

COMPARATIVE LABOUR CASE LAW - 1

COORDONATED BY
ALLISON FIORENTINO



EMPLOYMENT CASE LAW AND INTERNATIONAL LAW: COMPLEMENTARITY OR HOSTILITY?

EDITORIAL

The judge may be a creator of legal standards, either directly by setting a precedent or interpreting a text in a given direction. The judge-made law is not always synonymous with innovation. Sometimes the judge is confined to his role of “mouthpiece of the law”¹ to use the terminology of Montesquieu. When it is adopted by the national parliament, there will be no objection, but what about when the judge is compelled to apply a supranational text? Can, his obedience to a foreign law be sometimes tinged with suspicion and even hostility? This is the question that may arise in light of the case law of the British judge mainly in his apprehension of the European Convention on Human Rights (Article by Mrs Fiorentino, I).

But this pessimistic view of international law should not obscure the role that seems mostly play international law to the judge: that of an additional instrument in the arsenal of measures he can use to enhance the protection of employee or interpret an obscure legal provision. In Mexico, the ILO Conventions, the International Covenant on Economic, Social and Cultural Rights or the American Convention on Human Rights are increasingly used in the courts (article by Professor Sidnei Machado II).

Also in Turkey, the influence of international standards on labor law and specifically the trade union and the strike is undeniable (article by Professor Melda Sur, III).

The use of international law by the judge raises the question of the direct applicability of a foreign text. How can the judge set aside national law in favor of a supranational convention? In this respect, the example of Brazil is relevant. Brazilian judge has used a constitutional subterfuge to recognize the primacy to some ILO conventions on national legislation (article by Professor Patricia Kurczyn Villalobos, IV)

Finally this issue will benefit from lighting a specialist in international law who will give the ILO perspective on this subject (article by Mr. Xavier Beaudonnet, V)

¹ « *But the judges of the nation are, as we have said, only the mouth that pronounces the words of the law, inanimate beings who can moderate neither its force nor its rigor.* » C. de SECONDAT MONTESQUIEU, *Oeuvres complètes de Montesquieu*, Book XI, Chapter 6, Firmin Didot frères, 1838 p. 268.