

Criteria for Labor Minimum Age in England, Australia and Canada

Katayoun Rahvari*

Ph.D. in Public Law, Iran

*E-mail: k.rahvari@hotmail.com

Abstract

The concept of protection of children against labor and working children since start of activity of International Labor Organization has been a main goal and its evident sample is enactment of protocol No. 138 regarding the minimum labor age, which was enacted in 1973 and recommendation No. 146 with the same title and in the same year which had application in all fields of economic activity and their final goal was to eliminate child labor. In this regard, considering importance of subject, many countries have joined the mentioned protocol and have specified the minimum labor age in their local laws. The conditions of three countries i.e. England, Australia and Canada were studied and considered and it was specified that no suitable condition governs despite progress and development of the mentioned countries.

Keywords: child labor, minimum age, International Labor Organization, laws and regulations.

Introduction

England and Wales

In England and Wales, abundant laws have been enacted to protect children and teenagers and guarantee their constitutional law. Some of these laws have been enacted for protection of children and teenagers and some others only contain small parts relating to rights of children and teenagers, however, they are related to their constitutional law.

In addition, Britain has accepted many international transactions relating to child law such as The United Nations Convention on the Rights of the Child which was enacted in 16 December 1991, The United Nations Convention on the Rights of the Child which has been admitted on 1992/1/15, Convention for the Protection of Human Rights and Fundamental Freedoms which was agreed on 1967/2/24, The Minimum Age Convention, which has been enacted on 2000/6/7, and Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights which was admitted on 1976/5/201.

In the local laws, the main law which restricts application of children and teenagers in professional activities is Children law enacted in 1993. In addition, the word "child" means a person who is in compulsory educational age (up to 16 years). Of course, according to the mentioned law and also children employment law enacted in 1973, no child below 13 years can work with or without wage Therefore, it seems that legislator has considered the minimum labor age as 13 years. However, it is not clear why it has not performed any action regarding equalization of its enactment to regulations of the protocol in this field though this country is one of the acceptors of the minimum age protocol.

Since Children law enacted in 1933 has been reviewed by Children (Protection at Work) regulations, however, this age limitation has not changed.

In addition, according to law enacted in 1933, the people with minimum age of 14 years can be employed for performing light work and light work is defined as a work which is not harmful for safety, health and progress of the children and doesn't affect their attendance in school and also obtaining their professional experience and skill.

It is observed that law enacted in 1933(Children law) considered the minimum age for light work as 14 years, however, surprisingly, we see in another place of the same law and also children employment law enacted in 1973 that the general criterion for the minimum labor age is 13 years. In other words, age for light work has been considered above the minimum labor age, which is one of the weaknesses of these laws.

In addition, it is difficult to calculate compulsory school age. Compulsory school age is ended since School Leaving Age after the child reached age of 16 years or since school leaving age before the child reaches age of 16 years if the child reaches age of 16 years before start of the future educational year (education acts enacted in 1996).

As mentioned above, compulsory school age and its completion time which was referred in education act is complex and meaningless and age of 16 years cannot be considered certainly in this regard though Children law enacted in 1933 has announced the minimum labor age as 16 years.

Of course, UK Parliament empowered the local authorities to enact the laws by virtue of which they can employ persons with age of 13 years for performing light works or in farming and gardening affairs supervised by their parents. In addition, the local authorities are defined and recognized as local educational authorities to fulfill goals relating to limitations of labor age (Children law, 1933).

Therefore, local regulations of Britain are based on provisions of the minimum age protocol regarding performance of light work and necessary precautions have been made for this purpose, however, there are some complexities in compulsory educational age and by studying children employment law enacted in 1933 and its conformity to Education Act enacted in 1996, its ambiguities can be found as evident in law 1996. In definition of the word “child” in law enacted in 1933, age of 16 years has been considered as criterion while employment age of 13 years has been considered in another place of the same law and it is evident that child labor has not been prohibited in this country but it has some limitations. In fact, although Britain is a European country and it is expected to have more suitable and more advanced laws, however, it does not have satisfactory condition as we expect compared with some Asian countries to be discussed. The first paragraph of section 1 of women and children employment act enacted in 1920 shows that child labor (those who are below 16 years old) is not permitted in any of the industries.

The minimum employment age in industrial jobs was considered 16 years which seems to be justifiable considering enactment date of this law.

In addition, according to section 124 of Mines and Quarries Act enacted in 1954, no child below age of 16 years can be employed in mined unless they are trained in this field. Of course, we see enactment of more advanced laws with elapse of time. For example, the Betting, Gaming & Lotteries Act enacted in 1963 prohibited employment of people below age of 18 years in betting institutes and gaming houses and prohibited them from betting. Shipping industry law enacted in 1970 also emphasizes that no person below school age can work in the ship unless by virtue of the regulations which permit this employment under this law. In addition, license (production license) law enacted in 1983 prohibits all people below age of 18 years from selling and receiving alcoholic drinks.

All of the mentioned jobs are regarded as a part of harmful and hazardous professions and legislator has increased the minimum age for performing them. In addition, based on the statistics published in 2008, 4,005,000 children are between 15 and 19 years old (2,058,000 boys and 1,947,000 girls). In this age group , 1,815,000(45.3%) are economically active with 953,000 boys and 862,000 girls and participation rate of boys is 46.3% and participation rate of girls is 44.3%.

Australia

In Australia, many important conventions relating to children's rights have been accepted and attempt was made to support rights of children in federal, lands and the dependent areas and some of them have not been successful.

In international requirements, Convention on Children's rights was enacted on 16 January 1991 in Australia. Unfortunately, this country has not joined protocol No. 138. Of course, Minister of Industrial Relations issued order for organizing workgroup of joining protocols of International Labor Organization in May 1991. This workgroup believed that joining this protocol by Australia is not a suitable goal for this country. In this regard, it seems that decision of the mentioned workgroup has been affected by several factors: 1- understanding that the detailed requirements of the protocol particularly the requirements which have been interpreted by the Committee of Experts of International Labor Organization are excessively prescriptive from some viewpoints and 2- recognizing problems of conformity relating to articles 2, 3 and 7 and 3- unwillingness of the legislators in the areas which enforcement of the convention was not successful for performing actions which are necessary for conformity.

Therefore, it seems that the states and dependent lands are reluctant to take corrective measures to ensure conformity of their regulations to protocol 138. In addition, as mentioned in article 1 of protocol 138, the joining countries are obliged to adopt national policy for effective revocation of child labor and gradual increase of the minimum employment age and it seems that Australia doesn't have such national policy because Australia believes that it does not need such procedure because child labor is not regarded as an important subject in this country. It should be accepted that there is no single national policy relating to necessity of increasing the minimum labor age to 16 years.

In addition, it was mentioned that regarding article 1 of the protocol, it seems that all jobs which are performed by the teenagers (whether based on labor contract or not) are included considering generality of its term.

However, based on the available documents and evidence, the scope of actions based on which Australia has intended to prove conformity of the protocol includes the jobs other than the activities which are performed based on a work contract.

In fact, it is clear that actions of Australia are not comprehensive for this discussion and can create problems in conformity of actions of this country with other articles of the protocol.

For example, in the field of article 2 of the protocol, it seems that law and custom have not observed the inserted requirements in some respects which may be one of the reasons for no accession to the protocol.

In this country, a specified and single minimum age condition has not been determined for inclusion in the employment. Of course, compulsory attendance in the school up to age of 15 (16 years in Tasmania state) has been stipulated in enacted regulations of the states and dependent lands which is one of the positive points. However, it seems that compulsory education is not enough by itself and it will be necessary to apply comprehensive limitations on employment out of school hours and at holidays.

Of course, such regulations are found in different jurisdictions; however, their scope is not comprehensive enough for fulfilling requirements of the protocol. It may be argued that working out of school hours and at holiday can lead to mental and physical growth of the teenagers as these requests have been mentioned by many countries.

As mentioned above, the Committee of Experts opposed to this argument but feels that positive effects of these works can be adapted properly with reliance on concept of light work on article 7 but Australia points out difficulty in proof of conformity to this adaptation of this article.

Problems of adaptation to article 2 has been mixed with this fact that it is possible for the teenagers to have part-time job since age of 14 years later and some jurisdictions provided that they have received necessary permission from the competent authorities. Of course, these regulations are not so reliable but as a general idea, it seems that it should be kept to be used appropriate conditions. This assumption that Australia cannot claim that it lacks developed economic and educational facilities makes study of adaptation between protection of these regulations to the protocol very difficult regarding paragraph 4 of article 2 of the protocol. Even if Australia can prove deficiency and underdevelopment in concept of the necessary condition, it will not be able to prove compliance with essential condition for determination of minimum employment age even in age of 14 years.

Firstly, Australia is regarded as a developed country and secondly, proof of underdevelopment due to the presence of lands and states not coordinated with Federal State and it cannot have a minimum age criterion and minimum age of 14 years is not a suitable criterion for this country in addition that it is not executed harmoniously in all regions.

In this regard, Workplace Relations Act enacted in 1996 also stipulates that the minimum employment age and regulations relating to employment of children in any state and dependent land have different condition .

For example, New South Wales has no law for introduction of minimum age for employment and issue of child labor has been considered and legislated only in special industries but the opposite point is Victoria State which has taken some actions in the field of minimum employment age such as Child Employment Act enacted in 2003 which has stipulated that children below age of 13 years have been prohibited to work.. Therefore, the absence of general and uniform laws is fully evident. In addition, minimum age criterion in Victoria State is not consistent with requirements of protocol 138.

As mentioned above, issue of child employment in New South Wales State has been considered only in special industries.

In this regard, Children and Young Persons (Care and Protection) Act enacted in 1988 and Children and Young Persons (Care and Protection – Child Employment) Regulation enacted in 2005 stipulate that employment of children below age of 15 years in activities such as amusement, show, fixed photography or door-to door sale of products shall be controlled by Office for Children – Children s 'Guardian (OCCG). In addition, by virtue of enactment 2005 mentioned above, employers of these industries shall be permitted to work and recruit children and observe the available regulations and procedures. However, employment of children below age of 13 years has been regarded permissible in Victoria State by virtue of child employment act enacted in 2003 in family jobs, amusement and recreational industries and children aged above 11 years can perform activities such as carriage of newspaper, advertisement notices or transportation for the registered pharmacies and also each employed child (even in family jobs) shall perform only light work.

It is observed that the above regulations in these two states have some problems from other viewpoints in addition to the previously mentioned problems. Firstly, employment of children below age of 15 years in the mentioned activities doesn't specify what the minimum age should be and refers to the maximum age. In this regard, the question is that: can we utilize a 7-year-old child in these jobs? It is evident that some of them such as door-to –door sale of products is not suitable for children and secondly, it does not seem that the mentioned activities are regarded as part of light works which can be adapted to article 7 of protocol 138 and it can be said that the protocol has not been observed for light works.

In Victoria State, the same problem is found in employment of children below age of 13 years and the presence of 5-year-old child can be utilized in cases in law of 2003. In addition,

minimum age of 11 years in aforementioned jobs is not suitable. In addition, concept of light work is not specified here.

In fact, it should be mentioned that requirements of article 7 of protocol 138 regarding light work is not observed here and there is no formal requirement that the performed work out of school hours should have similar nature to what was explained in article 7 and there is no official decision in aforementioned laws and regulations regarding permissible forms of activity or conditions under which work is performed.

In fact, it seems that concept of light work is not formally and legally confirmed in any of the jurisprudences of this country and such generalized regulations have not been considered. Although the children below school leaving age legally cannot perform fulltime works and some legal authorities have limited employment of children below special ages in special activities, it should be noted that there is no limitation as stipulated in article 7.

Regarding hazardous works and requirements of article 3 of protocol 138, the condition is not so satisfactory and Australia doesn't bind itself to enforce its provisions in this section due to no accession to the protocol.

In addition, there are general regulations by virtue of which the teenagers below age of 18 years can be prevented from performing hazardous jobs (the jobs which are harmful for health, safety and their morality) in any of the jurisdictions of Australia. In addition, it is unlikely that sudden sets of limitations and prohibitions referred in the regulations can be regarded as decision which is considered as the exceptions under paragraph 3 of article 3 of protocol m138 for teenagers of 16 and 18 years.

Of course, it should be noted that despite aforementioned shortcomings, there is no evidence regarding abuse of the children and young adults' labor in this country while there are suitable and considerable conditions in terms of educational, health and social security system. That Australia does not recognize accession to the protocol as suitable target and does not perform its requirements shows that this convention has been accepted only by few developed countries and accession to it creates problems of adaptation in the developed countries which have joined it. It can be thought that failure of many countries in which child labor is considered as an economic and social major problem to join this convention increases doubt about adequacy and effect of this protocol as a reaction to this subject in developing or developed world.

In addition, no adaptation of laws and regulations of the states to mother state and the absence of uniform and single laws in federal states can be imagined and in addition to Australia, it seems that it is found in some countries such as Brazil, Mexico, Canada and America.

At the end, it is proper to look at the statistics. According to the estimation that published by International Labor Organization in 2008, 1,437,000 children and teenagers aged between 15 and 19 years (permissible labor ages) live in this country (737,000 boys and 700,000 girls) among whom 850,000 persons were economically active. There were 431,000 boys and 419,000 girls among whom participation rate of boys is totally 58.5% and girls is 59.8%

It is found that participation of the girls in this age is higher than that of boys considering their population probably due to lack of barriers which decrease the presence of girls. In other words, if traditions, customs and cultures such as marriage and tendency of more families to keep girls in family environment prevent their presence in workplaces to some extent in the aforementioned countries, this case is not found in developed countries such as Australia.

Canada

In Canada, the government signed Convention on the Rights of the Child on 28 May 1990 and joined it on 13 December 1991. However, Canada has not joined protocol 138.

In this country, considering the federal government system, laws and regulations relating to employment of children are mentioned in two federal and state levels and the condition is the same for the minimum employment age.

Of course, federal and state governments cooperate with each other instead of competition and dispute and the federal government which is superior to the states has power of action and decision about the cases which are not related to states and there is a negligible competition between federal government and state governments and children labor laws are in line with each other .

According to Canada Labor Code enacted in 1985 and Canada Labor Standards Regulations enacted in 1978, full labor age is 18 years. People with minimum age of 17 years can perform permissible jobs provided that it doesn't interfere in compulsory education laws and is not harmful for their health and safety. Permissible jobs include 1-clerical and agricultural jobs , 2- transportation , communication , repair and maintenance and 3- construction according to Canada Labor Standards Regulations.

According to Canada Labor Code and Canada Labor Standards Regulations, the persons below 15 years were prevented from working on ships and prohibited jobs for the children aged below 17 years include 1- working in mines , 2- working with explosives and 3- jobs relating to atomic energy.

It seems that Canada could observe criteria of protocol 138 despite not joining it considering minimum age of 17 years in the field of federal laws and necessary conditions have been mentioned for the permissible jobs. Of course, it was necessary to consider the minimum age of 18 years for hazardous jobs but no problem will occur in case of observing safety in the minimum age of 17 years. However, it is better to consider the higher minimum age for some professional activities such as working with nuclear energy.

But the minimum employment age varies from 14 years in states such as Nova Scotia, Ontario and Quebec to 17 years in North West, Nunavut and Yukon.

In the largest state which is Ontario, Industrial Establishments Regulation enacted in 1990 did not permit employment of persons below age of 16 years in the plant and permitted employment in mines and the related construction sites for teenagers of 16 years above, however, employment in underground mines is permitted for the persons who have the minimum age of 18 years . As a result, the minimum permissible legal age for employment is different in terms of labor type for nonagricultural activities.

For example, the minimum age is 14 years for nonindustrial workshops (not plants) based on Safety Regulations for Industrial Establishments under the Occupational Health and Safety Act enacted in 1990, 15 years in non -woodcutting plants and 16 years for woodcutting plants.

Therefore, it seems that each state has enacted its own restrictions about employment and the minimum age and based on the available information and the conducted studies, attempt was made to observe requirements of protocol 138 which is considerable that Canada did not join it.

Based on the statistics published in 2008 by International Labor Organization, 2,232,000 children are between 15 and 19 years old (permissible labor ages)(1,144,000 boys and 1,089,000 girls). In this age group, 1,248,000(55.9%) are economically active with 622,000 boys and 626,000 girls and participation rate of boys is 54.4% and participation rate of girls is 57.5%.

Conclusion

Considering aforementioned materials in these three countries, it is specified that necessity of joining protocol 138 and recommendation letter 146 of International Labor Organization is due to

effort to eliminate child labor and the work which children perform should be in a level based on their full physical and mental growth.

In this regard, the condition in England has been evaluated weak from some perspectives and it seems that it shall enact more suitable and more advanced laws because it is a European country. In addition, there is a lack of coordination between states and dependent lands and federal state in Australia which does not show single national policy and as a result, there is no single criterion for the minimum age and this dissimilarity is also found in Canada to less extent.

Therefore, it is necessary to expand necessary actions to increase attention to the protocol and the recommendation letter and the countries shall attempt to enact necessary regulations along with suitable sanction. Of course, it seems that it takes long time to execute these criteria and adapt all countries to these international regulations.

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