

THE REQUIREMENTS TO MEET BASIC INTERNATIONAL LABOR STANDARDS FOR THE PROTECTION OF EMPLOYEES' RIGHTS UNDER THE COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP

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ABSTRACTS:

This paper analyzes and clarifies the basic international labor standards mentioned in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) which Vietnam and other member countries of this agreement have made commitment and enforced to protect the basic rights of employees. This paper also analyzes the factors affecting the enforcement of laws on the protection of employees' rights according to basic international labor standards.

Keywords: basic international labor standards, employees rights, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

1. Introduction

In recent years, joining new-generation Free Trade Agreements (FTAs) has been a trend of countries around the world. Participation in FTAs, on the one hand, has brought member countries favorable opportunities in creating driving force for socio-economic development, expanding export markets, and creating jobs for employees, improving people's material life, etc. On the other hand, with non-commercial commitments (such as on environment, labor, public procurement, etc.), member countries must make changes in legal regulations to meet the requirements and demands from these FTAs.

Particularly for the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in the field of labor, the issue

of labor rights and protection of employees' rights has been recognized in Chapter 19 of the CPTPP Agreement¹. This FTA did not introduce new labor rights but it only reiterated the labor rights stated in the 1998 Declaration with eight core conventions (Core/Fundamental Convention) of the International Labor Organization (ILO), widely accepted on a global scale. Accordingly, each party adopts and maintains the rights set forth in the ILO Declaration on Fundamental Principles and Rights at Work² in its laws and regulations as well as in the implementation of such laws and regulations in its country. This declaration has identified four fundamental principles and rights of employees, corresponding to the four pairs of core ILO conventions.

Although there are different names such as core

labor standards, fundamental principles and rights, internationally recognized labor standards, human rights labor conventions, the basic international labor standards have been developed by the ILO, reflected in its conventions, which are considered core conventions on employees' rights, valid for all member countries, especially for ratifying countries.

In essence, the basic international labor standards are regulations on working conditions established in certain forms as the basis for the construction and operation of labor relations. The basic international labor standards are introduced with different political, economic and social purposes. But the main driving force is to promote the improvement of working conditions and the implementation of basic principles of the Law on Labor³. Countries that have ratified conventions and recommendations or not can still transform the spirit of the ILOs documents into their national legislation, with the aim of protecting employees' legitimate rights and interests and creating conditions for building progressive, harmonious and stable labor relations.

2. Basic international labor standards required by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership on the protection of employees' rights

The CPTPP was formerly known as the Trans-Pacific Partnership Agreement (TPP)⁴. Like the previous TPP, the CPTPP affirms its obligations as a member of the ILO, including those outlined in the 1998 ILO Declaration relating to labor rights in its territory and recognizes that labor standards may not be used for trade protectionism purposes⁵. The basic international labor standards mentioned in the CPTPP Agreement are shown in the following contents:

2.1. Protecting the right to freedom of association and substantive recognition of employees' right to collective bargaining

2.1.1. About the right to freedom of association

The right to freedom of association (also known as freedom of association) of employees is exercised through the activities of labor representative organizations. Basically, the representative organization of the employees is established by the employees on the basis of the principle of freedom, voluntariness, and not against

the law, with the main function of representing and protecting the legitimate rights and interests, and worthy for employees. The establishment of employees' representative organization is a major movement in the world, appearing in Europe at the beginning of the nineteenth century when the employees had a need to be protected against the power of the employers and they were aware of the value of collective strength⁶. At the national level, employees may establish one or more of their representative organizations, depending on the extent to which the freedom of association of employees is recognized by national law. In countries that do not support to political pluralism, there is often a single type of organization representing employees. In contrast, in countries that favor pluralism, there are often different types of organizations representing different groups of employees.

On the international level, the representative organizations of employees have the right to join the representative organizations of employees in the region and at the international level⁷. Thus, it can be seen that the labor representative organizations were born from the actual need to protect the legitimate rights and interests of employees. The recognition and protection of employees through representative organizations in different countries depend on the political regime, legal policies, and socio-economic conditions of each country.

The ILO stipulates the right to organize in the Convention No.87 on Freedom of Association and Protection of the Right to Organise Convention and the Convention No.98 on Right to Organise and Collective Bargaining Convention. Accordingly, the ILO recognizes that employees and employers have the right to participate in the establishment and membership of trade unions, in accordance with their charter of trade unions to promote and protect their interests. The Convention No.87 provides: (i) Employees and employers, without distinction of any kind, do not have to ask for prior permission but still have the right to organize and join organizations of their choices, with the only condition which is to comply with the organization's own charters (Article 2); (ii) Employees' and employers' organizations have the right to establish their own charters and management rules, freely elect their representatives, organize the

administration of their activities, and draw up their program of activities. The competent authorities must avoid any interference of a nature that would restrict that right, or impede the lawful exercise of that right (Article 3). In general, the right to form and join trade unions is voluntary of employees.

2.1.2. Substantive recognition of employees' right to collective bargaining

Collective bargaining has long been proven to be an important and effective means of building agreements to protect jobs and working conditions for employees, and to create conditions for businesses to adjust their production and business activities which adapt to changes in economic circumstances while still complying with and protecting and ensuring basic labor rights⁸. Collective bargaining plays an important role in the existence and development of labor relations, because collective bargaining is the "heart" of a healthy labor relationship and a successful labor market because it is a tool to determine working conditions and employees using at the enterprise, create conditions for the labor relations to develop in a harmonious, healthy and sustainable manner, balancing the interests of the parties. At the same time, it contributes to the prevention, limitation and settlement of labor disputes arising in labor relations⁹. It can be seen that the role of collective bargaining aims to balance the position of employees with employers in labor relations; improving salary and working conditions, ensuring the principle of equality in all aspects, enhancing the stability of labor relations, and at the same time, being an effective measure to effectively limit and resolve conflicts, disputes in labor relations.

On the ILO's side, this organization believes that collective bargaining is a process of negotiation and discussion between two parties, the employer and the representative of the workers' collective, on issues of interest related to economic and social policies. The above understanding of the ILO shows that collective bargaining only exists when there are employees, employers and their representative organizations. That shows that employees and employers only exist when there is a system of labor relations in the market economy, but not in an agricultural society without modern labor relations or modern labor relations which have not yet developed at a certain high level¹⁰.

2.2. Elimination of all forms of forced and compulsory labor

In international law, forced or compulsory labor is any work or service that a person is forced to do under the threat of any penalty and that the person does not voluntarily perform¹¹. The laws of most countries in the world say that forced labor is an illegal form of labor that is prohibited and eliminated by law. All forms of forced labor are condemned, violations of the law on forced labor can be handled, and subjects who violate the provisions of the law on forced labor can be held legally responsible at different levels.

Protecting the rights of employees in the fight and prevention of forced labor is considered a central content in national legal policies to improve working conditions for employees. It shows that the abolition of forms of forced labor is the efforts of countries in building a progressive, harmonious and stable labor relations on the basis of respecting the legitimate rights and interests of the parties involved Labor relations, in line with international standards, are one of the bases for maintaining the political and social stability of the country - a prerequisite for promoting economic development and attracting FDI foreign investment. And that is even more meaningful in the current international context, when the basic international labor standards are highly valued, humanism values, human rights, and rights of employees are focused and considered mandatory regulations, not indispensable in new generation FTAs, including the CPTPP that member countries commit to and implement.

2.3. Effective elimination of child labor, prohibition of the worst forms of child labor

Child labor is a global social issue and is always a hot topic in the world, attracting the attention of international organizations and progressive countries around the world. The abuse of child labor always leaves very serious consequences and corollaries, depriving children of the opportunity to develop to their fullest potential, greatly affecting their physical and mental health, adversely affecting the sustainable development of society, the future of each country and nation.

In order to protect children, the United Nations as the largest organization in the world adopted the Convention on the Rights of the Child (1989), and the ILO adopted the Convention No.138 on the minimum working age - in 1973 and the

Convention No.182 on the Prohibition and Urgent Action to Eliminate Bad Forms of Child Labor in 1999. These are important legal documents that form the basis for the protection of the basic rights of children, prevent and eliminate child labor, and prohibit bad forms of child labor. Effectively eliminating child labor and banning the worst forms of child labor are one of the "standards" in the labor sector that new-generation FTAs, including the CPTPP, require members to comply with and implement. This must be followed and implemented. In the context of globalization that is taking place strongly and deeply today, the birth of FTAs is one of the clear proofs for the trend of globalization and international economic integration of countries. The basic international labor standards are considered as mandatory and indispensable contents in the content of FTAs, in which the standard on child labor protection and elimination of all bad forms of child labor are always considered one of the "core" standards in the basic international labor standards.

2.4. Elimination of discrimination in employment and occupation

Creating decent jobs for all as well as equal distribution of income for employees is considered the center of all socio-economic policies of countries. However, discrimination in opportunities and treatment in employment and occupation is common in most countries around the world. That comes from many different reasons such as legal regulations, customs, negative impacts of the labor market, even prejudices in society¹². Discrimination in labor relations is quite common in the world. Struggling to ensure equality and ending all discriminatory acts in employment and occupation against employees are important goals and tasks in the process of building a progressive, harmonious and stable labor relationship, protecting the legitimate rights and interests of employees.

The ILO also adopted the Convention No.111 on Discrimination in Employment and Occupation in 1958. Accordingly, discrimination is considered: "Any distinction, exclusion or preference based on race, color, sex, religion, political opinion, national origin or social origin, which has the effect of eliminating or impairing equality of opportunity or treatment in employment or job"¹³. Ending discrimination in labor and profession is necessary. On the one hand, it ensures equal rights of

employees in labor relations, a fundamental right in labor law. On the other hand, ending discrimination contributes to improving labor productivity; improving the material and spiritual life of employees; contributes to improving and stabilizing labor relations, creating motivation to promote progress, fairness and equality in society. Ending discrimination in labor and employment is considered to be one of the Basic International Labor Standards which are referred to by the CPTPP and obligatory for member countries to commit to and enforce.

3. Factors affecting the implementation of legislation on the protection of employees' rights in accordance with basic international labor standards mentioned in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

3.1. Political factors

Politics and law are important components of the social superstructure based on certain infrastructures. Politics is expressed in the lines and policies of the State, parties and legal documents. Law is the most concentrated, direct and specific form of expression of the ruling party's lines and policies compared to other forms of expression. Thanks to the law, the ruling party's lines are disseminated on a society-wide scale in the form of universally binding codes of conduct and secured by appropriate state measures¹⁴. In essence, the CPTPP is an international treaty, expressed through a specific form, an agreement¹⁵ signed between countries and valid for member countries, including Vietnam.

For member countries, participating in FTAs, in addition to complying with conditions in the trade sector, must also comply with and enforce other non-commercial standards, notably international labor force on the protection of employees' rights through the Basic International Labor Standards. It can be seen that the political factor has a great and direct impact on the implementation of the law on the protection of employees' rights to meet the requirements of the basic international labor standards mentioned in the CPTPP. However, countries should also thoroughly and carefully consider ratifying or acceding to ILO conventions, including core conventions, so that the accession is in line with their conditions, characteristics and for the national interest¹⁶.

3.2. Socio-economic factors

Assessment of the impact of the CPTPP on socio-economic factors can see a double-acting relationship. On the one hand, together with the influence of other FTAs, the CPTPP will have great and far-reaching impacts on many aspects of socio-economic life such as contributing to creating driving force for economic development, attracting foreign investment; creating new business opportunities, expanding markets and business environment for Vietnamese enterprises; contributing to protecting human rights, reforming the national political institution towards democracy, openness, transparency, etc. On the other hand, socio-economic factors have an impact on the implementation of the commitments of the CPTPP in general and the protection of employees' rights in particular. Those socio-economic factors are the market economy mechanism, the economy's competitiveness, national governance capacity, labor force and human resource quality, etc. or other enforcement capacities to comply with and operational capacity to meet the rigorous and very demanding conditions of an agreement that is considered "comprehensive" and "progressive" like the CPTPP. This is completely true with the assumption that once the economy and society develop, human rights, especially economic, social and cultural rights will be better guaranteed¹⁷.

3.3. Legal factor

Like other social relations, the law has a direct impact and is considered an effective "means" to influence the implementation of legal contents on the protection of employees' rights as required by the CPTPP. By their international commitments, Vietnam and other member countries are obliged to respect and ensure the implementation of commitments in the implementation of international labor standards of the ILO, in particular Labor standards which are outlined in the 1998 ILO Declaration, which is widely recognized globally. Those international labor standards are recognized as fundamental and core rights of employees, which countries are obliged to "adopt" and "maintain" in order to ensure the implementation of the agreed and committed contents. With the basic goal of substantive and effective protection of the basic rights of employees. Thus, it can be seen that the law is an important and necessary tool and has a direct

impact on the implementation of the law on the protection of employees' rights according to the Basic International Labor Standards, meeting the requirements of CPTPP Agreement.

3.4. Law enforcement factors of the subjects

In order for the protection of employees' rights to meet the requirements, according to the Basic International Labor Standards of the CPTPP, it requires the participation of many different actors. The subjects responsible for the implementation of this mission can be the State through competent state agencies, organizations representing employees, employers and employees themselves. In which, it can be seen that the main actors are the State and the employers.

For the State, this is the central subject, the State has the function and obligation to protect social relations by promulgating legal norms and applying protection regulations according to certain legal procedures for violations of the law¹⁸ in order to ensure social relations in an intentional "order" of the State. Therefore, for the protection of employees' rights, the State will play an important and decisive role in the content of this issue.

4. Conclusion

Currently, along with the process of extensive international economic integration, Vietnam has signed and joined many new-generation FTAs. One of the agreements that will have a great impact on the socio-economic development of Vietnam in the near future is the CPTPP. This is considered a "comprehensive and progressive" free trade agreement with strict standards, which not only deals with traditional trade areas but also regulates non-commercial and non-traditional issues, in which there are Basic International Labor Standards in the field of labor with the aim of protecting employees' basic labor rights, in the spirit and content of the 1998 ILO Declaration, with the foundation of eight fundamental and core conventions of this organization which are "referenced" by CPTPP member countries and are binding on member countries.

This requires that the protection of employees' rights in the provisions of the laws of the member countries of the CPTPP in general and Vietnam in particular must be compatible, consistent and responsive to the basic international labor standards mentioned in this agreement, which becomes more necessary than ever ■

ENDNOTE:

¹The CPTPP Agreement was signed on March 08th, 2018 in Santiago - Chile and officially took effect on December 30th, 2018.

²Article 19.3 - CPTPP Agreement.

³Luu Binh Nhung. (2006). The regulation of labor standards in Vietnam. *Jurisprudence Journal*, 2, 46.

⁴The CPTPP Agreement with the participation of 11 members including Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. CPTPP was officially signed on March 08th, 2018 in Santiago, Chile. On November 02nd, 2018, the National Assembly of Vietnam ratified the new-generation FTA and this agreement came into force in Vietnam from January 14th, 2019.

⁵Article 19.2 - CPTPP Agreement.

⁶Nguyen Quang Quynh. (1972). *Law on Labor and Social Security*, Sai Gon, 1972.

⁷Le Thi Hoai Thu. (2018). Completing the law on labor representative organizations when Vietnam joins the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. *Science Journal of Vietnam National University, Hanoi: Jurisprudence*, 34(4), p.33.

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⁹Pham Thi Thuy Nga. (2019). *Completing the law on collective bargaining in the current integration context in Vietnam*. Hanoi: Social Science Publishing House.

¹⁰Pham Thi Thuy Nga. (2019). *Completing the law on collective bargaining in the current integration context in Vietnam*. Hanoi: Social Science Publishing House.

¹¹Clause 1, Article 2 of ILO Convention 29 - 1930.

¹²Tran Thi Thuy Lam. (2011). *Convention on Discrimination in Employment, Occupation and Internalization in Vietnamese Labor Law*. *Jurisprudence Journal*, 1, 25.

¹³Clause 1, Article 1, Convention No. 111.

¹⁴Hoang Thi Kim Que. (2005). *General theoretical textbook on State and law*. Hanoi: Publishing House of Vietnam National University.

¹⁵Clauses 1, 2 - Article 2 - Law on International Treaties 2016.

¹⁶Le Thi Thuy Huong. (2019). On the possibility of implementing labor commitments in the free trade agreement and some challenges for Vietnam. *Vietnam's new-generation FTAs*. *Vietnam Legal Science Journal*, 03(124), 44.

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CÁC YÊU CẦU VỀ TIÊU CHUẨN LAO ĐỘNG QUỐC TẾ CƠ BẢN ĐỂ BẢO VỆ QUYỀN LỢI CỦA NGƯỜI LAO ĐỘNG THEO HIỆP ĐỊNH ĐỐI TÁC TOÀN DIỆN VÀ TIẾN BỘ XUYÊ THÁI BÌNH DƯƠNG

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TÓM TẮT:

Bài báo này phân tích và làm rõ các tiêu chuẩn lao động quốc tế cơ bản được đề cập đến trong Hiệp định Đối tác Toàn diện và Tiến bộ xuyên Thái Bình Dương (CPTPP) mà Việt Nam và các nước thành viên khác đã cam kết thực hiện nhằm bảo vệ các quyền cơ bản của người lao động. Đồng thời, bài báo cũng phân tích các nhân tố ảnh hưởng đến việc thực thi các quy định pháp luật về quyền của người lao động theo các tiêu chuẩn quốc tế.

Từ khóa: tiêu chuẩn lao động quốc tế cơ bản, quyền của người lao động, Hiệp định Đối tác Toàn diện và Tiến bộ xuyên Thái Bình Dương (CPTPP).