entry into force of that Treaty.[18]

In none of those cases did the national referring court seek advice on the effects of the second paragraph of Article 307 of the EC Treaty. Nor was it raised by any of the parties who submitted observations to the Court. This was different from the case on underground work.

5.2 Underground work of women

Similar case arose after Austria joined the EU. Different ILO Convention was at stake and legal arguments were more about primary EU law.

In case Commission v. Austria[19] the Court has been asked whether Austria has infringed Community law as its national legislation prohibited underground work of women due to legal obligations deriving from the ILO Convention 45, ratified by Austria before it joined the EU.

Austria argued that restrictions on the employment of women are justified by its international obligations under ILO Convention 45, which, remained binding on it under Article 307 EC due to its conclusion preceded Austria's accession to the EC Treaty.[20]

The question to be resolved by the ECJ was whether the principle of equal treatment precludes a Member State from prohibiting women's night work in circumstances where an ILO Convention preceded the Treaty required such a prohibition. In essence, the Court has held that, although such a prohibition was contrary to the principle of equal treatment, the Directive does not apply in so far as the provisions of national law have been adopted to ensure that a Member State's obligations under a contract falling within the scope of Article 307 are met.

In both cases of ILO Conventions conflicting with EU law, the ECJ logically protected its own legal system, which preferred equality for men and women and found that the protection was excessive and no longer reasonable. For EU Member States, clear dominance of the EU law has been declared by the Court. At the same time, the Court did not interpret the EU law in a way which would oblige the Member States not to respect own obligations deriving from the international law. A way of a respectful partner of the ILO has been taken.

[17] Case C-345/89 *Criminal proceedings against Alfred Stoeckel* [1991] ECR I-04047, paras. 15 and 18.

[18] Case C-13/93 *Office National de l'Emploi v Madeleine Minne* [1994] ECR I-00371.

[19] Opinion of Mr Advocate General Jacobs C-203/03 *Commission of the European Communities v Republic of Austria* [2004] ECR I-00935.

[20] 'The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.'

However, as a result of incompatibility of the ILO conventions with the principle of equal treatment, all EU Member States, which were signatories to the ILO Convention 45 were actually obliged denounced it at the first possible occasion. Twenty EU Member States denounced the Convention 45 with only Portugal and Greece keping it.

As a reaction to this, the ILO Managing Authority called on the ILO Convention Parties 45 to consider ratifying ILO Convention No. 176 on Mines Safety and Health, which it describes as 'the current standard in this field [which actually covers the scope of Convention 45' and replacing Convention 45 (28). Convention No. 176 applies equally to men and women.

The ILO Convention 89 has been denounced by 15 EU Member States, only Romania is still keeping it.

The result of this conflict might be seen as a clear primacy of the EU law. Both above mentioned conventions have been denounced by almost all EU Member States because they are in conflict with EU rules on equal treatment of men and women. Still, it is fully possible that Ferri's arguments that cooperation with the ILO is important so that possible obligations stemming from ILO legal instruments are compatible with EU law and policies.[21] This only confirms that the EU law is currently taking a lead, whereas the ILO remains a strong, respected, but also influenced partner.

This somehow bitter solution of the conflict of EU law and ILO law resulted in a weaker positioning of the ILO and its legal system but it was also an occasion for a modernisation of the body of ILO law. In fact, the vast number of ILO Conventions should be revised and some of old and out-dated ILO Conventions shall be abrogated.[22] an emphasis should be put on new and actual topics so that ILO legal instruments are powerful enough also in the future, for the changing world.

6. ILO SOURCE OF INSPIRATION AND LEGAL ARGUMENTS

The close legal connection between ILO standards and EU law has been reflected in various explicit references to the ILO in EU law. ILO conventions are quoted in Directive 2000/78 and also in Working time Directive.[23]

[21] Ferri (2015) 83.

[22] This proces started already with the ILO conference in 2017, when 4 Conventions have been abrogated and 2 withdrawn. The revision proces is continuing under the Standards Iniciative – see International Labour Standards Department (2018) link 2.

[23] Recital 4 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303 states:
'(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.'
Quoted by: Case C-157/15 *Samira Achbita and Cetrum voor gelijkheid van kansen en voor reacismebestrijding v G4S Secure Solutions*[2017] ECLI:EU:C:2017:203, Case C-188/15 *Asma Bougnaoui and Association de defense des droits de l'homme v Micropole SA* [2017] ECLI:EU:2017:204, Case C-214/16 *C. King v The Sash Window Workshop Ltdd and Richard* Dollar [2017] , Case C-414/16 *Vera Egenberber v Evangelisches Werk für Diakonie und Enwicklung e.V.* [2018] OJ C 200, Case C-68/17 *IR v JQ* [2018] ECLI:EU:C:2018:696 and many others.

ILO standards are taken into account, while applying and interpreting the EU law, especially by the CJEU. In various decisions the CJEU has referred to and actually applied ILO labour standards in its judgments. This shows that even though there is no direct link between ILO standards and EU law, in general the application of certain core ILO standards can be effectively guaranteed through the legal obligations common to all EU Member States.[24]

In Schultz-Hoff, the ECJ expressly confirmed the relevance of the ILO Convention No 132 to the interpretation of Directive 2003/88. The ILO Convention No. 132 has been found virtually identical with the Directive 2003/88, regarding the protection of the right to paid leave. This right has been interpreted as very strong also thanks to the spirit of the ILO Convention, which has been somehow taken into the overall structure of EU-wide working time arrangements.[25] However, the Court concluded that the EU law does not preclude national legislation or practices according to which a worker on sick leave is not entitled to take paid annual leave during that sick leave.

ILO principles have been used in many cases by advocates general, who quoted some ILO Conventions e.g., GA Tančev in case C-214/16 *C. King* argues:

'It is significant that entitlement to paid annual leave is repeatedly expressed in European and international law as a "claim". […] Article 3 (1) of ILO Convention 132 contains even more mandatory wording and is not addressed solely to States. It provides that any person covered by this Convention shall be entitled to annual paid leave of a fixed minimum length.'

By this interpretation, the GA underlines the fact, that ILO is in case of paid leave somewhat ahead when compared to the EU law.

Similarly, in *Mascellani* case, an ILO Convention No 175 has been identified as a stronger instrument than the Part-Time-Work Directive 97/81, as the protection afforded by the Directive to part-time workers is lower than the level of protection guaranteed under the ILO Convention and related recommendations.[26] It has been argued, that if the stronger instrument of international law (ILO) does not provide for a right of a former part-time employee to refuse a full-time job, such a right cannot be derived from the Directive 97/81, of which adoption has been prompted by the ILO Convention No 175. The Court concluded that Directive 97/81/EC does not preclude national legislation under which an employer may order the conversion of a part-time employment relationship into full-time employment without the consent of the employee.

There is a high level of convergence of ILO and EU law, as regards subject and goal of legal norms.[27]

[24] Pons-Deladriere (2015) 96–98.

[25] Although Article 7 (1) of Convention No 132 of the ILO indicates that the principle of average earnings is established, that provision expressly provides that any person who is entitled to leave provided for in that Convention is to receive at least his normal or average remuneration for the entire period of leave. The obvious aim of this alternative is to take into account special employment relationships where employees do not receive any usual remuneration.

[26] See e.g. Opinion of Mr Advocate General Wahl Case C-221/13 Teresa Mascellani v Ministero della Giustizia [2014] ECLI:EU:C:2014:479.

[27] Murray (2001) 175.

7. EU LAW AND ILO – HAND IN HAND FOR FUTURE OF SOCIAL RIGHTS

Looking at current relationship between the EU and ILO, the strong connection between the 'mother' and 'daughter' definitely prevails over conflicts, which have calmed down.

In fact, very recently, during the preparations of the ILO Centenary Declaration, the EU and Member States played a key role in negotiations and helped to find common ground on several topics. In the Centenary Declaration, there were declaratory statements e.g., 'imperative of social justice that gave birth to the ILO', 'labour is not a commodity', 'human-centred approach to the future of work' and also hot issues are included.

Among topics, which are mentioned by the declaration, are those, which are being recently put forward by the EU: promoting workers' rights as a key element for the attainment of inclusive and sustainable growth, gender equality at work (including investment in the care economy), promoting the transition from the informal to the formal economy. ILO Members are called upon to further develop three key areas: Strengthening the capacities of all people to benefit from the opportunities of a changing world of work; strengthening the institutions of work to ensure adequate protection of all workers and the promotion of a sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

In many aspects, the main Centenary Declaration's areas are complementary with the EU policies and the European Pillar of Social Rights.

The European Pillar of Social Rights has been studied by the ILO and defined as an 'instrument that could help ensure that people living in the EU fully enjoy their rights. Convergence towards better socio-economic outcomes, underpinned by such a Pillar, could be the foundation for a more integrated and stable Europe and a fully functioning EMU. It is therefore imperative that the EU continue to strive collectively towards economic, employment and social improvements for all its members.' [28]

The ILO in this study supports concrete steps of European Social Pillar as possible input for further interaction between ILO and EU law. EU topics fully supported by the ILO following are mentioned:

– A balanced approach to minimum wage policy based on the principles enshrined in ILO instruments

– The establishment of national adequate minimum income guarantees covering as many people as possible, based on obligations arising from European and ILO treaties

– Increased policy coordination at the EU level to reconcile work and family life in line with relevant ILO standards

– Employment promotion and unemployment protection, incorporating relevant ILO standards, which are widely ratified by the EU Member States

– Social dialogue in line with relevant ILO Conventions.

The study stresses that convergence towards better socio-economic outcomes could be the foundation for a more integrated and stable Europe and a fully functioning monetary union.[29]

[28] International Labour Office (2016) link 1.

[29] The study argues e.g., 'Over the past few years, an increased difficulty in reaching consensus and agreements among the 28 Member States has been evident. Resuming a process of upward socio-economic convergence in the EU could help to overcome some of the current political challenges, while also restoring public confidence in the European project.'

On the side of the EU, it supported the effective implementation of the ILO Social Protection Floors Recommendation, which underlined especially income security (also specifically for children), access to goods and services and to basic health care in order to allow life in dignity).

It is also worth underlining that the very last ILO Convention, adopted in occasion of its Centenary, reflects a hot and global topic, violence and harassment in the world of work. This occurs in the course of, linked with or arising out of work Art. 3. It should protect all workers and other persons in the world of work, irrespective of their contractual status and shall apply to all sectors (Art. 2). Member States shall adopt laws and regulations to define and prohibit violence and harassment in the world of work, including gender-based violence and harassment. For the first time, harassment and violence in the world of work have been declared as unacceptable behaviour and also defined[30] at a global level. The vast majority voted for it (439 for, 7 against, 30 abstentions) so its legitimacy is quite high.

The Convention contains particular focus on addressing gender-based violence and harassment in the world of work, including a definition and recognition that a gendered approach that takes into consideration the root causes is necessary to address it. Moreover, the convention and recommendation specifically recognizes the impact of domestic violence on the workplace and provide guidance for how to address it.

The definition of world of work includes the commute to and from work, private and public spaces at work, employer-provided accommodation and work-related technology-assisted communication. The definition of worker includes workers irrespective of their contractual status, interns, volunteers, and persons in training among others. It expressly covers workers in informal and formal work.

The Convention has therefore a wide scope and if really applied, it could represent a concrete and very important change in the world of work around the globe. It must be admitted, that the EU law does not have any concise and well elaborated instrument on harassment and violence. Even if in many directives harassment and sexual harassment are defined and prohibited, the legislation on it has been adopted as one of forms of discrimination, with no special focus on it. Also the CJEU case law is scarce in this respect.[31] In this regard, the ILO is currently leading in the area of combatting harassment and violence at work, even if this leadership is conditioned by the level of ratification in the near future. It could be deduced from the voting on the Convention, that the ratification process will follow in many ILO countries.

The Harassment Convention and other ILO Conventions tackle very important issues e.g., domestic work, maritime labour, maternity protection, child labour. The problem is the level of ratifications. Whereas core ILO Conventions in average reached 175 ratifications each, the conventions adopted since 2000 do not have in average 30 ratifications per convention. Moreover, countries which ratified recent conventions are not so powerful to convinced the others to follow them. One exception is the Maritime Labour Convention, which is actually an instrument of coordination of social security, ratified also by quite a good number of EU Member States. In this connection, a possible conflict of EU and ILO rules comes at stake.

[30] Art 1a) defines harassment and violence in the world of work as 'a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.'

[31] Actually only Case C-303/06 S. *Coleman v Attridge Law and Steve Law* [2008] ECR I-05603 and some cases on EU staff regulations.

Moreover, a legitimate question is for a Centenary,is one non-binding Declaration and one Convention on harassment enough? ILO, as a global player, should have probably more courage to develop the strongest possible strongest instrument. An overwhelming convention on decent work,[32] as a fruit of its hundred years of existence and promoting social justice would have been appropriate. The Declaration already reacts to new phenomena and new issues connected with the world of work.

In general, EU seems to be stronger as it has a stronger system of law,with a Court interpreting it and contributing to its further development. Currently it does not seem however, that the EU would be strong either, as it's getting more difficult to adopt new norms e.g., the debate on migrant quotas and its follow-up. The EU Member States are often not able to agree on a new piece of EU law, including further development of social norms. The whole EU is also partly paralyzed by the Brexit, difficult political situation across European countries and increasing nationalism.

Nor the EU, not the ILO can stay behind big challenges and changes in the world of work, which require also changes of concepts of social security.

8. CONCLUSIONS

The social dimension of the EU has been apparently largely taken from the ILO and the spirit of its conventions. Therefore, the ILO and its body of law has been always respected by the EU law. This respect is however not passive as the EU activity can be observed in two major dimensions:

The EU law however over the years has strengthen its social dimension, which brought sometimes to conflict of EU law and ILO conventions. Thanks to the ECJ's interpretation of the relation between the EU law and ILO conventions, EU law today somehow prevails over the ILO law. The ECJ never asked the EU Member States to break the ILO conventions, some, which have been in conflict with the EU law, have been denounced by most Member States.

The EU's influence on the recent development of the ILO instruments, especially through its Member States seems to be undisputable. Some EU Member States contributed strongly to debates e.g., on the Harassment Convention.

Bearing this in mind, the future ILO-EU collaboration in the field of social rights seems to be crucial, especially in today's uneasy political situation in the world, where social rights as human rights and their global character are being questioned. International labour standards, as a solid and already agreed body of international legal social instruments can support stability also in the EU policy, which recently struggles to find and adopt common solutions. At the same time, the already achieved rights and social values guaranteed by the EU law can be further developed by the ILO and promoted worldwide.

The long-lasting partnership of ILO and EU can still continue to bring rich fruits for further promotion of social rights and social protection in Europe, but also in other countries of the world. The further existence of ILO therefore still makes sense and represents new opportunities especially for people who work and whose social rights shall be protected and safeguarded.

[32] Van den Heijden argues: 'a powerful and unanimous signal on the occasion of the 100-year anniversary in 2019 is necessary if the organisation is to survive in the 21st century. Such a powerful signal could bet he drafting and adoption of a Framework Convention on Decent work.' – see Van den Heijden (2018).

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