

On the Special Protection for Juvenile Workers

Jinruo Wu

Law School of Sichuan University, Chengdu 610207, Sichuan, China

Abstract: Industrial Revolution was the beginning of the phenomenon of child labor. Capitalists employed children, based on the autonomy of private law and the principle of contract, and put them under an adult-working condition whose labor intensity is not consistent with their physiological and psychological development. The health of children's physical and mental development had been greatly harmed and the process of national civilization and the construction of legal system had been undermined, which was hard to ensure the rights to survival, health and development of these juveniles. Therefore, plenty of countries have launched special protective measures for underage workers. By taking Constitution of the People's Republic of China as the core and Labor Law of the People's Republic of China, Law of the People's Republic of China on the Protection of Minors, Compulsory Education Law of the People's Republic of China, Regulations of the Special Protection on Children and Provisions on the Prohibition of Using Child Labor as the main contents, Chinese government has also initially set up the legal system regarding the special protection on juvenile workers while some of the contents still need to be improved and reviewed for further enhancement.

Keywords: Child Labor; Labor Rights; Special Protection

1. Definition of child labor and significance of the special protection

With the foundation of International Labour Organization in 1919, a number of conventions and proposals related to child labor were then issued, including the Minimum Age Convention, Worst Forms of Child Labour Convention, Medical Examination of Young Persons (Industry) Convention, and Medical Examination of Young Persons Recommendation, all of which laid the basis for the construction of a more complete legal system and international rules for the protection of minor workers. The acceleration of globalization in the 21st century along with the development of cross-border flows of trade and labor has made labor rights protection a hot and important topic in the field of law. "The official establishment of World Trade Organization means that how to build a set of core international labor standards among the increasingly frequent oversea trade and investment activities is going to be an unavoidable trend"^[1], and thus protection on juvenile workers should be given top priority for minors who will become the future talents of each country.

There are two main aspects and considerations regarding the protection on juvenile workers. To begin with, minors' rights to live and development are naturally guaranteed. A long time unconstrained work with the labor intensity equivalent to adult workers under the demanding or excessively harsh working conditions will not only damage the physical and mental health of minors, and may even lead to their death, but also strangle the children's opportunities to receive

education, learn essential living skills, and improve knowledge. The other aspect is the impact on the country's economic and social stability. Being the labor force of a country's next generation, children, whose knowledge and technique is one of the powers to improve national labor resources as well as upgrade enterprise technology in the future, will be hazarded by factors such as undue labor intensity if the situation isn't supervised and controlled. It causes labor marginalization and reduces national potential in economic growth, triggers social conflicts, and endangers the long-term development.

Labor Law of People's Republic of China stipulates a legal minimum age of 16 years old for employment. Unless otherwise specified (such as special requirements for occupation), no unit, organization or individual may recruit workers under 16 years of age. Moreover, workers over 18 years of age with normal intelligence have full capacity for civil conduct, as stipulated in the Civil Code are classified as adult workers^[2]. Therefore, citizens between the ages of 16 and 18 who have normal intellectual development and work ability constitute a special working group, namely, juvenile workers. They don't have full capacity for civil conduct, and their physical and psychological development fall short of the degree of the legal mature age. However, they are, due to the practical and economic needs, making a transition to adult workers with the working capability to engage in some jobs that suit their physical and mental development. Therefore, the rights of juvenile workers need special protection from laws and regulations. Based on Constitution of the People's Republic of China, which is also the foundation of special protection for minor workers, China has witnessed the construction of a legal system on special protection for minor workers, with the Labor Law of the People's Republic of China, Law of the People's Republic of China on Employment Contracts, Law of the People's Republic of China on the Protection of Minors, Compulsory Education Law of the People's Republic of China and other administrative and departmental regulations including Regulations of the Special Protection on Children and Provisions on the Prohibition of Using Child Labor as the main content in terms of working conditions, working hours, scope of work, intensity and so on.

2. Specific content and basic principles of special protection for child labor

There are two aspects for the legal protection of child labor. One is the common legal protection applicable to all workers, covering all laws, regulations and administrative rules associated with adult and child workers. The other is the legal protection in particular for child labor, which relies mostly on the labor legal system mentioned above. It can be listed as the following five contents.

2.1 Minimum age for child labor

The International Labour Conference in 1973 promulgated the Minimum Age Convention, which defined the age standard for minors and set the minimum age standard for workers to participate in industrial labor at the age of 15. As mentioned above in this article, according to the relevant labor laws in China, juvenile workers refer to citizens with working abilities ranging from 16 to 18 years of age, as well as employees under the age of 16 who have been approved by the labor and personnel authority in special industries. Many laws in China stipulate the minimum age of employment for minors, and resolutely resist the use of workers under the age of 16 without clear clarification in laws and regulations^[3].

2.2 Special protection for juvenile workers based on their physiological states

“For the physical, psychological development, health and safety of child labor, in addition to

the protection of general working conditions, special protection should be given to them in terms of working scope, place and intensity. From a certain point of view, the protection of underage workers is the protection of future labor and productivity.”[4] In China, special protection are given to underage workers by the labor law system with regard to the type of work, labor scope, labor intensity, labor environment and labor time to ensure the physical and mental health and development of underage workers, as Article 64 of the Labor Law clearly sets forth that no juvenile workers shall be arranged to engage in the work down the pit of mines, work that is toxic or harmful, and work with Grade IV physical labor intensity at the same time as stipulated by the State, or other taboo work that they should avoid.

The so-called “other taboo work” include exile operations, such as deforestation, high-altitude operations that may fall, high-risk operations in which the dose of radioactive substances exceeds the national standard, and other workplaces that may cause adverse consequences to the growth and development of underage workers. In this case, China has adopted enumeration to specify and regulate in detail the types of labor that underage workers can engage in. In addition, Law of the People’s Republic of China on the Protection of Minors also generally states that any organization or individual who recruits minors between the ages of 16 and 18 as laborers shall provide special protection to them, strictly abide by the relevant laws and regulations, such as the Labor Law in terms of types of work, labor intensity, working hours and working environment, and shall not arrange for them to engage in excessive labor, dangerous operations, overwork or poisonous and harmful labor, according to the relevant national provisions.

2.3 Protection of the health of juvenile workers with regular health check-ups

It’s laid down in China’s laws that employers must carry out health examination for underage workers at three stages, namely, before arranging work, one year after work, and half a year after the previous examination while they have reached the age of 18. The medical examination is designed to supervise the employers’ implementation of protection for underage workers at all times, which is a sign to show the country’s emphasis on the health of them. If it is proved by the medical department that the health of underage workers is impaired and they are not adapting to their current jobs, the employer shall take measures including workload cut and job transfer, so as to balance the healthy growth of them and economic efficiency, with the law giving first priority to the former.

2.4 Providing technical training for juvenile workers and offering guidance on their further education in spare time to improve their educational and technical level

It is one of the basic rights for workers to receive vocational skills training. As minors under the age of 18, the demand for knowledge and skills is even more urgent for their future. To employ juvenile workers, a registration system should be implemented and special protection should be given. Meanwhile, employers shall proactively organize the technical training for juvenile workers and give guidance on their further education in spare time to improve their educational and technical level for better labor resources in the future.

2.5 Limited working hours of juvenile workers

Generally, they are not allowed to work at night, and are prohibited from working overtime.

3. Review on China’s existing special protection for juvenile workers

Although China’s labor laws and regulations related to the protection of juvenile workers

are constantly improving and developing systematically, there are still deficiencies that need to be reviewed, such as immature legislative technology, excessive discretion of the competent authorities, lack of flexibility, and so on. The author is going to take the restrictions on working age and time as examples for further discussion.

China's labor law adopts the protection method of restricting the employment age, which is prohibited in principle and permitted by legal exceptions, and stipulates that 16 years old is the minimum age for employment. If otherwise stipulated by the law, workers under the age of 16 can be recruited. However, there are restrictions on recruiting minors under the age of 16 in units in literature and art, physical culture and sport, and special arts and crafts, provided that the administrative examination and approval procedures should be undertaken as the premise according to relevant national laws and regulations. Meanwhile, the employees thereof should be guaranteed the right of receiving compulsory education, as well as their labor rights. Through comparative law studies, Japan's Labor Standards Act sets the age of 15 as the minimum age for employment in principle. However, for "light labor that is not injurious to their health and welfare", children over 12 years old are allowed to engage in such work as this outside school hours with the permission of the relevant government agency. According to the Fair Labor Standards Act of the United States, the age of 14 is the legal minimum employment age for non-agricultural work. However, children of any age, including those under 14 years of age, can engage in jobs such as delivering newspapers and making a show in theaters. For those between 14 and 18 years of age, simple jobs such as retail, food service or office work are allowed, while workplaces with higher technical level or physical requirements, such as mining and manufacturing industries are prohibited from minors. Other countries such as the UK and Germany also have similar regulations.

From the above legislative examples, it can be seen that foreign legislation have no objection to minor workers engaging in simple and light jobs that are harmless to their bodies and minds. However, legislation in China only allow the "artistic and sports" industries to recruit minor workers aged between 14 and 16^[5], in which the field of work for minors is too narrow, while the employment is made subject to the mere consent of "parents or other guardians", which seems unduly broad. In author's opinion, we may make reference to foreign legislation on the article concerning the occupational field restrictions for minor workers between the ages of 14 and 16, with addition of an open miscellaneous provisions in the meantime, to cater for economic and social development.

The same is true of the limitation of labor time. The laws of Germany and the United States stipulate that children can't work during class, while Japan stipulates the ratio of employment time to study time. In addition to the health factors, such as the physical development and mental state of child labor, the said legislation had also considered the conflict between work and study under the circumstance of receiving education, hence the labor protection law should give attention to both health and education. In China, Article 15 of Labor Law and Article 13 of Provisions on the Prohibition of Using Child Labor also have similar provisions. The author holds that the limitation of working hours and the minimum employment age should be taken into account as well, that is, if juvenile workers could complete the nine-year compulsory education, and the type of work, work environment and labor process provided to them are recognized by the relevant competent departments as not to impede their physical and mental health and conflict with the "education time", employers may recruit them.

References

[1] Jiao X. On the international efforts to ban child labor (in Chinese). National Lawyers 2011; 3:

48.

- [2] Standing Committee of the National People's Congress. Article 18 of the Civil Code of the People's Republic of China. In: Bulletin of the Standing Committee of the National People's Congress of the People's Republic of China (in Chinese). Beijing: China Min Zhu Fa Zhi Pulisher; 2020; (S1).
- [3] Standing Committee of the National People's Congress. Labor Law of the People's Republic of China. In: Bulletin of the Standing Committee of the National People's Congress of the Peoples Republic of China (in Chinese). Beijing: China Min Zhu Fa Zhi Pulisher; 2019; (1).
- [4] Annie Brooking. Intellectual Capital—Application and management of the third resource. Dalian: Dongbei University of Finance and Economics Press; 1998: 214.
- [5] Standing Committee of the National People's Congress. Labor Law of the People's Republic of China. In: Bulletin of the Standing Committee of the National People's Congress of the Peoples Republic of China (in Chinese). Beijing: China Min Zhu Fa Zhi Pulisher; 2019; (1).

About the author: Jinruo Wu, female, Han nationality, born in September 2000 in Ningbo, Zhejiang Province. She is doing her undergraduate study at Law School of Sichuan University. Her research interest is the science of law.

1 Article 13 of Provisions on the Prohibition of Using Child Labor stipulates that units in literature and arts, and physical and sports may, upon agreement by their parents or guardians, recruit minors under the age of 16 as professional artists or sportsmen.

2 The Ministry of Labor, Ministry of Education, Ministry of Agriculture and Rural Affairs, State Administration for Market Regulation and All-China Federation of Trade Unions jointly issued the Provisions on Prohibition of Child Labour on November 5, 1998.

3 Article 13 of Provisions on the Prohibition of Using Child Labor stipulates that units in literature and arts, and physical and sports may, upon agreement by their parents or guardians, recruit minors under the age of 16 as professional artists or sportsmen.