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FÓRUM

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Vietnamese Labour Law in Comparison with ILO Core Labour Standards in Light of the EVFTA: Present Limits, Future Reforms

ABSTRACT

Within the context of the Europe-Vietnam Free Trade Agreement (EVFTA), this article analyses and compares Vietnamese labour law with core labour standards outlined within the fundamental conventions of the International Labour Organisation (ILO). Therefore, it provides recommendations for future labour law reforms in Vietnam to satisfy labour commitments under the EVFTA and suggests further research directions. This study contributes to setting a model of legal research not only for Vietnam but also for other countries when negotiating within new-generation free trade agreements in terms of labour commitments.

Keywords: EVFTA ■ free trade agreement ■ ILO ■ labour commitments ■ labour standards

I. INTRODUCTION

Under the fast-paced evolution of international economic integration, free trade agreements have been crucial in multilateral and bilateral collaboration.[1] The European Union (EU), known as one of the leading partners of countries and regions around the world, would be regarded as one of the most prosperously open markets for developing countries.[2] Despite the pursuance of the policy on "Trade for all",[3] it is noteworthy that the EU still pays a lot of attention to social dimensions in its trade agreements,[4] specifically through labour provisions, which are generally promulgated in chapters called "Trade and Sustainable Development"

[1] Urata, 2002, 27-28.
[2] Policy.trade.ec.europa.eu: EU position in world trade.
[3] European Commission, 2015.
[4] Richieri, 2016, 435-468.

of its free trade agreements[5] and also make reference to ILO international labour standards, particularly ILO core labour standards.[6]

Regarding these standards, EU free trade agreements commit parties to ratify eight ILO fundamental conventions that cover four main groups of rights at work and to effectively implement them in national legislation and practices.[7] However, experiences from international legal practice and labour dispute settlement cases reveal the limits of compliance with EU free trade agreements and core labour standards of the ILO among nations globally, even for developed ones like South Korea.[8] And with the recent ratification of the EVFTA, the EU's most comprehensive free trade agreement with a developing nation,[9] Vietnam is not an exception. Recent research has also indicated that there are still limits in the domestic labour law of this country, even though the ratification of the ILO fundamental conventions is mostly fulfilled.[10] So as not to put Vietnam in South Korea's place, first and foremost, it is called for an in-depth understanding of the compliance of Vietnamese labour law with ILO core labour standards. This would provide an adequate basis for this nation to continue implementing these labour standards effectively in practice.

The remaining of this article, except for the conclusion part, is organised into four sections: The next section revisits the relationship between trade and labour in EU policy and systematises labour provisions in EU free trade agreements. In Section III, Vietnam's obligations under the EVFTA in terms of core labour standards are detailed, as is the essence of these standards. Based on the core of these standards, particularly the ILO's eight fundamental conventions, Section IV makes a comparison between Vietnamese labour law and core labour standards and then identifies the present limits in the domestic legislation. Section V proposes recommendations for Vietnamese labour law reforms in the future.

II. THE TRADE-LABOUR LINKAGE IN EU POLICY AND LABOUR COMMITMENTS IN EU FREE TRADE AGREEMENTS

From historical and theoretical perspectives, this section clarifies the backdrops that the EU has incorporated social dimensions/labour provisions into its schemes of preferences and free trade agreements and then provides the background of labour commitments in its trade agreements.

[5] Bendini, 2015.
[6] Zamfir, 2022, 3-4.
[7] European Commission, 2021, 18.
[8] European Commission, 2021, 17-18.
[9] Navasartian, 2020, 562.
[10] Nguyen, Xuan T. – Nguyen, T. D. – Nguyen, Xuan H., 2022, 76-83.; European Commission, 2021, 18.; CEACR, 2018, 2019, 2020, 2021, 2022, 2023.

Tracing back to the 1990s, there was a passionate debate between "free trade versus fair trade",[11] accordingly, for those who supported the "free trade" theory, they believed that the ILO and its labour standards were not necessary.[12] These would even be barriers against the economic market and labour or working conditions, and besides that, everybody, of course, including employees, would benefit from globalisation.[13] On the other hand, "fair trade" advocates followed the idea of revealing the undoubted dark sides of globalisation[14] and the ILO and international labour standards would play a significant role in preventing nations from "a race to the bottom" and "social dumping".[15]

In addition to this, under pressure from rising European unemployment, the social dumping effects of international commerce, and the impact of globalisation and human rights, the EU found a way to incorporate these matters into its trade policy.[16] However, attempts by the EU, US, and other developed countries at that time to integrate labour standards into multilateral coordination of trade liberalisation (WTO negotiations) were unsuccessful, leading the EU and many states to turn to bilateral coordination to further their agendas.[17] And thereby, labour provisions have featured significantly in EU trade-policy-making through three milestones, as follows: (i) from the mid-1990s, they were most prominent in the EU's unilateral systems for developing countries, which include commitments in relation to labour standards under its Generalised Systems of Preferences Plus (GPS+);[18] (ii) during the 2000s, quotations to labour standards within those free trade agreements "widened and deepened", especially with the presence of the 2007 Lisbon Treaty as an important institutional factor;[19] (iii) since the 2011 EU-South Korea free trade agreement, in the chapter titled "Trade and Sustainable Development", these provisions have been combined with rules governing environmental protection. And these chapters are now a crucial component of the EU's "new-generation" trade agreements.[20]

Despite significant variance among agreements, the EU's Trade and Sustainable Development chapters consist of several key provisions in terms of labour commitments:[21] There are, most importantly, substantive standards. Most notably, all agreements call for the parties to make a commitment to maintaining ILO core labour standards, which are incorporated into fundamental conven-

[11] Roozendaal, 2002, 67.
[12] Brown – Deardorff – Stern, 1998, 171-194.
[13] De Wet, 1994, 3.; Alston, 1994, 95-104.; Arne, 2005, 73.
[14] Witte, 2008, 16.
[15] Namgoong, 2019, 487-488.
[16] Orbie – Vos – Taverniers, 2005, 159–187.
[17] Smith et al., 2021, 4.
[18] Trade.ec.europa.eu: European Union's GSP+ Scheme, 2019.
[19] Putte – Orbie, 2015, 264.
[20] Bendini, 2015.
[21] Smith et al., 2021, 5.

tions and address concerns that involve child and forced/compulsory labour, discrimination at work, and last but not least, the rights of workers to organise and bargain collectively. Additionally, there are also procedural obligations. The parties have committed to a number of steps to ensure the agreement's long-term success, including continued domestic labour protection levels, increased conversation and cooperation, and the evaluation and monitoring of the agreement's long-term effects. The third category consists of institutional practices. With a wide variety of national and international bodies, such as Civil Society Forums, Expert Panels, and Two-Party Committees of State and European Union Officials, the document's language suggests the two groups will work together to fully execute the chapter related to trade and sustainable development. Within the bounds of this paper, it only focuses on substantive standards, especially core labour standards, and related obligations that Vietnam has to comply with.

III. THE EVFTA AND ILO CORE LABOUR STANDARDS

Taking the same approach as almost new-generation free trade agreements, the EVFTA refers to principles and obligations derived from membership in the ILO to maintain laws that ensure that in practice four groups of rights within eight ILO conventions,[22] regarding the "ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up" in 1998.[23] By examining the core of these eight conventions, this section would set the foundation for making a comparison between Vietnamese labour law and ILO fundamental rights in Section IV.

1. Freedom of association and effective recognition of collective bargaining rights

Embodied within "C087-Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)" and "C098-Right to Organise and Collective Bargaining Convention, 1949 (No. 98)", respectively, C087 and C098 from here on out.

The primary tenet of C087 is that both employees and employers deserve to be able to establish and participate in groups based on their selection.[24] No government agency shall take any action that violates or chills the free enjoyment of this right. Additionally, states should take the steps needed to protect workers' and employers' rights to organise.[25]

[22] Zamfir, 2022, 4.
[23] Art 13.4 of 2019 on the EVFTA.
[24] Art 2 of 1948 on the C087.
[25] Art 3, 4 and 11 of 1948 on the C087.

Furthermore, C098 states that employees must be afforded sufficient protection from unlawful discrimination in the workplace. Employers are not permitted to condition a worker's employment on his/her refusal to become or retain a trade union membership. In addition, employees cannot be fired for taking part in union activities before, during, or after work without the authorisation of the employer,[26] It is also forbidden to take any action that would encourage the formation of workers' organisations subordinate to employers' organisations or provide financial or other support to workers' organisations with the goal of bringing them under the control of employers' organisations.[27] It also requires that, when necessary, employers or employer organisations and worker organisations be encouraged to develop and use mechanisms for voluntary negotiation.[28] It's important to note that C098 does not apply to public officials who participate in state administration and the armed forces and police are only regulated by these provisions if national regulations and laws do not prohibit it.[29]

2. Forced/compulsory labour elimination

This core standard is promulgated in "C029 - Forced Labour Convention, 1930 (No. 29)" and "C105 - Abolition of Forced Labour Convention, 1957 (No. 105)", below C029 and C105 respectively.

In essence, C029 requires that members must undertake steps to eradicate forced/compulsory labour in employment (hereafter referred to as "forced labour"). This Convention also defines the phenomenon as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[30] Numerous exceptional situations are made, such as for labour in prison, given that "the said person is not hired to or placed at the disposal of private individuals, companies or associations".[31]

In C105, member states agree not to use forced labour for "political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system".[32] Furthermore, forced labour is prohibited for economic growth, discipline in the workplace, retaliation for strike participation, and other purposes

[26] Art 1 of 1949 on the C098.
[27] Art 2 of 1949 on the C098.
[28] Art 4 of 1949 on the C098.
[29] Art 6 of 1949 on the C098.
[30] Art 2 of 1930 on the C029.
[31] Art 2 of 1930 on the C029.
[32] Art 1 of 1957 on the C105.

also listed in this Convention.[33]

3. Effective child labour abolition

This core standard is set forth within "C138 - Minimum Age Convention, 1973 (No. 138)" and "C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)", also known as C138 and C182 in their own right.

According to C138, each participant must work towards a national policy that will finally put an end to child labour.[34] Furthermore, rules should be formulated to raise the entry-level employment age to one that is in line with children's maximal physiologic and cognitive maturation. The age specified in C138 shall not be less than the age at which obligatory education is completed and in no event shall be less than 15 years of age.[35] Work that poses a risk to minors' health, safety, or morals either because of what it is or how it is done requires a worker to be at least 18 years old.[36] Numerous exemptions are built into this Convention; for instance, less developed countries may establish their own minimum ages at 14 or restrict the range of applicability of this Convention.[37]

Besides, C182 mandates nations to adopt "immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour".[38] Children are referred to those younger than 18 years of age.[39] All kinds of slavery, as well as the employment, procurement, or offering of young people for unlawful purposes, and activity deemed probably to have an impact on the safety, health, or morality of minors, fall under the umbrella term "worst forms".[40]

4. Elimination of employment and occupational discrimination

C100, known as "C100-Equal Remuneration Convention, 1951 (No. 100)" and C111, also known as "C111-Discrimination (Employment and Occupation) Convention, 1958 (No. 111)", are two conventions that codify this principle.

In C100, members are strongly encouraged to employ the equal remuneration to their policies. Remuneration here includes "the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising

[33] Art 1 of 1957 on the C105.
[34] Art 1 of 1973 on the C138.
[35] Art 2 of 1973 on the C138.
[36] Art 3 of 1973 on the C138.
[37] Art 2 of 1973 on the C138.
[38] Art 1 of 1999 on the C182.
[39] Art 2 of 1999 on the C182.
[40] Art 3 of 1999 on the C182.

out of the worker's employment".[41] Besides, equal remuneration "refers to rates of remuneration established without discrimination based on sex".[42] C100 is not about to apply to differential rates of remuneration between workers that correspond to distinctions determined by objective evaluation on the job.[43]

On the other hand, discrimination referred to in C111 includes "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".[44] It further states that discrimination will not be found to have occurred if a person is treated differently because of their failure to meet the "inherent requirements" of a particular job.[45] Members are tasked with pursuing a national strategy that advances workplace fairness for all.[46]

IV. A COMPARISON OF VIETNAMESE LABOUR LAW AND ILO CORE LABOUR STANDARDS

With the basis provided by Section III, this section is to compare contemporary labour law in Vietnam with ILO core labour standards and eventually point out the limitations and inconsistencies in Vietnamese labour law that would require further amendments and supplements in the long run.

1. Freedom of association and effective recognition of collective bargaining rights

In terms of C087,[47] one of the milestones in Vietnamese labour law is that the new Labour Code 2019, for the first time, officially recognises the circumstance in which, besides the traditional union trade, employees' organisations at enterprises could be established in the scope of industrial relations.[48] It means that workers have rights to form, join and operate multiple representative organisations of their own at the enterprise level instead of selecting only trade union to

[41] Art 1 of 1951 on the C100.

[42] Art 1 of 1951 on the C100.

[43] Art 3 of 1951 on the C100.

[44] Art 1 of 1958 on the C111.

[45] Art 1 of 1958 on the C111.

[46] Art 2 of 1958 on the C111.

[47] This is the only one outstanding fundamental convention that Vietnam has not ratified yet, but under the context of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998, the obligations to respect, promote, and realise fundamental rights enshrined in all eight fundamental labour conventions mentioned above remain.

[48] Art 3 of 2019 on the Labour Code.

as usual. Although the Labour Code 2019 makes it easier for employees to fulfil the freedom of association enshrined in C087, several limitations inconsistent with this Convention should be considered. Firstly, the level of employees' representative organisations is only recognised at the grassroots level and which is much narrower than the nature of freedom of association in C087.[49] Secondly, the operation of employee representative organisations would somehow be more restricted than the C087 guide. While this Convention provides flexible ways to run an organisation of employees without previous authorisation,[50] the Vietnamese Labour Code 2019 requires obligatory registration procedures for establishing employees' organisations at the workplace.[51] And because there has been a lack of guiding documents from the government to establish them up until now, it is believed that Vietnamese labour law now possibly limits the right to organise of employers in this country to some extent.[52]

Regarding C098, on the one hand, the new Labour Code sets the foundation for employees' representative organisations to exercise the right to collective bargaining by providing two safeguards to protect them and their members from employer discrimination and intervention.[53] Additionally, the Code makes introductions to collective bargaining for enterprises with multiple employee representative organisations.[54] On the other hand, in comparison with C098, Vietnamese labour law reveals inconsistencies in some essential aspects. Firstly, given the scope of application of C098, this is to enable and promote free and voluntary collective bargaining besides representative organisations of workers' own choosing at all levels, whereas the 2019 Labour Code includes provisions on its scope of application[55] and anti-union discrimination and interference,[56] which refer only to workers' representative organisations at the grassroots level. It means that the rights provided by C098 are not assured to workers' organisations at all levels as well as their members under Vietnamese labour law.[57] Secondly, there is a big legal gap in the regulation of the minimum threshold of representativity regarding collective bargaining at the enterprise level and sectoral bargaining. Accordingly, the Labour Code 2019 refers to a minimum membership requirement to bargain collectively at enterprises without, however, elaborating on the required threshold.[58] Similar to this, at the sectoral bargain-

[49] Art 2 and 5 of 1948 on the C087.
[50] Art 2 and 7 of 1948 on the C087.
[51] Art 170 and 172 of 2019 on the Labour Code.
[52] Nguyen, Xuan T. – Nguyen, T. D. – Nguyen, Xuan H., 2022, 80.
[53] Art 175, 176 and 177 of 2019 on the Labour Code.
[54] Art 68, 69 and 70 of 2019 on the Labour Code.
[55] Art 1 of 2019 on the Labour Code.
[56] Art 175, 176 and 177 of 2019 on the Labour Code.
[57] ilo.org: Direct Request: Right to Organise and Collective Bargaining Convention (No.98) – Viet Nam, 2023.
[58] Art 68 of 2019 on the Labour Code.

ing level, the decree on the minimum requirements to participate in collective bargaining where more than one workers' organisation seeks to participate in such bargaining is unclear.[59] These may act as an obstacle to workers and their organisations when enforcing collective bargaining rights, especially for foreign workers in Vietnam.

2. Forced/compulsory labour elimination

When it comes to this core labour standard, numerous provisions of C029 and C105 are codified in Vietnamese labour law. The 2019 Labour Code, most prominently, defines forced labour as "coercive labour means the use of force or threat to use force or other tricks to force an employee to work against his/her will".[60] In addition, the Code prohibits forced labour exploitation by employers and grants employees the right to work as well as the freedom to choose their employment.[61] Employees also have the right to end their employment contracts unilaterally and without warning,[62] even if they are required to work. Besides that, the 2019 Labour Code also discloses contemporary limits compared to C029 and C105. Firstly, Vietnamese law recognises the aforementioned term forced labour in the way employers force workers to perform certain work contrary to their will, resulting in a "forced labour" situation.[63] As such, the forced labour concept seems applicable only to those who participate in labour engagement and therefore, those who do not may be disregarded.[64] Whereas, C029 gives a definition of "forced labour" as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[65] Here, "any person" could refer to anyone, regardless of their gender or employment status.[66] Secondly, if the Vietnamese Labour Code just mentions "forced labour" as "the use of force or threat to use force or other tricks" without a detailed explanation, other behaviours such as excessive overtime, withholding of wages, retention of identity documents, debt bondage, abusive working/living conditions, intimidation/threats, physical/sexual violence, isolation/restriction of movement/mobility, deception/abuse of vulnerability might be considered as all forced labour in-

[59] ILO.org: Direct Request: Right to Organise and Collective Bargaining Convention (No.98) – Viet Nam, 2023.
[60] Art 3.7 of 2019 on the Labour Code.
[61] Art 5 and 8 of 2019 on the Labour Code.
[62] Art 35 of 2019 on the Labour Code.
[63] lsvn.vn: Completing 'forced labour' regulations, 2020.
[64] Phan, 2015, 20.
[65] Art 2 of 1930 on the C029.
[66] Nguyen, 2016, 4.

dicators of C029.[67] Thirdly, regarding the specification of exceptional cases of forced labour including cases of emergencies, the national labour code provides that the employer has the authority to require employees to work overtime at any time and employees could not refuse such work if the work is to implement a conscription request for the reasons of: (i) national security or national defence in emergency situations; (ii) preventing and recovering from natural calamities, fires, epidemics, and disasters; (iii) executing duties to protect human life or assets owned by organisations, agencies, or individuals.[68] However, as reflected in the Observation Report adopted in 2020, the Committee of Experts on the Application of ILO Conventions and Recommendations (CEACR)[69] indicated the scope of labour regarding this case is beyond the one of C029 Article 2.2.d in emergency cases, which only allows forced labour in cases of these situations, especially during special times like wars or natural disasters or the danger of natural disasters, and in situations where the safety of part or all of humanity would be in danger.

3. Effective child labour abolition

In comparison with C138, the Labour Code 2019 strictly follows the Convention guidance as playing a significant role in protecting "minor workers" who are under the age of 18[70] in both the official and unofficial spheres without employment relations.[71] The Code maintains protections for minors' right to work and sets forth detailed guidelines for their employment, including age-based distinctions in the types of labour they can do, where they can do it, and how many hours they can put in, including three main groups of minor workers: those aged under 13, from 13 to under 15, and from 15 to under 18.[72] Additionally, the Labour Code calls for state agencies, parents and guardians to play roles in supervising and protecting workers aged under 13.[73] These exactly match the C138 instructions,[74] therefore setting a foundation in Vietnamese labour law to help young people have the fullest physical and mental development as required in Article 1 of this Convention.

In comparison to C182, Vietnamese legislation promulgates provisions not only in the Labour Code but also in the Criminal Code so as to prohibit and

[67] ILO, 2013.
[68] Art 108 of 2019 on the Labour Code.
[69] ILO.org: Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021) – Vietnam, 2021.
[70] Art 143 of 2019 on the Labour Code.
[71] ILO, 2020, 2.
[72] Art 143 and 145 of 2019 on the Labour Code.
[73] Art 144 of 2019 on the Labour Code.
[74] Art 2, 3, 7 and 8 of 1973 on the C138.

eradicate child labour in its worst forms. Specifically, the 2019 Labour Code introduces principles of employment for minor workers that guarantee that in order to further guarantee that their physical, mental, and personality development would be respected, and they may only conduct jobs that are suitable for their health conditions.[75] Otherwise, employers may be charged fines when they have violations against regulations on minor workers (Article 29, Decree No. 12/2022/ND-CP dated January 17, 2022 on "Penalties for administrative violations against regulations on labour, social insurance, and Vietnamese guest workers"). It is noteworthy that the 2015 Criminal Code (amended in 2017) applies penal sanctions for the person who commits the crimes, especially on the employment of a person aged under 16 for pornographic purposes or the trafficking of a person aged under 16.[76] These regulations relatively fit C182 well in all core provisions; however, a lack of a "child labour" definition in Vietnam still remains, which leads to a legal gap in terms of C182. "Child labour" is now indirectly understood as anyone aged under 16 participating in the employment market and is also part of minor workers, due to contemporary legal documents in this country.[77] This may be inconsistent with the "child" definition in C182,[78] in which a child is known as someone under 18. As a consequence, workers in Vietnam between the ages of 16 and 18 are not often protected by child labour laws and may not receive protections that are in line with international standards for child employment.[79]

4. Elimination of employment and occupational discrimination

When compared with C100, the 2019 Labour Code also warrants that employees of both genders who perform the same or similar work must be paid the same wage, regardless of their gender,[80] in accordance with C100.[81] And besides, the Code clarifies the principles enshrined in C100[82] by following provisions, such as a wage scales formulation, wage tables and labour norms; the principles of wage payment; and wage payment.[83] It is undeniable that workers, no matter what their genders are, would be paid equally and impartially based on fundamental criteria according to Vietnamese labour law. Otherwise, employers may be fined for neglecting to pay equal wages or discriminating against

[75] Art 144 of 2019 on the Labour Code.
[76] Art 147 and 151 of 2019 on the Labour Code.
[77] Nguyen – Ngo, 2022, 137.
[78] Art 2 of 1999 on the C182.
[79] Nguyen, Xuan T. – Nguyen, T.D. – Nguyen, Xuan H., 2022, 80.
[80] Art 90 of 2019 on the Labour Code.
[81] Art 1 of 1951 on the C100.
[82] Art 2 and 3 of 1951 on the C100.
[83] Art 93, 94 and 95 of 2019 on the Labour Code.

employees of the same gender who perform equal work, as the aforementioned Decree No.12/2022/ND-CP in Article 17.1.

Furthermore, by comparison to C111, the 2019 Labour Code adds five new prohibited discrimination grounds to those already enshrined in the former 2012 Labour Code,[84] namely "national origin", "age", "pregnancy status", "politics", and "family responsibilities".[85] These are almost based on the clarification of "discrimination" as C111 promulgates in Article 1. And following Article 2 of C111, Vietnamese labour law has undergone a significant change and revolution in terms of the way to approach vulnerable worker's rights to work, from the provisions that allow female workers, workers with disabilities, or elderly workers to make their own decisions on whether or not to carry out the specific work to the ones that strengthen these worker groups protection, especially female workers at the workplace, by humanitarian rules on reinforcing gender equality or sexual harassment prevention.[86] However, besides the positive traits of revolution, there are still limitations in the 2019 Labour Code that should be reconsidered to make the Code consistent with C111. Firstly, there are no official legal documents to make sure that the understanding of grounds of "politics" and "national origin" in the 2019 Labour Code[87] accords with the justifications of "political opinion" and "national extraction" promulgated in C111.[88] Secondly, the way that the Labour Code regards "gender" as a discriminatory factor does not truly convey the meaning of "sex" promulgated in C111 as ILO instructions and international norms from countries around the world.[89]

V. RECOMMENDATIONS FOR FUTURE REFORMS IN VIETNAMESE LABOUR LAW IN LIGHT OF THE EVFTA

Despite recent amendments and supplements to Vietnamese labour law, specifically in the new 2019 Labour Code, to fulfil labour commitments required in the EVFTA and further in ILO core labour standards, it is proven that the current Labour Code has outstanding limitations inconsistent with ILO fundamental conventions, so that the Vietnamese government should reconsider and accelerate the reform of labour laws in the future, as following points:

Firstly, Vietnamese labour law should facilitate the employees' rights to organise and collective bargaining at the highest level that C087 and C098 require.

[84] Art 3 of 2019 on the Labour Code.

[85] Committee of Experts on the Application of Conventions and Recommendations (CEACR), 2022, 612.

[86] Nguyen, Xuan T. – Nguyen, T.D. – Nguyen, Xuan H., 2022, 80.

[87] Art 3 of 2019 on the Labour Code.

[88] Art 1 of 1959 on the C111.

[89] ILO, 2007, 42-43.

As discussed earlier, these rights are mostly recognised at the grassroots level in Vietnam, alongside many mandatory registration rules and unspecific guidelines in the minimum threshold of representativity that become a big challenge for workers when they exercise these fundamental rights. So it is believed that these Vietnamese government needs to expand and clarify the scope of application of C087 and C098 at all levels in the domestic labour law and provide updated and necessary legal guiding documents in order to make these workers' rights accessible.

Secondly, the "forced labour" definition in the 2019 Labour Code should be readjusted so as to approach it more closely to the one enshrined in C029 and C105. This concept encompasses three fundamental conditions: "work or service"; "menace of any penalty"; and "voluntary".[90] It would possibly be referred to as "the situation in which a person is forced by another to impose work under the threat of possible adverse consequences for himself/herself or his/her relatives".[91] Moreover, to close the gap, a range of indicators should be classified into typical identification signals/cases based on the eleven ILO's indicators for forced labour, including: (i) employers take advantage of their employees' vulnerability; (ii) employers deceive their employees into joining and/or performing contractual relationships with them; (iii) employees are isolated and in a restricted movement; (iv) employees are threatened by their employers; (v) employers put their employees in a position of subordination and make them do required tasks by withholding their ID or wages or using indirect methods; (vi) employees are regularly and constantly forced to work excessive overtime; (vi) employees suffer physical and sexual violence by their employers. In addition to this, the Vietnamese law should be amended to narrow down the exceptional cases of forced labour. As explained above, the scope of emergency in the Vietnamese Labour Code seems unlikely to meet the characteristic of Article 2.2.d under C029; thus, national legislation should make a more appropriate adjustment to the Convention that permits forced labour to be exacted only in cases of emergency, according to the literal meaning of the phrase, particularly occurrences of war or (threatened) calamity, and also generally, any situations that might jeopardise the survival or the general or specific well-being of the population.

Thirdly, instead of just having definitions of "child" (a person under 16) in the Law on Children 2016, Article 1, and "minor workers" (a person under 18) in the Labour Code 2019, it is necessary to introduce an official "child labour" definition in Vietnamese labour law as C182 requirements. Accordingly, "child labour" encompasses the employment of workers aged under 18. By doing so, this not only makes the Vietnamese labour law in line with fundamental labour standards on child labour but also helps this group mature and avoid exploitation from the employers that may have a serious effect on the workforce in the future.

[90] Ollus, 2015, 228.
[91] Nguyen, 2016, 6.

Fourth, technically, the Vietnamese government should provide formal legal documents confirming that the "politics" and "national origin" grounds included in the Labour Code 2019 are equivalent to the respective ones of "political opinion" and "national extraction" stated by C111. In a similar way of approach, the discriminatory factor "gender" in this Code needs to be amended as "sex" or "sexual orientation," like the way many countries have selected in order to follow ILO guidelines and learn from the experiences of country members,[92] even international organisations, for instance the EU, in the Chapter of Fundamental Rights.[93]

VI. CONCLUSION

In order to fulfil the EVFTA's labour commitments, first and foremost, Vietnam needs to perfect the law, especially labour law, to ensure the requirements of ILO fundamental conventions. By making comparisons with these conventions, the study figures out limitations in Vietnamese labour law, mostly focusing on regulations related to C087, C098, C029, and C105, and the minor ones need to be reconsidered on provisions related to C182 and C111. Bear in mind that the step to improve Vietnam's labour law on paper in order to make it compatible with core labour standards in those fundamental conventions is just the first obligatory procedure that this country has to accomplish to adhere to the EVFTA labour commitments. The further obligation to warrant that the implementation of these provisions is effective in practice really costs a lot of time and effort to observe and research. It also means that the internalisation of international norms as ILO core labour standards in fundamental conventions and making domestic labour law effective with regard to these standards are parallel. This imperative is not only for Vietnam but also for other EU partners in the future when participating in EU free trade agreements, so as to ensure that trade liberalisation leads to economic growth and higher labour standards,[94] and consequently contributes to the attainment of sustainable development goals.

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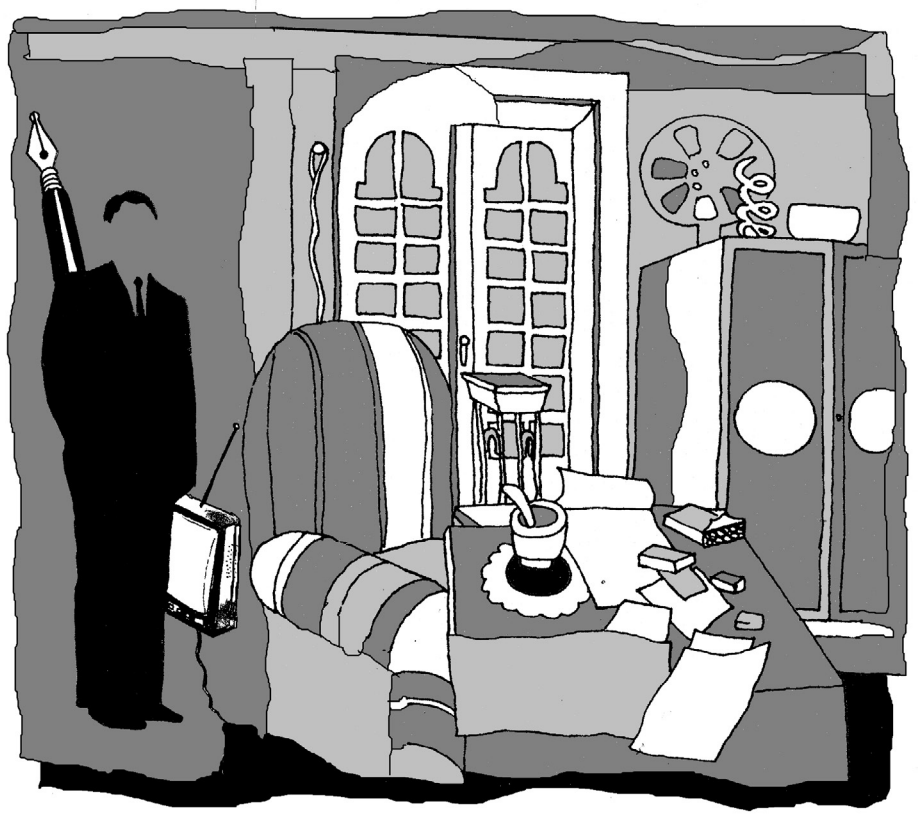

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