

2021/4

REVUE DE DROIT COMPARÉ DU TRAVAIL ET DE LA SÉCURITÉ SOCIALE

STUDIES

- P. UPSON** How does brain-computer interface technology present challenges for labour law in New Zealand?
I. ZOPPOLI How to overcome the paradoxes of redundancy in France and Italy?
H. BARRETTO GHIONE The emergence of the concept of "due diligence" in labour law and the forms of its legal integration
M. MOHAN, M. BABU, S. PELLISSERY & K. BHARADKAR The pensions system in Italy: a continuous reform
L. COMPA The double standard at work: European Corporate investment and workers' rights in the American South

THEMATIC CHAPTER

NATIONAL LABOUR LAW AND SOCIAL SECURITY SYSTEMS THROUGH THE LENS OF THE COVID HEALTH CRISIS. ADAPTATIONS OR FUNDAMENTAL CHANGES? (Coordinated by Loïc LEROUGE)

- P. Andersson & T. A. Novitz** Risk Assessment and Covid-19: Systems at work (or not) in England and Sweden
C. Marzo A Franco-British comparison of attempts at social protection for platform workers in the light of the pandemic: towards a new balance between public and private actors?
G. Golding Unfair dismissal and the coronavirus pandemic: Creative responses from Australia's Fair Work Commission
E. Ales Social protection in Italy during the pandemic: A comprehensive and adaptive approach in the sign of continuity
C. Murphy & L. Ryan National labour law and social security systems through the lens of the Covid health crisis. Adaptations or fundamental changes?
L. Lamarche Unemployment in the age of Covid: Will the canadian unemployment insurance system survive the pandemic?

COMPARATIVE LABOUR CASE LAW

JUDICIAL CREATIVITY PUT TO THE TEST IN THE FACE OF NEW HEALTH PROBLEMS AT WORK (Coordinated by Allison FIORENTINO)

- A. SALA** The creativity of the judge faced with new health-at-work problems: the Japanese case of karōshi and karōjisatsu
A. FIORENTINO English case law to the test of mental health at work

INTERNATIONAL LABOUR CASE LAW

- M. DOHERTY** The « worker », EU Law, and collective bargaining
M. D'APONTE New technologies and respect for workers' privacy in the case law of the ECHR

COMPARATIVE LABOUR LAW LITERATURE

- C. Carta & G.-F. Moraru** Labour law beyond national borders: major debates in 2018-2019-2020

INTERNATIONAL LEGAL NEWS

AMERICA: USA - **ASIA-OCEANIA:** AUSTRALIA - **EUROPE:** REPUBLIC OF SERBIA / UNITED KINGDOM - **INTERNATIONAL ORGANIZATION:** UNITED NATIONS ORGANIZATION

Scientific Committee Members

N. Aliprantis (Grèce), G.-G. Balandi (Italie), U. Becker (Allemagne), U. Carabelli (Italie), J. Carby Hall (Royaume-Uni), A. Cissé Niang (Sénégal), L. Compa (États-Unis), W. Däubler (Allemagne), P. Davies (Royaume-Uni), M. Dispersyn (Belgique), S. Gamonal C. (Chili), A. O. Goldin (Argentine), Z. Góral (Pologne), M. Iwamura (Japon), J.-C. Javillier (France), P. Koncar (Slovénie), M. Nasr-Eddine Koriche (Algérie), A.-M. Laflamme (Canada), R. Le Roux (Afrique du Sud), A. Lyon-Caen (France), A. Monteiro Fernandes (Portugal), A. Montoya Melgar (Espagne), A. Neal (Royaume-Uni), R. Owens (Australie), C. Papadimitriou (Grèce), P.-G. Pougoué (Cameroun), M. Rodríguez-Piñero (Espagne), J.-M. Servais (Belgique), A. Supiot (France), M. Sur (Turquie), G. Trudeau (Canada), C. Vargha (Bureau International du Travail), M. Weiss (Allemagne), A. Zheng (Chine).

Director Editor

Philippe Martin, COMPTRASEC (UMR CNRS 5114), Université de Bordeaux.

Editor in Chief

Isabelle Daugareilh, COMPTRASEC (UMR CNRS 5114), Université de Bordeaux.

Associate Editor

Alexandre Charbonneau, COMPTRASEC (UMR CNRS 5114), Université de Bordeaux.

Editor

Marie-Cécile Clément, COMPTRASEC (UMR CNRS 5114), Université de Bordeaux.

Technical Realization / PAO

Corinne Blazquez, Maison des Sciences de l'Homme d'Aquitaine (MSHA).

Editorial Committee Members

Pablo Arellano Ortiz (Organisation Internationale du Travail - Université Pontifica de Valparaiso PUCV - Chili), Jérôme Porta (COMPTRASEC - Université de Bordeaux - France), Eri Kasagi (CNRS - Université de Bordeaux - France), Risa L. Lieberwitz (Université de Cornell - États-Unis), Pascale Lorber (Université de Leicester - Royaume-Uni), Yuki Sekine (Université de Kobé - Japon), Achim Seifert (Université Friedrich Schiller de Iéna - Allemagne) et Ousmane O. Sidibé (Mali).

International Legal News Correspondents

■ **AFRIQUES** : A. Govindjee et K. Malherbe (Afrique du Sud), C. Boukli-Hacène et Z. Yacoub (Algérie), B. Millefort Quenum (Bénin), P. Kiemde et H. Traoré (Burkina-Faso), P.-E. Kenfack (Cameroun), S. Yao Dje et D. Koffi Kouakou (Côte d'Ivoire), P. Kalay (République Démocratique du Congo - Congo Kinshasa), S. Ondze (République du Congo - Congo Brazzaville), I. Yankhoba Ndiaye et M. Gaye (Sénégal), N. Mzid et A. Mouelhi (Tunisie)

■ **AMÉRIQUES** : A. O. Goldin, D. Ledesma Iturbide et J. P. Mugnolo (Argentine), A. V. Moreira Gomes, S. Machado et J. Sarmiento Barra (Brésil), R.-C. Drouin, A.-M. Laflamme, L. Lamarche et G. Trudeau (Canada), P. Arellano Ortiz et S. Gamonal C. (Chili), C. Castellanos Avendano, A. N. Guerrero et V. Tobon Perilla (Colombie), R. L. Lieberwitz (États-Unis), P. Kurczyn Villalobos (Mexique), L. Gamarra Vilchez et M. K. Garcia Landaburu (Pérou), M. Ermiada Fernández et H. Barretto Ghione (Uruguay).

■ **ASIE-OCÉANIE** : D. Allen, S. McCrystal et T. Walsh (Australie), A. Zheng (Chine), J. Park (Corée du Sud), G. Davidov (Israël), S. Dake, M. Iwamura, E. Kasagi, H. Nagano, Y. Sekine et Y. Shibata (Japon), S. Taweejamsup (Thaïlande) et Tuân Kiệt Nguyễn (Vietnam).

■ **EUROPE** : A. Seifert (Allemagne), A. Csuk et G. Löschnigg (Autriche), A. Lamine et V. De Greef (Belgique), A. Filcheva et Y. Genova (Bulgarie), C. Jacqueson (Danemark), I. Vukorepa (Croatie), J. L. Gil y Gil (Espagne), E. Serebryakova et A. Alexandrova (Fédération de Russie), M. Badel, J.-P. Laborde et M. Ribeyrol-Subrenat (France), C. Papadimitriou et A. Stergiou (Grèce), T. Gyulavári et K. Rúsz Molnár (Hongrie), M. O'Sullivan (Irlande), A. Mattei et S. Nadalet (Italie), B. Bubilaityte Martisiene et G. Tamašauskaitė (Lituanie), S. Burri et N. Gundt (Pays-Bas), M. Gajda, A. Musiała et M. Pliszkiwicz (Pologne), T. Coelho Moreira et A. Monteiro Fernandes (Portugal), M. Stefko et V. Štangová (République Tchèque), F. Rosioru (Roumanie), J. Carby-Hall et P. Lorber (Royaume-Uni), F. Bojić et L. Kovačević (Serbie), P. Koncar et B. Kresal (Slovénie), J. Julén Votinius (Suède) K. Pärli et A. Meier (Suisse), K. Doğan Yenisey et M. Sur (Turquie).

REVUE

ENGLISH ELECTRONIC EDITION

2021/4

DE DROIT COMPARÉ
DU TRAVAIL
ET DE LA SÉCURITÉ SOCIALE

REVIEW SUPPORTED BY THE INSTITUTE OF HUMAN AND SOCIAL SCIENCES OF THE CNRS

International Association of Labour Law Journals - IALLJ

The Comparative Law Review of Labour and Social Security [Revue de Droit Comparé du Travail et de la Sécurité Sociale] is member of the «International Association of Labour Law Journals», the exchange network of publications, ideas, legal and economic developments.

The other members of the association are:

Análisis Laboral (Peru)
Arbeit und Recht (Germany)
Australian Journal of Labor Law (Australia)
Bulletin on Comparative Labour Relations (Belgium)
Canadian Labour and Employment Law Journal (Canada)
Comparative Labor Law & Policy Journal (United States)
Derecho de las Relaciones Laborales (Spain)
Diritto delle Relazioni Industriali (Italy)
Diritti lavori mercati (Italy)
E-journal of International and Comparative Labour Studies (Italy)
Employees & Employers - Labour Law and Social Security Review: Delavci in delodajalci (Slovenia)
Europäische Zeitschrift für Arbeitsrecht : EuZA (Germany)
European Labour Law Journal (Belgium)
Giornale di Diritto del lavoro e relazioni industriali (Italy)
Industrial Law Journal (United Kingdom)
Industrial Law Journal (South Africa)
International Journal of Comparative Labour Law and Industrial Relations (The Netherlands)
International Labour Review (OIT)
Japan Labor Review (Japan)
Labour and Social Law (Belarus)
Labour Society and Law (Israel)
La Rivista Giuridica del Lavoro e della Previdenza Sociale - RGL (Italy)
Lavoro e Diritto (Italy)
Pécs Labor Law Review (Hungary)
Revista de Derecho Social (Spain)
Revue de Droit Comparé du Travail et de la Sécurité Sociale (France)
Revue de Droit du Travail (France)
Rivista giuridica del lavoro e della sicurezza sociale (Italy)
Russian Yearbook of Labour Law (Russia)
Temas Laborales (Spain)
Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (Germany)

STUDIES

- p. 6 Peter Upson**
How does brain-computer interface technology present challenges for labour law in New Zealand?
- p. 16 Irene Zoppoli**
How to overcome the paradoxes around worker dismissal in France and Italy?
- p. 28 Hugo Barretto Ghione**
Emergence of the notion of «due diligence» in labour law and how it is integrated into the legal system
- p. 38 Mani Mohan, Mathew Babu, Sony Pellissery and Kavya Bharadkar**
Ushering thin welfare regimes at the cost of thick labour jurisprudence: A tale of new labour codes in India
- p. 50 Lance Compa**
The double standard at work: European corporate investment and workers' rights in the American south

THEMATIC CHAPTER

NATIONAL LABOUR LAW AND SOCIAL SECURITY SYSTEMS THROUGH THE LENS OF THE COVID HEALTH CRISIS. ADAPTATIONS OR FUNDAMENTAL CHANGES?

COORDINATED BY LOÏC LEROUGE

- p. 66 Peter Andersson and Tonia A. Novitz**
Risk assessment and COVID-19: Systems at work (or not) in England and Sweden
- p. 80 Claire Marzo**
Franco-British comparison of attempts to provide social protection for platform workers at the time of the pandemic: towards a new balance between public and private actors?
- p. 100 Gabrielle Golding**
Unfair dismissal and the Coronavirus pandemic: Creative responses from Australia's Fair Work Commission
- p. 116 Edoardo Ales**
Social protection in Italy during the pandemic: A comprehensive and adaptive approach in the sign of continuity
- p. 132 Caroline Murphy and Lorraine Ryan**
National labour law and social security systems through the lens of the COVID health crisis. Adaptations or fundamental changes?
- p. 144 Lucie Lamarche**
Unemployment in the age of COVID: Will the Canadian unemployment insurance system survive the pandemic?

2021/4 CONTENTS

COMPARATIVE LABOUR CASE LAW

JUDICIAL CREATIVITY PUT TO THE TEST IN THE FACE OF NEW HEALTH PROBLEMS AT WORK

COORDINATED BY ALLISON FIORENTINO

- p. 160 Adrienne Sala**
The creativity of the judge faced with new health-at-work problems: the Japanese case of karôshi and karôjisatsu
- p. 170 Allison Fiorentino**
English case law and the challenge of mental health at work

INTERNATIONAL LABOUR CASE LAW

- p. 182 Michael Doherty**
The « Worker », EU Law, and collective bargaining
- p. 192 Marcello D'Aponte**
New technologies and respect for the worker's privacy in ECHR case law

COMPARATIVE LABOUR LAW LITERATURE

- p. 204 Cinzia Carta and Gratiela-Florentina Moraru**
Labour law beyond national borders: major debates in 2018-2019-2020

INTERNATIONAL LEGAL NEWS

AMERICA

- p. 230 UNITED STATES OF AMERICA** - Risa L. Lieberwitz, Cornell University, School of Industrial and Labor Relations

ASIA - OCEANIA

- p. 234 AUSTRALIA** - Shae McCrystal, Faculty of Law, University of Sydney

EUROPE

- p. 240 REPUBLIC OF SERBIA** - Filip Bojic, University of Belgrade
- p. 246 REPUBLIC OF SERBIA** - Ljubinka Kovačević, University of Belgrade
- p. 250 UNITED KINGDOM** - Jo Carby-Hall, University of Hull
- p. 256 UNITED KINGDOM** - Jo Carby-Hall, University of Hull

INTERNATIONAL ORGANIZATION

- p. 262 UNITED NATIONS ORGANIZATION** - Elena Sychenko, Saint Petersburg State University



**INTERNATIONAL
LEGAL NEWS**



ELENA SYCHENKO

SAINT PETERSBURG STATE UNIVERSITY

THE ACTIVITIES OF UN HUMAN RIGHTS BODIES IN 2020

The pandemic year was the moment for uniting the efforts of all UN Human rights bodies and formulating the guidance for ensuring human rights in the time of Covid restrictions. Provided these circumstances the present paper will concentrate first on the legal positions of certain Human Rights bodies dedicated especially to the implementation of labour rights in pandemic. Then, following the traditional approach of this annual review, the concluding observations of the Human Rights Committee and the Committee of economic, social and cultural rights will be considered.

I - Statements by human rights treaty bodies in the context of COVID-19

Pandemic and the measures carried out by the states to ensure the protection of people had a deep negative impact on the world of work. It goes without saying that the closure of borders, the temporary stoppage of business activities were the reasons for the unemployment growth, the broadening of the informal labour, for the violation of social rights of millions of people. It was a great a challenge for the states, for the international cooperation and for the system of international human protection as well. The harmful effects of this pandemic are expected to be most damaging in the poorest countries and in the poorest neighbourhoods, and for those in already disadvantaged or vulnerable situations, such as children in child labour and victims of forced labour and human trafficking, particularly women and girls¹. Unformal workers, migrants and disabled people should also be included in this list. As will further demonstrate the recommendations, adopted by UN human rights bodies in pandemic were often focused on these groups of people. The unprecedented unanimity, the high level of coordination of the efforts of different international bodies and the promptness of their reaction should be outlined.

The key recommendations on how to implement human rights in pandemic are published in the Compilation of statements by human rights treaty bodies in the context of COVID-19 Geneva, adopted in September 2020². The publication of a toolkit of treaty law perspectives and jurisprudence in the context of COVID-19 is another valuable international initiative³. The need to act with within a human rights

- 1 COVID-19 impact on child labour and forced labour: The response of the IPEC+ Flagship Programme https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipecc/documents/publication/wcms_745287.pdf
- 2 <https://www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx>
- 3 <https://www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx>

framework, permitting only necessary and proportionate restrictions of rights is the cross-cutting thread of all the recommendation⁴.

Addressing the need to protect women and girls Committee on the Elimination of Discrimination against Women (CEDAW) urged the states to take special measures for the protection of refugee and internally displaced women and girls, addressing their increased risk of trafficking and survival sex during the pandemic. It also noted that the COVID-19 crisis adversely affected women in low-paid jobs and in informal, temporary or other precarious forms of employment, especially in the absence of social protection. Therefore, recovery plans should address gender inequalities in employment, promote transition of women from the informal economy to the formal economy and provide relevant social protection systems for them⁵.

In respect of migrants UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families underlined the need to guarantee access to social services for migrants and their families. Particular needs of migrant women, children and others in vulnerable situations should also be attended⁶. Despite the low ratification rate of this convention and the lack of ratification from almost all developed countries, these recommendations are addressed to them as well. This appeal is based on interpretation of the whole set human rights treaties.

The CESCR⁷ urged the states to mitigate the adverse impact of COVID-19 responses on the employment and the remuneration of workers, such as unfair dismissals and layoffs, reduced working hours, modifications to the type of employment. States parties should ensure that safe and hygienic working conditions are guaranteed⁸. The Committee also underlined the value of the effective participation of trade unions at all levels of decision-making processes - workplace, industrial and national levels - so as to ensure the protection of workers' rights during the COVID-19 pandemic, including in the design of mitigation measures for the economy and the labour market. An important recommendations was formulated in respect of the right to social security: basic social security guarantees including universal access to the necessary health services and basic income security (e.g. in case of sickness, death, unemployment and loss of livelihood) should be ensured in the COVID-19 pandemic response; states parties should ensure that social security benefits cover all marginalized and disadvantaged individuals, particularly those who are severely affected by the COVID-19⁹. In case of severe lack of resources, States parties should ensure minimum

4 See in particular, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights by the Committee on Economic, Social and Cultural Rights, E/C.12/2020/1 (6 April 2020).

5 CEDAW. Guidance Note on CEDAW and COVID-19 (22 April 2020)

6 Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants by the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the UN Special Rapporteur on the human rights of migrants (26 May 2020). See also Covid-19 and the Human Rights of Migrants: https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf. It is important to note that the guidance is available in other official UN languages as well.

7 CESCR, statement on COVID-19 (2020).

8 *Ibid.*, § 5.

9 See Concluding observations for Israel (2019), E/C.12/ISR/CO/4, § 23(c).

benefits for the selection of a core group of social risks and contingencies, made following a wide process of consultation¹⁰.

An important conclusion is that any measures relating to the labour market, envisaged by States parties to respond to economic fallouts from the COVID-19 pandemic, should be centred on the Covenant rights. They should be necessary to combat the public health crisis posed by COVID-19, and be reasonable and proportionate¹¹. Provided almost universal ratification of the ICESCR, this legal position might become the source of inspiration and support for national courts, considering the restrictions imposed in Covid era. Here we can recall the jurisprudence of Constitutional courts on austerity measures, when they were held unconstitutional relying also on positions of the ECtHR and the CESCR¹².

II - Concluding observations of HRC and CESCR in 2020

In 2020 the CESCR adopted only five concluding observations, in respect of Ukraine, Norway, Guinea, Benin, Belgium¹³. The need to ensure equality of men and women and the issue of unemployment were one of the common points. In this regard it was recommended to Ukraine, for example, to promote women's full participation in the labour market, including by developing adequate and affordable day-care solutions and encouraging men to use their right to paternity leave and paid parental leave. The Committee was concerned with the high rate of unemployment among internally displaced persons, Roma and persons with disabilities and recommended inter alia enforcing the quotas for employment of persons with disabilities and raising awareness of the existing programmes providing benefits for employers who hire internally displaced persons. It also underlined the need to regularize the status of workers engaged in the informal economy, especially migrant workers and women, and, pending this regularization, extend the coverage provided by existing labour and social protection legislation to them and ensure effective labour inspection. It should be noted that the latter requirement is consonant to the recent Observation of CEACR¹⁴.

The Committee urged Ukraine to review the draft law regarding the restriction of trade union activities (no. 2681), the strikes and lockouts (no. 2682), to ensure the effectiveness of collective bargaining and of the right to union representation, in compliance with article 8 of the ICESCR and the provisions of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (no. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (no. 98). This is also an example of the practical interconnection of different international treaties on labour rights.

10 See Committee on Economic, Social and Cultural Rights, general comment no. 19 (2008) on the right to social security, E/C.12/GC/19, § 31 and 59(a).

11 CESCR, statement on COVID-19 (2020).

12 See Judgment Of The Constitutional Court Of Latvia, 21 December 2009, in the case 2009-43-01 that held unconstitutional the reductions of pensions.

13 Concluding observations no. E/C.12/UKR/CO/7; E/C.12/NOR/CO/6; E/C.12/GIN/CO/1; E/C.12/BEN/CO/3; E/C.12/BEL/CO/5.

14 Observation (CEACR) - adopted 2020, published 109th ILC session (2021) Ukraine Labour Inspection Convention, 1947 (no. 81)

The issue of business and human rights was considered in the concluding observations to the reports of Norway and Belgium. In respect of the former, the Committee appreciated the adoption of a national action plan "Implementing the United Nations "Protect, Respect and Remedy". However, it was concerned about the insufficient level of implementation of the plan. It also noted the inadequate access to remedies in the State party by non-nationals whose rights have allegedly been violated by Norwegian companies abroad. The Committee also welcomed the adoption of Belgic National Action Plan on Business and Human Rights in 2017, expressing its concern about the wholly voluntary nature of all the listed measures. As well as in respect of Norway, it noted that the Belgic plan lacks an effective complaints system and a support mechanism for victims of reprisals. It recommended Belgium to adopt a binding regulatory and normative framework that: (a) Requires business entities based in the State party to exercise human rights due diligence in their operations and in their business relationships, both in the State party and abroad; (b) Holds business entities liable for violations of economic, social and cultural rights; (c) Enables victims, including victims of reprisals, to seek remedies through judicial and non-judicial mechanisms.

The recommendations in this field are needed for the promotion of corporate social responsibility initiatives and in convincing states to take seriously the human rights violations of the MNC abroad. Last year largely the same recommendations were expressed in respect of Denmark¹⁵.

The treatment of disabled people was another common point in Belgic and Norwegian observations. The Committee found that the introduction of the possibility of flexible drawing of the old-age pension for persons aged between 62 and 75 years, which enables pensioners to combine work and pension and continue to accrue their pension points. However, disabled people are systematically prevented from accruing pension points from the age of 62, as they are transferred to the old-age pension only at the age of 67. This leads to about 10 per cent disadvantage in their old age benefits. In Belgium, the CESCR was concerned at the very low employment rate for persons with disabilities which was below the quotas and targets set by the public authorities.

In respect of Belgium the Committee also pointed the need to ensure that domestic workers enjoy the same conditions as other workers as regards remuneration, rest and leisure, limitation of working hours and protection against unfair dismissal.

Between the concerns formulated by the CESCR for Guinea the proposed framework for the protection and promotion of the rights of persons with disabilities should be mentioned. Between other measures it underlined the need to impose a requirement of reasonable accommodation. The economic exploitation of children was mentioned as an issue in Guinea. CESCR recommended to strengthen the legislation and ensure that it is enforced effectively, punish the perpetrators and take

15 E. Sychenko, « News - ONU », *Revue de droit comparé du travail et de la sécurité sociale*, 2020/2.

measures to facilitate the rehabilitation and social reintegration of child labourers. These recommendations are in line with the views of CEACR¹⁶.

Surprisingly, the same issue was considered in respect of Benin. Although the persistence of harmful practices such as *vidomegon* (placing children in families which traditionally are responsible for their care and their education, in particular), the prevalence of cases of trafficking in children from and into neighbouring countries, particularly for domestic servitude and commercial sexual exploitation in cases of girls, and for forced labour in mines, quarries, markets and farms in cases of boys, especially in diamond-mining districts¹⁷ has been numerous noted by other international bodies. The lack of attention to the problem of human trafficking in Benin also cannot be explained. According to the recent Trafficking in people report, human traffickers exploit domestic and foreign victims in Benin, and traffickers exploit victims from Benin abroad¹⁸.

Human Rights Committee adopted five observations in 2020, in respect of Central African Republic, Uzbekistan, Portugal, Tunisia and Dominica¹⁹. Gender equality in the labour market and the issue of human trafficking (HT) were the key common points in all the observations. It is important to note that though the ICCPR does not specify the particular obligations of the states to suppress human trafficking, the norms of article 8 of the Covenant are interpreted in line with the developed international understanding of the states' obligations to prevent HT, protect the victims, ensure the remedy and rehabilitation. These obligations are enshrined in the Palermo protocol²⁰, the Protocol of 2014 to the Forced Labour Convention, 1930 and the Forced Labour (Supplementary Measures) Recommendation, 2014 (no. 203).

Concluding this brief review three main points should be outlined. Firstly, the legal positions of the UN Human Rights bodies expressed in relation to Covid pandemic might be a valuable tool for challenging the decisions of states restricting labour and social rights. To ensure the use of these instruments the information about the UN approach to this issue should be widely disseminated. Secondly, again in 2020 the UN Human Rights Committees contributed to the perception of internationally recognized human rights as a whole, referring to the ILO standards and reflecting the positions of CEACR. Thirdly, the lack of attention of Human Rights bodies to certain important issues which were considered by CEACR is the sign for the non-governmental organizations presenting the reports before the Committees.

16 Observation (CEACR) - adopted 2018, published 108th ILC session (2019) Worst Forms of Child Labour Convention, 1999 (no. 182) - Guinea.

17 Committee on the Rights of the Child. Concluding observations on the report submitted by Benin. 29 November 2018. CRC/C/OPSC/BEN/CO/1; see also Observation (CEACR) - adopted 2018, published 108th ILC session (2019) Worst Forms of Child Labour Convention, 1999 (no. 182) - Benin.

18 2020 Trafficking in Persons Report: *Benin Office to Monitor and Combat Trafficking in Persons*: <https://www.state.gov/reports/2020-trafficking-in-persons-report/benin/>

19 Concluding observations no. CCPR/C/C A F/C0/3; CCPR/C/UZB/C0/5; CCPR/C/PRT/C0/5; CC P R/C/T U N/C0/6; CCPR/C/DMA/C0AR/1.

20 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000.

In order to enhance the efficiency of international monitoring these organizations, in my opinion, should also refer to the problems already raised by other international bodies.

REVUE

DE DROIT COMPARÉ
DU TRAVAIL
ET DE LA SÉCURITÉ SOCIALE

Manuscripts submitted for publication in the **Comparative Law Review of Labour and Social Security** [Revue de Droit Comparé du Travail et de la Sécurité Sociale] should be sent by e-mail or by post before **February, the 1st** of each year (for the Studies, the Comparative Social Jurisprudence and the International Social Jurisprudence) and before **June, the 1st** of each year for the Thematic Chapter. About the contributions to the International Legal News, they must be sent before **February, the 1st** (for the first issue) and before **September, the 1st** (for the third issue).

The opinions expressed in the articles are the sole responsibility of the authors. When translation is carried out in French, it is under the responsibility of the Chief Editor and members of the Editorial Board.

Every manuscript is submitted, without mentioning the name of the author, to two readers for evaluation and publication notice.

A subsequent publication in another journal would require authorization express of the Direction of the Review.



COMPTRASEC - UMR 5114

Mme Marie-Cécile CLÉMENT

Université de Bordeaux

16, avenue Léon Duguit - CS 50057 - F 33608 PESSAC cedex

Tél : 33(0)5 56 84 54 74 - Fax : 33(0)5 56 84 85 12

marie-cecile.clement@u-bordeaux.fr

<http://comptrasec.u-bordeaux.fr/revue-de-droit-compare-du-travail-et-de-la-securite-sociale>

GUIDELINES FOR AUTHORS

Manuscripts

The article must be submitted preferably in French. English or Spanish are also admitted.

Texts should include:

- **40 000 characters** - including footnotes and spaces - for topics «**Studies**» and «**Thematic Chapter**» when submitted in French. The limitation is set at **30 000 characters** when submitted in English or Spanish;
- **25 000 characters** - including footnotes and spaces - for topics «**Comparative Social Jurisprudence**» and «**International Social Jurisprudence**» regardless of the language of submission of the article;
- **15 000 characters** - footnotes and spaces included - for the rubric «**International Legal News**» when submitted in French. The limitation is set at **12 000 characters** when submitted in English or Spanish.

In addition, all manuscripts must be accompanied by the following elements:

- 5 key words (in French and English) to identify the content of the article;
- the institution of attachment, the title, and the postal and electronic address of the author;
- the title of the article.

Manuscripts for the «**Studies**», «**Thematic Chapter**» and «**International Social Jurisprudence**» should also include:

- a summary, in French and in English (**400 characters** each);
- two publications to choose from.



Notes and bibliographical references

The annotations and bibliographic references of the works and articles cited must be integrated within the article and placed in footnotes.

Their presentation will be as follows:

- For books: initial of the First Name, Name, Title of the book, place, publisher, «collection», date, p.
- For review articles: Initial of the First Name, Name, «Title of the article», Title of the review, no., date, p.
- For a contribution into collective books: Initial of the First Name, Name, «Title of article», in initial of the First Name, Name (dir.), Title of the book, place, publisher, date, p.

IALLJ CALL FOR PAPERS ~ 2022 MARCO BIAGI AWARD

To stimulate scholarly activity and broaden academic interest in comparative labour and employment law, the **International Association of Labour Law Journals** announces a **Call for Papers** for the **2022 Marco Biagi Award**. The award is named in honor of the late Marco Biagi, a distinguished labour lawyer, victim of terrorism because of his commitment to civil rights, and one of the founders of the Association. The Call is addressed to doctoral students, advanced professional students, and academic researchers in the early stage of their careers (that is, with no more than three years of post-doctoral or teaching experience).



1. The Call requests papers concerning comparative and/or international labour or employment law and employment relations, broadly conceived. Research of an empirical nature within the Call's purview is most welcome.
2. Submissions will be evaluated by an academic jury to be appointed by the Association. Submitted papers should include an abstract.
3. The paper chosen as the winner of the award will be assured publication in a member journal, subject to any revisions requested by that journal.
4. Papers may be submitted preferably in English, but papers in French, or Spanish will also be accepted. The maximum length is 12,500 words, including footnotes and appendices. Longer papers will not be considered.
5. The author or authors of the paper chosen as the winner of the award will be invited to present the work at the **Association's 2021** meeting which is to be announced soon on the website of the Association. Efforts are being undertaken to provide an honorarium and travel expenses for the presentation of the paper. Until that effort bears fruit, however, the Association hopes that home institutional funds would be available to support the researcher's presentation.
6. The deadline for submission is **1 March 2021** (final date of submission). Submissions [and a short bio of the author] should be sent electronically in Microsoft Word both to Lavoro e diritto at lavoroediritto@unife.it and to Frank Hendrickx, the President of the Association, at frank.hendrickx@kuleuven.be and his secretariat: iar@kuleuven.be.

Prior Recipients of the Marco Biagi Award

2020 Harry Stylogiannis (KU Leuven, Belgium), Platform work and the human rights to freedom of association and collective bargaining.

2019 Giovanni Gaudio (Bocconi University, Milan, Italy), «Dapting labour law to complex organisational settings of the enterprise. Why re-thinking the concept of employer is not enough».

2018 Matteo Avogaro (University of Milan, Italy), «New perspectives for worker organization in a changing techonological and social environment».

2017 Nicolas Buenos (University of Zurich, Switzerland, Insitute of Law), «From the right to work to the freedom from work».

2016 Mimi Zou, «Towards Exit and Voice: Redesigning Temporary Migrant Workers's Programmes».

2015 Uladzislau Belavusau (Vrije Universiteit Amsterdam, Pays-Bas), «A Penalty Card for Homophobia from EU Labor Law: Comment on Asociația ACCEPT (C-81/12)».

2014 Lilach Lurie (Bar-Ilan University, Israel), «Do Unions Promote Gender Equality?».

2013 Aline Van Bever (University of Leuven, Belgium), «The Fiduciary Nature of the Employment Relationship».

2012 Diego Marcelo Ledesma Iturbide (Buenos Aires University, Argentina), «Una propuesta para la reformulación de la conceptualización tradicional de la relación de trabajo a partir del relevamiento de su especificidad jurídica».

ABBREVIATIONS LIST

(PUBLISHERS, JOURNALS, BOOKS)

AuR = Arbeit und Recht (Germany)
AJLL = Australian Journal of Labour Law (Australia)
AJP/PJA = Aktuelle juristische Praxis - Pratique juridique Actuelle (Suisse)
BCLR = Bulletin of Comparative Labour Relations (Belgium)
CLELJ = Canadian Labour & Employment Law Journal (Canada)
CLLPJ = Comparative Labor Law & Policy Journal (United States)
DRL = Derecho de las Relaciones Laborales (Spain)
DLM = Diritti Lavori Mercati (Italy)
E&E = Employees & Employers: Labour Law & Social Security Review (Slovenia)
EuZA = Europäische Zeitschrift für Arbeitsrecht (Germany)
ELLJ = European Labour Law Journal (Belgium)
DLRI = Giornale di Diritto del Lavoro e delle Relazioni Industriali (Italy)
ILJ = Industrial Law Journal (UK)
IJCLLIR = Giornale di Diritto del Lavoro e delle Relazioni Industriali (Italy)
ILR = International Labour Review (ILO)
JLR = Japan Labor Review (Japan)
JCP = Juris-Classeur Périodique (France)
LD = Lavoro e Diritto (Italy)
OIT = Revue internationale de travail
PMJK = Pécsi Munkajogi Közlemények (Pecs Labour Law Journal) (Hungary)
RL = Relaciones Laborales (Spain)
RDS = Revista de Derecho Social (Spain)
RDCTSS = Revue de Droit Comparé du Travail et de la Sécurité Sociale (France)
RDT = Revue de Droit du Travail (France)
RGL = Rivista Giuridica del Lavoro e della Previdenza Sociale (Italy)
TL = Temas Laborales (Spain)
ZIAS = Zeitschrift für ausländisches und Internationales Arbeits und Sozialrecht (Germany)

SUBSCRIPTIONS AND RATES

ABONNEMENTS ET TARIFS

SUSCRIPCIONES Y PRECIOS

2021 RATES

REVUE DE DROIT COMPARÉ
DU TRAVAIL ET DE LA SÉCURITÉ SOCIALE

(PRINT) ISSN 2117-4350
(E-JOURNAL) ISSN 2262-9815

COMPTRASEC
UMR 5114

Mme Marie-Cécile Clément
UNIVERSITÉ DE BORDEAUX
Avenue Léon Duguît - 33608 PESSAC cedex FRANCE
Tél. 33(0)5 56 84 54 74
Fax 33(0)5 56 84 85 12
Email : revue.comptrasec@u-bordeaux.fr

PER YEAR

3 PRINT ISSUES PAPERS (FRENCH)
1 ELECTRONIC ISSUE (ENGLISH)

		Price/Prix/Precio
Annual Subscription	Print Journal / Revue papier / Revista Impressa (3 numéros en français / 3 issues in french / 3 números en francés)	105 €
Abonnement Annuel	E-journal / Revue électronique / Revista Electrónica (1 numéro en anglais / 1 issue in english / 1 número en inglés)	70 €
Suscripción anual	Printed copies & E-journal / Pack Revues papier et électronique / Revistas impresa y electrónica (3 numéros en français & 1 numéro en anglais / 3 issues in french & 1 in english / 3 números en francés & 1 en inglés)	145 €
Unit Price Prix à l'unité Precio unitario	Print Journal / Revue Papier / Revista Impressa	40 €
	E-Journal / Revue électronique / Revista Electrónica	70 €
	Journal article / Article / Artículo	6 €
<i>Postal charges included / Frais de port compris / Gastos de envío incluidos</i>		
VAT TVA IVA	2,10% France / 1,05% Outre-mer & Corse / 0% UE & hors UE	

MODE DE PAYMENT / MODE DE RÈGLEMENT / FORMA DE PAGO

ONLINE PAYMENT / PAIEMENT EN LIGNE / PAGO EN LINEA

(Credit card - Carte de crédit - Tarjeta de credito) <http://comptrasec.u-bordeaux.fr/revue/abonnement>

PURCHASE ORDER / BON DE COMMANDE / ORDEN DE COMPRA

to / à / a : revue.comptrasec@u-bordeaux.fr

NB : Online payment is preferred. If you have any difficulty, please contact us at
Le paiement en ligne est à privilégier. En cas de difficulté, veuillez nous contacter à
El pago en linea se prefiere. Si tiene alguna dificultad, contáctenos a

revue.comptrasec@u-bordeaux.fr

Achévé d'imprimer en janvier 2022
sur les presses de l'imprimerie Aquiprint
Dépôt légal 1^{er} trimestre 2022
Imprimé en France

REVUE

2021/4

DE DROIT COMPARÉ
DU TRAVAIL
ET DE LA SÉCURITÉ SOCIALE

The Comparative Law Review of Labour and Social Security [Revue de Droit Comparé du Travail et de la Sécurité Sociale] has been published by COMPTRASEC, UMR 5114 CNRS of the University of Bordeaux since 1981. It is edited three times a year in order to contribute to the development of analyses and exchanges on labour and social security law around the world. The Comparative Law Review of Labour and Social Security is a member of the International Association of Labour Law Journals (IALLJ), an international network for the exchange of ideas and publications on labour law and social security.

For any correspondence or contribution proposal write to:

Marie-Cécile CLÉMENT

COMPTRASEC - UMR CNRS 5114 - University of Bordeaux
16, avenue Léon Duguit - CS 50057 - 33608 PESSAC cedex - France

E-mail : marie-cécile.clement@u-bordeaux.fr

Phone: +33 (0)5 56 84 54 74 - Fax: +33 (0)5 56 84 85 12

<http://comptrasec.u-bordeaux.fr>

The opinions expressed in the articles are the sole responsibility of the authors. When translation is carried out in French, it is under the responsibility of the Director Editor and members of the Editorial Board. Every manuscript is submitted, without mentioning the name of the author, to two readers for evaluation and notice before publication.

PREVIOUS ISSUE

2021/3

THEMATIC CHAPTER

NATIONAL LABOUR LAW AND SOCIAL SECURITY SYSTEMS THROUGH THE LENS OF THE COVID HEALTH CRISIS. ADAPTATIONS OR FUNDAMENTAL CHANGES?

COORDINATED BY LOÏC LEROUGE

WITH THE CONTRIBUTIONS OF:

PETER ANDERSSON & TONIA A. NOVITZ (SWEDEN, UNITED KINGDOM), VALÉRIE FLOHIMONT (BELGIUM), ELIZABETH BLUFF & RICHARD JOHNSTONE (AUSTRALIA), GABRIELLE GOLDING (AUSTRALIA), CAROLINE MURPHY & LORRAINE RYAN (IRELAND), EDOARDO ALES (ITALY), VAGELIS KOUMARIANOS (GREECE), LUCIE LAMARCHE (CANADA), CLAIRE MARZO (UNITED KINGDOM), SILVIA FERNÁNDEZ MARTÍNEZ (SPAIN).

INTERNATIONAL LEGAL NEWS

AFRICA: ALGERIA

AMERICA: ARGENTINA / CHILE / UNITED STATES

ASIA-OCEANIA : AUSTRALIA / JAPAN

EUROPE: RUSSIAN FEDERATION / REPUBLIC OF SERBIA / UNITED KINGDOM / SWISS

FORTHCOMING

2022/1

STUDIES

INTERNATIONAL LEGAL NEWS

REVUE

DE DROIT COMPARÉ
DU TRAVAIL
ET DE LA SÉCURITÉ SOCIALE

REVUE DE DROIT COMPARÉ DU
TRAVAIL ET DE LA SÉCURITÉ SOCIALE

4 numéros par an
~3 éditions papier (en français)
~1 édition électronique (en anglais)

2021/1

Études
Actualités Juridiques Internationales

2021/2

Jurisprudence Sociale Comparée
Jurisprudence Sociale Internationale
Actualités des organisations
internationales
Chronique bibliographique

2021/3

Dossier thématique
Actualités Juridiques Internationales

2021/4

Studies
Thematic Chapter
Comparative Labour Case Law
Comparative Labour Law Literature
International Legal News

Pour plus d'informations

<http://comptrasec.u-bordeaux.fr/revue-de-droit-compare-du-travail-et-de-la-securite-sociale>

Contact

revue.comptrasec@u-bordeaux.fr

COMPTRASEC

Centre de droit comparé du travail
et de la sécurité sociale

université
de **BORDEAUX**



70 euros

ISSN 2117-4350