C122 - Employment Policy Convention, 1964 (No. 122)

1. Introduction; 2. Context and Aims; 3. Content

1. Introduction

The Employment Policy Convention, 1964 (No. 122), ratified by 111 countries, introduces the commitment for member States to achieve full, productive and freely chosen employment\(^1\). It “was a promotional framework and not a prescription for countries. In this, it was typical of employment-related instruments”\(^2\).

Convention No. 122 was included among the priority ILO Conventions\(^3\), identified as the most significant instruments from the viewpoint of governance. Its sphere of action is key to the Organisation’s activities. If we look at the past, the importance attributed to work as a driver for social development and as one of the “central issues of social policy”\(^4\) reveals the genetic code of the ILO. Reflecting on the present, we can see that “it is necessary to put the aim of full and productive employment and decent work at the heart of the crisis responses”\(^5\) and that, in this regard, “the normative and legal framework offered by the ILO and its standards provide an important basis for asserting the central importance of the social aspects of financial viability, development and sustainability at the national level, and more generally the social dimensions of globalization”\(^6\).

The on-going economic and financial crisis has drawn attention to the extreme vulnerability of the labour market, which is profoundly conditioned by the upswings and downturns of the economy, of growth rates and of the dynamics of the global market. This has given rise to the need to promote a wide range of actions, both domestically and at supranational level, in order to support governments

---

\(^1\)The other international instruments linked to the Convention No. 122 are: the Employment Policy Convention, 1964 (No. 122); the Employment Policy Recommendation, 1964 (No. 122); the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169); the Employment Relationship Recommendation, 2006 (No. 198).


in promoting occupation and reducing unemployment rates. In fact, the recent G20 concluded with the signing of a “Declaration on Innovation and Inclusive Growth: Decent Work, Enhanced Employability and Adequate Job Opportunities”, which stressed that “productive employment and decent work are the foundation of the livelihoods of people across the world”.

This suggests that there has been a harmonisation “between the ILO’s initial approach, which understood employment as a free-standing goal requiring targeted macro-economic policy choices, and the conception of the other organisations, among which employment was regarded as a sort of by-product of an otherwise balanced macro-economic policy” based on the assumption that “employment promotion needs to be dealt with through an interdisciplinary, multi-sector, multi-stakeholder and UN inter-agency approach”. We are witnessing the emergence, albeit as part of a gradual process, of a new global consensus on occupational themes and on the necessary interaction between employment policies and the guarantee of the right to work for all.

2. Context and Aims

The Preamble to the Convention affirms the key principles representing the foundation of values and systemic structure underpinning ILO’s position on occupational policies: “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment” read Art. 26 of the Universal Declaration of Human Rights; and the Declaration of Philadelphia “recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve full employment and the raising of standards of living”.

These preliminary remarks already reveal the singular tension between the institutional nature of the provision and its leanings towards a “rights-based approach to employment policy”: Convention No. 122 targets States, defining the occupational policies that they should adopt, but at the same time in Convention No. 122 we could find the language of rights and safeguards that must be guaranteed to individuals. With regard to this aspect the Employment Policy Recommendation No. 169 makes it clear that the promotion of full, productive and freely chosen employment “should be regarded as the means of giving practical effect to the right to work”.

---

7 Amongst others, see the Annual Report of the United Nations High Commissioner for Human Rights, “Realization of the right to work”, 21 December 2015, oddh.iscsp.utl.pt/.../100_ff24109ea66225858be05f9756a05d6c
9 Maupain (n. 4), 85.
This ambivalence, described as “the symbiosis between policy and rights”,\textsuperscript{13} represents the beating heart of the Convention and the key to a regulatory text that continues to be a framework of reference for the Member States even though it was introduced over 50 years ago.

Coming back to the text of this instrument, according to Article 1 of the Convention “each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”. In particular, “the said policy shall aim at ensuring that “(a) there is work for all who are available for and seeking work; (b) such work is as productive as possible; (c) there is freedom of choice of employment and the fullest opportunity for each worker to qualify for, and to use his skills and endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin”.

The “quantitative” dimension of work, which aims at the promotion of full employment and at the introduction of measures to combat unemployment, combines with a more purely “qualitative” dimension considered as the right to freely choose one’s own job and to carry it out in decent conditions. According to the ILO, in fact, “governments of member States should assess as appropriate […] the creation and maintenance of productive and freely chosen employment, conforming to fundamental principles and rights at work and other international labour standards”\textsuperscript{14}. Seen in the light of the other provisions of the Convention No. 122, Article 1 reveals what could be described as the “relational” dimension of employment policies given that “the said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices” (art. 3 par. 3). It has been remarked that “employment is a cross-cutting issue and the result of multi-layered policy interactions”\textsuperscript{15} and that, therefore, “in order to foster the quality and quantity of employment, a wide range of integrated and well-designed policy interventions, cutting across both macro and microeconomic dimensions and addressing both labour demand and supply are required”.\textsuperscript{16}

3. Contents

We have seen that Convention No. 122 is part of a framework of ILO actions intended to promote occupation, considered a driver for economic and social progress as well as in order to guarantee the fundamental right to work. From this perspective the provision establishes that “each Member shall, by such methods and to such extent as may be appropriate under national conditions, (a) decide on

\textsuperscript{13} ILO, \textit{Guide on employment policy and international labour standards} (n.6), 15.


\textsuperscript{15} ILO, \textit{Guide for the formulation of national employment policies} (n.6).

\textsuperscript{16} ILO, \textit{Guide for the formulation of national employment policies} (n.6).
and keep under review, within the framework of a coordinated economic and social policy, the measures to be adopted for attaining the objectives specified in Article 1; (b) take such steps as may be needed, including when appropriate the establishment of programmes, for the application of these measures” (art. 2).

This instrument does not enter into the measures to be adopted other than to underline the need for actions that are coordinated at national level and carried out in arrangement with the social partners. We should however bear in mind the interpretation provided by the CEACR (the ILO Committee of Experts on the Application of Conventions and Recommendations) and establishing that “the Convention creates a basic obligation on States to make an explicit formal pronouncement of their employment policy. This declaration may be considered an essential basis for a conscious effort to attain the goals of the Convention, and it emerges from national practice, taken as a whole, that an express commitment to pursue an active policy as a major national objective is essential if the goals of the Convention are to be given the necessary prominence in government policy” (par. 26)\(^\text{17}\). This implies that “the Convention requires national employment policy to be positioned as a major goal within the national agenda. Accordingly, the active employment policy should be pursued as a major goal of macroeconomic policy, and entails a focus on the design and implementation of such policies” (para 27). In this perspective “the achievement of full and productive employment should not be an afterthought, but should be considered throughout the macroeconomic policy formulation stage” (para 27).

In this framework “the primary role of the ILO should be to complement and support macroeconomic strategies with as effective active labour market measures as possible (such as job training and skills development). To ensure the realization of potential benefits of active measures, member States needed support in making critical national policy decisions, in prioritizing labour market initiatives, sequencing policies appropriately, building policy coherence, and improving monitoring and evaluation” \(^\text{18}\). It’s important to stress that Convention No. 122 also asks States to introduce appropriate control mechanisms intended to verify the effectiveness of the measures adopted within the States. In this regard the Employment Policy Recommendation No. 122 invites States to use an approach that involves “compiling and analysing statistical data and trends as a basis for deciding measures of employment policy”\(^\text{19}\).

To elaborate the policies at national level “representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers, shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing

\(^{17}\text{General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization (n.11).}\)

\(^{18}\text{ILO, Committee for the Recurrent Discussion on Employment (n.2), 22.}\)

\(^{19}\text{General Survey concerning employment instruments (n.11), 17.}\)
their full co-operation in formulating and enlisting support for such policies” (art. 3). The Employment Policy Recommendation, 1964 (No. 122), also provides for employers and workers in all the sectors and their organizations to “take all practicable measures to promote the achievement and maintenance of full, productive and freely chosen employment”.

Vania Brino
Ca’ Foscari University Venice