Labour and Environmental Sustainability

Summary of Literature Reviews

by
Juan Escribano Gutiérrez

agreenment

A Green Mentality for Collective Bargaining

A EU research project led by

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Agreenment – A Green Mentality for Collective Bargaining aims at investigating how and why collective bargaining can contribute to embed the principle of environmental sustainability into labour relations, without abandoning but reinvigorating the ideals of justice, equality and democracy that justify the traditional and selective goals of the EU social model and collective bargaining regulation. The research project is based on the idea that there is no contradiction between environmental sustainability and the fundamental ideals and functions of labour law and industrial relations. The project covers 6 EU countries: France, Hungary, Italy, the Netherlands, Spain and the UK.

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Introduction

A review of the scientific literature of the countries that integrate the Agreenment Research project allows us to contemplate a series of common elements in all these legal systems. The purpose of this brief summary is, precisely, to find out what these common elements are.

The first existing studies on this subject, especially in France in the 1980s, begin by highlighting the need to break the traditional separation between environmental law and labour law. The literature of Spain and France, and later of the rest of countries, will end up resorting to similar theoretical proposals. However, this need is not always justified in the same way. Thus, it goes from those conceptions in which it is considered that the convergence between both sectors of the legal system is a consequence of the same object of protection of both, that is, the worker's person; to positions in which it is the aim pursued by both sectors of the legal system which justifies its necessary approximation, specifically, the search for the productive continuity of companies, as work and the environment affect the cost of production. Today, the reading of the most recent studies leads to a clear conclusion: it is not appropriate to continue to conceive labour law and Environmental Law as two separate compartments.

From a practical point of view, it was conceived as essential in this evolution to remove the first obstacle to achieve this necessary convergence. Specifically, the aim was to eliminate the duality between the internal and external environment. The protection of the worker’s health requires the elimination of such duality, since an integral protection of the worker needs, in turn, to guarantee healthy conditions during the performance of his work and also as an inhabitant of an environment affected by the possible negative consequences of business activity for the environment. The creation by Supiot of the concept of mixed risks and its subsequent generalization in the most recent studies carried out in the other countries will be particularly noteworthy for this purpose.

Furthermore, the most recent theoretical developments on decent work have brought to the fore the fact that this objective can only be achieved if it is accompanied by effective protection of the environment. In other words, the two values – decent work and environmental sustainability – are complementary in nature, although legal and industrial relations systems should be adjusted to promote their practical convergence.

However, progress in the theoretical positions analysed has not always been accompanied by a commitment by legislators to conceive the environment as part of the content of labour standards. Thus, it is not easy to find examples in our legal systems of the legislator's clear commitment to ending the separation between these sectors. On the contrary, the tendency to conceive the environment

as a niche of employment that will necessarily have to be promoted in the near future is much more generalized.

Highlights of specialized literature

We can remark, from the group of studies of the analyzed scientific literature, the following notes:

- Given that workers are the most immediate knowers of possible non-compliance by the company with its environmental obligations, it is logical to attribute to those reaction mechanisms in this respect. To this end, the practical virtuality of the instruments of collective conflict in this context has been analysed. This literature has detected a progressive increase in the number of assumptions in which strikes are used with the aim of tackling environmental non-compliance by their companies.

- It has been highlighted that it is necessary to take advantage, also in these contexts, of the ways in which workers participate in the company. Thus, in countries such as the Netherlands, where co-management instruments have historically had a greater presence, it will be easier to involve workers in the sustainable management of the companies in which they work. In general, the logic of collective action by trade unions ranges from conflict-oriented policies to more cooperative policies with employers and public institutions, depending on the sectors and types of organizations involved.

- Such an assertion will extend, in countries where the experience of co-management has been less developed, to the social economy sector. Furthermore, the perspective of the *commons*, embraced in the Italian literature, is described as the best alternative for promoting total convergence, rather than a simple and reductionist balance between work and the environment.

- In addition, it is assumed that there is a need to provide individual workers with protection mechanisms that do not prevent them from adequately denouncing the breaches they detect in their companies. The specialized doctrine was thus brought forward to the approval of the recent Community Directive.

- The specialized doctrine detects, with respect to these mechanisms, important deficits related to the lack of adaptation of them to the elements that characterize the protection of the environment, in particular, the difficulty of incorporating the precautionary principle present in environmental law.

- Another of the guidelines detected in the analysis of the literature of our respective countries is precisely the need to use, in the context of labour law, the traditional concepts of the other discipline, that is, sustainable development and the precautionary principle in particular.

- In a propositive line, a certain intention is detected on the part of the specialized doctrine to extend the possibilities of the labor contract as an instrument that favors the protection of the environment. In this way, there are studies that have tried to elucidate the possibilities of individual autonomy with regard to the introduction of contractual clauses with an environmental content. However, on many occasions this possibility is not imaginable in a context of strong labour precariousness such as that which presides over labour relations in most of the countries analyzed. For this reason, essays are being prepared with the aim of specifying which spaces the worker's right of resistance to environmentally unjust orders holds.

- Given the lack of attention given by the Labor Law to the protection of the environment in most of the legal systems analyzed, the Corporate Social Responsibility (CSR) is finally appealed as an adequate instrument to supply such limits. It is, possibly, the appeal to this CSR that unites the different systems studied the most, since, from the most advanced, especially the French case, to those who have less developed this convergence – the case of Hungary –, they end up configuring CSR as the adequate instrument to compensate for such deficits. However, criticism of this option has not ceased. In fact, it has come to be argued that the very strengthening of such CSR is a sign of the legislator's lack of willingness to introduce the necessary rules of law that imply, for example, the strengthening of collective bargaining as the ideal instrument for regulating environmental commitments in companies.

Collective bargaining and the environment

With respect to our specific topic, that is, the possibilities of collective bargaining in order to integrate the defense of the environment among the objectives of labour law, we can summarize the results obtained by our first doctrinal inquiries as follows:

- In the first place, it is observed that monographic studies on the role of collective bargaining in this context are still scarce.

- Those studies that have dealt with it agree that the collective agreement continues to be an underused instrument despite its enormous potential. Few collective agreements deal with the subject in a systematic way, limiting themselves to regulating very specific aspects and in relation to very specific economic sectors.

- However, there are increasing attempts to include specific aspects of protecting the environmental health of workers and to create instruments of sustainability in the company. Italian literature suggests the example of of so-called "green pay", i.e. pay mechanisms in which wage increases are linked to energy efficiency and the reduction of environmental impacts.

- Nevertheless, there is also significant reluctance on the part of workers' representatives in charge of negotiating collective agreements to increase the role of collective bargaining for these purposes.

- Beyond the contents and strategies of collective bargaining, the literature reviews show how unions are increasingly recognizing the importance of promoting sustainable development and, in minor cases, of finding alternatives to the current socio-economic order based on the illogical idea of quantitative growth on a finite planet. In some cases, the role of trade unions in environmental protection arises in relation to the prevention and management of natural and environmental disasters, as well as in the adoption of strategies to promote sustainable consumption among their members and communities.

Conclusions

To conclude, we can affirm that not even in the legal systems in which there has been more progress in the search for meeting spaces between labour law and environmental protection, the studies carried out on the role of collective bargaining in environmental protection are sufficient. In addition, in some of the countries selected by our project, the pioneering nature of a study such as the one we carry out is evident. Therefore, it is clear that the analysis we face, as well as its comparative nature, will open new avenues in this regard.

In particular, it is clear that one of the objectives of our studies will be to overcome the misperception by certain trade union sectors that environmental protection is detrimental to employment. On the contrary, our studies will contribute to the view that the inclusion of green clauses in collective bargaining is an opportunity for the creation of quality and healthy jobs. In addition, literature reviews show us a wide range of complementary trade union activities to promote environmental justice, ranging from those based on traditional class-oriented strategies to those aimed at establishing cooperative relationships with employers, civil society and those responsible for certain political formations.