MASTER THESIS | MASTER'S THESIS

Titel | Title

The Austrian Federal Employee Protection Act - a Human Rights Approach

verfasst von | submitted by

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angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of

Master of Laws (LL.M.)

Wien | Vienna, 2025

Studienkennzahl lt. Studienblatt | Degree programme code as it appears on the student record sheet:	UA 992 891
Universitätslehrgang lt. Studienblatt | Postgraduate programme as it appears on the student record sheet:	Human Rights (LL.M.)
Betreut von | Supervisor:	Univ.-Prof. Mag. Dr. Karl Stöger MJur

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2. List of Abbreviations

Art.	Article
B-BSG	Bundes-Bedienstetenschutzgesetz, Federal Employee Protection Act
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFR	Charter of Fundamental Rights of the European Union
CMW	The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECSR	European Committee of Social Rights
e.g.	exempli gratia, for example
ESC	European Social Charter
ESC rights	Economic, Social and Cultural Rights
EU	European Union
EU-OSHA	European Agency for Safety and Health at Work
EUROSTAT	European statistics
i.e.	id est, that means
Ibid	in the same source
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
NHS	National Health Service
No.	Number

OHCHR	Office of the United Nations High Commissioner for Human Rights
p	page
para(s)	paragraph(s)
SDG	Sustainable Development Goal
SLIC	Senior Labour Inspectors Committee
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHO	World Health Organization

3. Introduction

The right to health and the right to safe and healthy working conditions are universally recognized as fundamental human rights and inherent to human dignity. These rights are enshrined in international conventions such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). They obligate States to protect individuals from health risks and ensure safe working environments.

This thesis will look into various aspects of the right to health, agreeing with human rights scholar Tony Evans that the discussion around fundamental human right always entails not only a discourse on international legal standards, but also entails a moral discourse and an explicitly political discourse.[1] The principles of interdependence, non-discrimination or freedom from interference are all baselines of a human rights discussion. A human rights approach to health and safe working conditions requires a respect for basic human rights principles.

To adopt appropriate legislative measures is a crucial catalyst to work towards the full realization of fundamental rights. In Austria one of the laws, which effectuates the commitments made by the State on an international level, is the Federal Employee Protection Act (Bundes-Bedienstetenschutzgesetz B-BSG), which governs workplace safety and health for federal employees. This Master's Thesis is set out to analyse the B-BSG in the light of enforcing these rights within the Austrian context. By looking at preventative measures, participatory structures, and mechanisms for monitoring, this research aims to showcase the B-BSG's mission to protect the health and safety of federal employees. Human rights have to be examined through the lens of effectiveness.[2] They „cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. Monitoring of compliance with laws and regulations on occupational safety and health, is a prerequisite for the right guaranteed to be effective."[3]

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[1] Tony Evans, *International Human Rights Law As Power/Knowledge* in Human Rights Quarterly 27 (2005) p 1046-1068

[2] see The Universal Declaration of Human Rights (UDHR) United Nations General Assembly, 1948, article 8

[3] Council of Europe *Digest of the case law of the European Committee of Social Rights* 2022, p 70

The thesis is structured in two major parts: international law and national law. The international law section looks into the right to health and the right to work and discusses how the right to decent work and safe and healthy working conditions are a combination of the two. The second part is dedicated to the role of domestic law in effectuating human rights, followed by a deep dive into the B-BSG.

It will not focus on the rights to health or safe and healthy working conditions tailored to a certain group of people, like women or migrant workers, nor on the collective dimension of the right to work or social security. The thesis will also not include a comparative law analysis between different Austrian domestic labour laws (e.g. the B-BSG and the Austrian Employee Protection Act, ArbeitnehmerInnenschutzgesetz - ASchG), which regulate similar areas.

4. Methodology

This thesis uses a doctrinal research methodology through the analysis of legal texts and a review of relevant commentaries. It looks at the interconnectedness of several human rights, applying a holistic human rights approach. To unpack the system of values and politics underlying the human rights view of occupational safety and health, a good place to start is to examine the General Comments of the Committee on Economic, Social and Cultural Rights (CESCR), the UN committee that monitors the implementation of the ICESCR. The CESCR has discussed safety and health at work as a human right, as well as broader rights such as the right to health and the right to work.[4] The relationship between the right to health and the right to work, contributing to the formation of the right to safe and healthy working conditions showcases the interdependence of rights as one of the overarching principles of a human rights based methodology. A holistic human rights approach requires considering the human rights beyond the one right that appears most relevant and ensuring that the measures adopted do not diminish the enjoyment of other rights.[5]

The analysis continues with a systematic exposition of the provisions of the B-BSG, grouping them in different categories which are all contributing to fulfil the guarantees under the human rights instruments. The analysis highlights the legal obligations imposed on the employer, which in case of the B-BSG is the government, the principle of hazard prevention and the monitoring system through documentation and inspection. The methodology aims to provide a comprehensive understanding of how the B-BSG functions as a tool for enforcing human rights in the workplace.

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[4] see Jeffrey Hilgert *The future of workplace health and safety as a fundamental human right* in Comp. Labor Law & Pol'y Journal Vol. 34:715 2013, p 721

[5] see Gillian MacNaughton and Diane F. Frey *Decent Work for All: A Holistic Human Rights Approach* in American University International Law Review 26 no 2 (2011) p 471

5. International Law

5.1 The right to health

The World Health Organization (WHO) defines health as „a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.“ According to the WHO „the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.“[6]

The right to health is a fundamental human right that is recognized internationally.[7] It is enshrined in international agreements, including the UDHR and the ICESCR.

Article 25 UDHR

„1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.“

Article 12 ICESCR

„1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.“

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[6] World Health Organization (WHO) 1946 Constitution of the World Health Organization, preamble

[7] CESCR General Comment No. 14 *The Right to the Highest Attainable Standard of Health (Art. 12)* 2000 E/C.12/2000/4 para 1

Article 11 ESC – The right to protection of health

„With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co operation with public or private organisations, to take appropriate measures designed inter alia:

1 to remove as far as possible the causes of ill health;

2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

3 to prevent as far as possible epidemic, endemic and other diseases.“

The ICESCR provides one of the more complex articles on the right to health. The Convention came into force in 1976 and binds the States Parties that signed and ratified the convention; Austria ratified it in 1978. According to the ICESCR every human being is entitled to the enjoyment of the highest attainable standard of health and the States Parties recognize this right in relation to physical and mental health. While paragraph 1 provides a definition of the right to health, paragraph 2 names a declarative list of States Parties' obligations. The drafting history of article 12 paragraph 2 acknowledges that the right to health embraces a wide range of socio-economic factors and extends to the underlying determinants of health, like food and nutrition, housing, access to safe and portable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.[8]

Additionally the right to health is enshrined in article 24 of the Convention on the Rights of the Child (CRC) of 1989, article 11 para 1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) of 1965 as well as article 25 of the Convention on the Rights of Persons with Disabilities (CRPD). All of these groups face special health related issues, which this thesis will not go into detail about. Many regional human rights instruments also recognize the right to health, such as the European Social Charter of 1961 in article 11, the African Charter on Human and Peoples' Rights of 1981 in article 16 and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 in article 10.

[8] Ibid para 4 and 7

Furthermore the right to health has been proclaimed in the Vienna Declaration and Programme of Action of 1993.[9]

5.1.a Universality, interdependence, inalienability

As stated in the Vienna Declaration and Programme of Action, decided on at the World Conference on Human Rights in Vienna, which took place in June 1993 „all human rights are universal, indivisible and interdependent and interrelated. The International community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.“ The human rights framework embraced by the UDHR and the ICESCR is based on the three key principles of universality, interdependence, and equality of all human rights. „Article 28 of the UDHR states that everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. This provision implies a holistic framework in which social, economic, and political structures at both the national and international level support the full realization of all categories of human rights."[10]

The „holistic human rights approach connects all human rights in a unified system, rather than focusing on distinct components. A holistic human rights approach, therefore, rejects traditional, hierarchical distinctions between civil and political rights […] and economic, social and cultural rights“. Instead it advocates that „human rights are so interconnected that it is impossible to make progress on some rights without achieving progress in the system as a whole“. „A holistic approach stresses the universality, interdependency, and equality of all human rights. It recognizes that all categories of rights […] will require resources, may involve violations, and are essential to human dignity.“[11]

„*Universality* means that all people are entitled to human rights at all times.“ Those are „rights that one has simply because one is a human being.” “*Inalienability* means that people cannot voluntarily or involuntarily surrender their own human rights or the human rights of

[9] see Ibid para 2

[10] see MacNaughton and Frey (n 5) p 452

[11] see Ibid p 451 and 452

others.“[12] „All individuals are always holders of human rights because one cannot stop being human“.[13]

Human rights are also ***interrelated*** in the sense that they are connected to each other. Human rights conventions are to be read in the context of the whole. „The relationships between the work rights illustrate this understanding. Article 23 UDHR on the right to work and Article 24 UDHR on reasonable limits for work hours are closely related to Article 22 UDHR on the right to social security, which in turn is closely tied to Article 25 UDHR on the right to an adequate standard of living and security in the event of unemployment, sickness or disability.“[14]

Human rights are ***interdependent*** in the sense that the realization of one right may support or reinforce the realization of another right.[15] The fundamental human right to health is indispensable for the exercise of other human rights.[16] The preamble of the Constitution of the WHO reads: „The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States.“[17] Of course „the right to health is dependent upon the rights to food, water, and housing, as these are underlying determinants of health.“[18] At the same time the right to health is dependent upon the ralization of other human rights, like work, human dignity, equality and non-discrimination as these freedoms also address integral components of the right to health.[19] Moreover the right to physical and mental well-being is a prerequisite to enjoy other human rights, like the ability to participate politically, to enjoy the freedom of expression and association.[20]

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[12] Ibid p 455

[13] see Jack Donnelly *Universal Human Rights in Theory and Practice* Vol 3rd ed. Cornell University Press; 2013. https://search-ebscohost-com.uaccess.univie.ac.at/login.aspx?direct=true&AuthType=ip,shib&db=nlebk&AN=671407&site=ehost-live (accessed 6 January 2025)

[14] MacNaughton and Frey (n 5) p 456

[15] Ibid p 457

[16] CESCR (n 7) para 1

[17] World Health Organization (WHO) (n 6)

[18] MacNaughton and Frey (n 5) p 457

[19] CESCR (n 7) para 3

[20] MacNaughton and Frey (n 5) p 458, 463

„The right to health is also closely tied to the right to education because ill health care lowers educational achievement by increasing absences and disrupting concentration. The right to education can also enhance the right to health, for example, by improving access to health information. Moreover the right to health is linked to the right to work because ill health may reduce an individual's productivity at work or may limit or prevent that person from working at all. In turn, the right to work bolsters the right to health by assisting in the realization of related rights, such as the rights to food and housing. Indeed, the Commission on Social Determinants of Health, established by the World Health Organization, considers fair employment and decent work as important to living long and healthy lives."[21]

Likewise, the right to fair wages, to an adequate standard of living, to safe and healthy working conditions, to rest and leisure etc. are all interwoven. To put it very bluntly wealth and health go hand in hand. "Ill health is both a cause and a consequence of poverty: sick people are more likely to become poor and poor people are more vulnerable to disease and disability."[22]

To add another layer, „interdependence may also be understood in terms of the relationships between people." The rights of workers are closely related to the ones of their children or other family members, especially when responsible for the care and education of the children.[23]

Human rights are also *indivisible* by forming a „structure in which the value of each right is significantly augmented by the presence of many others."[24] Additionally indivisibility means that measures to protect and fulfil any particular right should not create obstacles to the protection and fulfilment of any other human right.[25]

Lastly as a result to the fact that all human rights are inherent to human dignity, they are *equal* in status and cannot be ranked in a hierarchical order.[26] The opening line of the UDHR reads that the "recognition of the inherent dignity and of the equal and inalienable rights of all

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[21] Ibid p 457 and 458

[22] Paul Hunt & Gillian MacNaughton, *Impact Assessments, Poverty and Human Rights: A Case Study Using The Right to the Highest Attainable Standard of Health* 2006 (World Health Organization Health and Human Rights Working Paper Series No. 6) p 27

[23] MacNaughton and Frey (n 5) p 459

[24] Donnelly (n 13) p 31

[25] MacNaughton and Frey (n 5) p 460

[26] UN Common Understanding *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies*

members of the human family is the foundation of freedom, justice and peace in the world." The same words are used in the preambles to the ICESCR and the ICCPR and are reaffirmed in the 1993 Vienna Declaration, which urged the international community and national governments alike to treat all human rights "in a fair and equal manner."

5.1.b State obligations

The State is the main addressee of any human rights norm. Human rights limit the power of the State and are there to protect or enable the individual. Over the course of the 20th century human rights developed from simply protective rights to economic, social and cultural rights, which oblige the State to take action as well.[27] They oblige the State in the following three ways: to respect, protect and fulfil.[28] The realization of the right to health may be pursued through different approaches, many of which compliment each other.

The *duty to respect* is also called the „negative obligation", obliging the State to refrain from interfering - directly and indirectly. If the State was not respecting the right to life and the prohibition of torture or cruel, inhumane or degrading treatment, inevitably the health of the people would suffer. The right to health is intertwined with asylum rights and prison standards as well. Part of the obligation to respect is „refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants to preventive, curative and palliative health services."[29] As stated by the European Committee of Social Rights the right to protection of health guaranteed in article 11 ESC complements articles 2 (right to life) and 3 (prohibition of torture) of the ECHR - as interpreted by the European Court of Human Rights - by imposing a range of positive obligations designed to secure its effective exercise.[30]

The *duty to protect* is such a „positive obligation" since the State is obliged to take action and prevent third parties from interfering with human rights' guarantees.[31] It has to protect its people from violence among each other by persecuting offenders and offering help and protection in various easily accessible ways, like women's shelters, youth welfare services or

[27] Subhram Rajkhowa and Stuti Deka *Economic, Social & Cultural Rights (2 Vols)* 2018, p 16

[28] Ibid p 19 and 20

[29] CESCR (n 7) para 34

[30] Council of Europe (n 3) p 111

[31] see Vladislava Stoyanova *Positive Obligations under the European Convention on Human Rights: Within and Beyond* Boundaries Oxford October 2023, p 10

food banks. Medicines and medical devices have to be inspected regularly of their quality and the best available technology based on scientific research has to be provided for everyone.[32] Moreover controlling the marketing of medical equipment and medicine is crucial along with ensuring that medical practitioners fulfil appropriate standards of education, skill and act upon an ethical code of conduct.[33]

The *duty to fulfil* is another so called „positive obligation". According to CESCR General Comments Nos. 12 on the right to adequate food (article 11 of the Covenant) and 13 on the right to education (article 13 of the Covenant), the obligation to fulfil incorporates an obligation to *facilitate* and an obligation to *provide*. In General Comment No. 14 on the right to the highest attainable standard of health (article 12 of the Covenant) the Committee found the obligation to fulfil also incorporates an obligation to *promote* due to the critical importance of health promotion in the work of the WHO and others.

One main pillar of the duty to fulfil is that States have to give sufficient recognition to the right to health in the national political and legal systems.[34] They are required to adopt appropriate legislative, administrative, financial, judicial, educational and social measures towards the full realization of the right to health.[35] The goal is to maintain and restore the health of the population by enabling and assisting communities to enjoy their right to health.[36]

Besides assault or gruesome accidents there are various more mundane health issues, that people face, like diseases, injuries or signs of old age. The State has to act by providing healthcare systems and medication in combination with an insurance system which is affordable for all. „Article 12 para 1 ESC guarantees the right to social security to workers and their dependents […]. States Parties must ensure this right through the existence of a social security system established by law and functioning in practice."[37] „States have to ensure the appropriate training of doctors and other medical personnel, the provision of a sufficient number of hospitals, clinics and other health-related facilities, and the promotion

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[32] see Amnesty International *Rechtsdurchsetzung von wirtschaftlichen, sozialen und kulturellen Menschenrechten* "https://www.amnesty.at/media/8792/rechtsdurchsetzung-von-wirtschaftlichen-sozialen-und-kulturellen-rechten.pdf" accessed 25 December 2024

[33] CESCR (n 7) para 35

[34] Ibid para 36

[35] CESCR General Comment No. 23 *The right to just and favourable conditions of work (Article 7)* 2016 E/C.12/GC/23 para 50

[36] CESCR (n 7) para 37

[37] Council of Europe (n 3) p 119

and support of the establishment of institutions providing counselling and mental health services, with due regard to equitable distribution throughout the country."[38]

Further obligations include the promotion of medical research and health education, as well as information campaigns, in particular with respect to sexual and reproductive health, domestic violence, the abuse of alcohol and the use of cigarettes, drugs and other harmful substances.[39] People are to be supported in making informed choices about their health. Through the provision of advisory and educational facilities individual responsibility should be encouraged. Education and participation must be guaranteed „for both the general population and population groups affected by specific health-related problems. [According to the European Committee of Social Rights this even] includes environmental health" topics.[40] Plus very importantly the principles of equality and non-discrimination have to be applied throughout any state conduct, also by abstaining from enforcing discriminatory practices.

The CESCR looked at the right to health in closer detail and found that the measures provided have to contain the following interrelated and essential elements[41]:

Availability: „Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party."[42] This will vary according to the State's development but will at least include the underlying determinants of health, like safe and portable drinking water, hospitals, trained medical personnel receiving adequate salaries and essential drugs.[43]

Accessibility has four overlapping dimensions: Non-discrimination, physical accessibility, economic accessibility (=affordability) and information accessibility. Health facilities, goods and services must be accessible to all, without discrimination, especially to the most vulnerable or marginalized. Adequate access to buildings has to be a given, especially for persons with disabilities. Payment for healthcare services has to be affordable for all, including socially disadvantaged groups. The principle of equity demands that poorer

[38] CESCR (n 7) para 36

[39] Ibid

[40] Council of Europe (n 3) p 115

[41] see Rajkhowa and Deka (n 27) p 223

[42] CESCR (n 7) para 12

[43] Ibid

households should not be disproportionately burdened with health expenses. Information accessibility encompasses the right to seek, receive and impart information and ideas.[44]

Acceptability: Medical ethics and confidentiality have to be respected and sensitivity towards gender requirements or requirements of the elderly has to be shown.[45]

Quality: All goods and services have to be scientifically accurate and of good quality. This includes skilled medical personnel, scientifically approved drugs and hospital equipment and adequate sanitation.[46] Life expectancy, the principal causes of death as well as infant and maternal mortality rates are reliable indicators of how well a particular country's overall health system is operating.[47]

An immanent part of any human right is the prohibition of discrimination. Every person has the right to live in dignity, which includes equality of opportunity and a fair allocation of resources. The European Committee of Social Rights states that „human dignity is the fundamental value and indeed the core of positive European human rights law - whether under the ESC or under the ECHR - and health care is a prerequisite for the preservation of human dignity".[48] The State has the obligation to take concrete and targeted steps to work toward the full realization of non-discrimination as quickly as possible; to ensure economic, social, and cultural rights for everyone, such as basic medical care.[49] The European Committee of Social Rights takes it a step further by obliging States to ensure equal access to *quality* health care.[50] Hence healthcare has to be easily accessible - physically, financially and non-discriminatory. This applies to healthcare facilities, medical goods as well as services. Vaccination campaigns for example against children's diseases like polio are to be made

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[44] Ibid

[45] Ibid

[46] Ibid

[47] Council of Europe (n 3) p 112

[48] Ibid p 111

[49] see Amnesty International *Warum WKS-Rechte unverzichtbar für ein menschenwürdiges Leben für alle sind* https://www.amnesty.at/themen/wirtschaftliche-soziale-und-kulturelle-rechte/warum-wsk-rechte-unverzichtbar-fuer-ein-menschenwuerdiges-leben-fuer-alle-sind/ accessed 26 December 2024

[50] Council of Europe (n 3) p 112

accessible to everyone.[51] Language, lack of economic wealth or disabilities must not constitute unbreachable barriers. „Financially accessible“ however does not equal „for free“.[52]

The realisation of non-discrimination has to prove itself in law and in fact. Discrimination on any of the prohibited grounds constitutes a violation. On the basis of article 2 paragraph 2 and article 3, the ICESCR prohibits any discrimination in access to health care on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status, sexual orientation and civil, political, social or other status, which has the intention of interfering with the equal enjoyment or exercise of the right to health.[53]

5.1.c Progressive realisation

The implementation of the aforementioned four essential elements will depend on the conditions prevailing in each and every particular State. When looking at the exact wording of Article 11 ESC, the Government has to take appropriate measures to remove *as far as possible* the causes of ill health. Furthermore it has to prevent -again- *as far as possible* epidemic, endemic and other diseases.[54] Article 12 paragraph 1 ICESCR speaks of the highest *attainable* standard of health.

These phrasings show normed examples of the *principle of progressive realisation*, which urges the States to induce measures continuously according to their potential, to work towards the full realization of the right to health.[55] In the words of the CESCR progressive realization means „that the States Parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of the rights recognized in the Covenant.“[56] It is well known within the community of States that realizing such multi faceted rights is difficult, it takes time and resources.[57] International Conventions provide for progressive realization and acknowledge the constraints due to the limits of available

[51] see Amnesty International (n 32)

[52] see Amnesty International (n 49)

[53] CESCR (n 7) para 12, 18 and 19

[54] see Council of Europe, European Social Charter (Revised) (ESC), ETS 163, 3 May 1996, Article 11

[55] see Amnesty International (n 32)

[56] CESCR General Comment No. 3 *The Nature of States Parties' Obligations (article 2 para 1)* 1990 E/1991/23 para 9

[57] see John Tobin *The Right to Health in International Law* Oxford 2011 p 225

resources the States face.[58] However the duty of progressive realisation does not permit inactivity, even if the resources are scarce. The States Parties have a „commitment to take joint and separate action to achieve the full realization of the right to health"[59], urging the international community to work together as one to guarantee human rights globally.

In General Comment No. 3 on the nature of States Parties' obligations, the CESCR „confirms that States Parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant."[60] Work related health however is not part of the core obligations.

The realization of non-discrimination on the other side is considered to be possible without many resources and therefore easily achieved. In its General Comment No. 18 the Committee even states that the principle of non-discrimination in article 2 para 2 of the Covenant is immediately applicable. It negates the principle of progressive implementation in this case, as as the implementation does not depend on available resources.[61] The Committee stresses, that strategies and programmes to eliminate health-related discrimination can be pursued with minimum resource implications.[62] Next to the guarantee that the right to health will be exercised without discrimination of any kind, the obligation to take steps towards the full realization of article 12 ICESCR is another immediate obligation. Again these steps must be deliberate, concrete and targeted.[63]

Sometimes it is difficult to distinguish between the inability of a State to take action and its unwillingness to do so. Acts of omission however can amount to a violation such as the failure to establish a national policy on occupational safety and health or occupational health services or the failure to enforce relevant laws.[64] „A State which is unwilling to use the maximum of its available resources for the realization of the right to health is considered in

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[58] CESCR (n 7) para 30

[59] Ibid para 38

[60] Ibid para 43

[61] see CESCR General Comment No. 18 *The right to work* (2005) E/C.12/GC/18 para 33

[62] CESCR (n 7) para 18

[63] CESCR General Comment No. 13 *The Right to Education (Art. 13)* 1999 E/C.12/1999/10 para 43

[64] CESCR (n 7) para 49

violation of its obligations under article 12“ ICESCR. Furthermore a State „cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations.“[65]

5.1.d The balancing of human rights

„The right to health is not to be understood as a right to be healthy.“[66] The wording „highest attainable standard of health“ shows that both the individual’s biological and socio-economic preconditions as well as the State’s available resources set limits which are to be considered. The Austrian legal system is largely unfamiliar with a "right to health", as no one can guarantee a person's health.[67] There are multiple aspects to good or ill health that cannot be ensured by the State, like genetic factors, individual susceptibility to ill health or the adoption of unhealthy or risky lifestyles.[68]

Even though the wellbeing of every individual is a great good and a valuable asset everyone wishes for, the State does not have the power to control every aspect in regard to health. This is also due to the fact that different human rights can compete with each other. This view could be interpreted as going against the concept of the holistic human rights approach, contradicting the principle of equality of human rights, which argues that there is no hierarchy of human rights as they are all equally valuable (see above). Nevertheless the balancing of human rights is well-established practice when determining human rights violations.

As recently seen in the COVID-19 pandemic (which according to the WHO lasted from March 2020 to May 2023) the State rose to protect the individuals by restricting other fundamental rights like the right to free movement, the right to private and family life as well as cultural and educational rights. Such restrictions of other fundamental rights constitute a tricky predicament. Even at the height of the pandemic there were (at times emotionally loaded) discussions if those restrictions were in fact legal. According to the CESCR in its General Comment No. 23 from 2016 „States Parties should avoid taking any deliberately

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[65] Ibid para 47

[66] Ibid para 8

[67] see Andreas Wimmer, Johannes Kepler University Linz *Das Recht auf Gesundheit, eine rechtsvergleichende Perspektive - Österreich* study 2022, p 50

[68] CESCR (n 7) para 9

retrogressive measure without careful consideration and justification. When a State party seeks to introduce retrogressive measures, for example, in response to an economic crisis, it has to demonstrate that such measures are temporary, necessary and non-discriminatory, and that they respect at least its core obligations."[69] This statement can be read against the background of the financial crisis of 2008. Keeping in mind that 2020 brought a global pandemic, affecting vital infrastructure in addition to the health of people, without any knowledge about long term effects, the calculated infringements still had to be set carefully and were criticized constantly. This situation showed how difficult the balancing of different human rights is. As mentioned above article 11 no 3 ESC binds the State to prevent epidemic, endemic and other diseases as far as possible. The European Committee of Social Rights gives the States more leeway in such extraordinary times - and urges them to take action fast. „In terms of preventive measures, States Parties must apply the *precautionary principle*: when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection provided for in Article 11 [ESC], to prevent those potentially dangerous effects." This circumstance undoubtedly occurred in the case of the COVID-19 pandemic. „Such measures may include testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards. Measures required must not only comply with the obligation to protect the right to protection of health under Article 11, but also with other Charter obligations related to health, including obligations in respect of the right of workers to safe and healthy working conditions (Article 3) […]. Finally, States Parties must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work […] places them at particular risk of infection."[70] The public interest to protect public health can justify far-reaching restrictions on fundamental rights, as demonstrated by the COVID-19 pandemic and the government measures taken to combat it. This has also been confirmed repeatedly by the Austrian Constitutional Court.[71]

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[69] CESCR (n 35) para 52

[70] Council of Europe (n 3) p 117

[71] see Wimmer (n 67) p 51

Unfortunately States sometimes misuse issues of public health as a reason to limit the exercise of other fundamental rights. The CESCR emphasized that the Covenant's limitation clause in article 4 is „intended to protect the rights of individuals rather than to permit the imposition of limitations by States. Consequently a State party which, for example, restricts the movement of, or incarcerates, persons with transmissible diseases such as HIV/AIDS, refuses to allow doctors to treat persons believed to be opposed to a Government, or fails to provide immunization against the community's major infectious diseases, on grounds such as national security or the preservation of public order, has the burden of justifying such serious measures in relation to each of the elements identified in article 4.[72] Such restrictions must be in accordance with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society. In line with article 5 no. 1 ICESCR, such limitations must be proportional, i.e. the least restrictive alternative must be adopted when several types of limitations are available. Even where such limitations on grounds of protecting public health are basically permitted, they should be of limited duration and subject to review."[73]

Digression:

I would like to engage in an exaggerated thought experiment. If the State wanted to quickly work towards the best health condition of its individuals without spending a lot of money, there are many easy and quick improvements that could be made. First of all no one should be allowed to drink alcohol or smoke cigarettes anymore. Dangerous sports like skiing and horse jumping should be prohibited. Motorcycles should be banned, as well as fast food. Instead everyone is ordered to do some low impact physical exercise an hour daily and eat vegetables with every meal. All these measures would be enshrined in domestic law. As absurd as this sounds, there is no doubt it would increase the overall health of Austrians.

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[72] Article 4 ICESCR reads: *„The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society."*

[73] CESCR (n 7) para 28 and 29

But obviously these laws would interfere with other human rights, especially the right to private life, which can be found in various human rights catalogues.[74] The scope of protection is a rather large one, with physical integrity lying within the scope. As with every human right's interference one can justify an infringement by passing a proportionality test: The interference by law must be necessary to protect a public interest to be justified.

Given that the laws fulfil the criteria of accessibility, foreseeability and precision and were published correctly and provide legal certainty, finding a public interest is rather easy: The health of the population, which can be connected to the wealth of a population, is a legitimate aim. When advancing to the necessity assessment the results are not as obvious. While it is arguable that the interferences are suitable to protect the health and wealth of the people, it is difficult to find that the measures are proportionate to the legitimate aim. As already mentioned before i.e. if there are less intrusive solutions to reach the legitimate aim. Even if there are no less restrictive means, one cannot argue for the adequacy, when weighing the right to private life against the pursued interest of a healthy population. The fictional interferences restrict the core of the human right to private life. Surveilling and enforcing the adherence with the law would equally cause a massive intrusion.

Therefore such laws would be disproportionate and would pose a violation of the human right to private life. Every individual can choose freely if they want to eat healthy or not, if they want to smoke or undergo plastic surgery, even though there can be serious complications. Of course this does not include minors or other vulnerable groups, where restrictions are justified. When looking at more serious health risks like the consumption of illegal drugs, the proportionality test would have a different outcome. So obviously there are multiple exceptions, but it goes to show that the norm adult is the main keeper of his or her health in the realm of the private life and responsible when choosing an (un)healthy lifestyle. To phrase it differently: one has the right to live an unhealthy life, without interference from the State. In these cases the State is left with the tools of advice and education in regard to prevention and encouraging the individual responsibility in matters of health.[75]

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[74] see The Universal Declaration of Human Rights (UDHR) (n 2) Article 12; see Council of Europe, European Convention on Human Rights (ECHR) as amended by Protocols Nos 11, 14 and 15, ETS No 005, 4 November 1950, Article 8

[75] Council of Europe, European Social Charter (Revised) (ESC) (n 54) Article 11 para 2

This is also reflected in the CESCR's interpretation of the right to health as containing both freedoms and entitlements. „The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference […]. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."[76] The Committee therefore interprets major parts of the fundamental right to private life into the right to health. This interpretation rids the system of the necessity of balancing two rights. The European Committee of Social Rights calls „respect for physical and psychological integrity an integral part of the rights to the protection of health" and recalls the obligation that the States must „refrain from interfering directly or indirectly with the enjoyment of the right to health."[77] The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health connects informed consent when it comes to medical intervention with the promotion of patient autonomy, self-determination and bodily integrity.[78] Hence the State is obliged to leave freedom to the people while still protecting their health in crucial areas.

5.1.e Developments in health protection

Within the last decades one could witness a tendency of States regulating the consumption of its people, actually interfering with their right to private life. The promotion of unhealthy lifestyles underwent far reaching regulations in regard to smoking. Tobacco companies were banned from advertising on posters and in the press, smoking within closed areas such as public transport, restaurants and cafés as well as workplaces was prohibited as scientific research showed the high risk of death in connection to smoking. Furthermore as the harmful substances do not only have an effect on the smoker him- or herself but likewise spread to passive consumers close-by, the prohibitions include protection of non-smokers to enjoy their social and cultural rights. Now they can visit events or travel without being exposed to smoke involuntarily. Again this shows a balancing of human rights, with the right to health being considered more prominent. According to the European Committee of Social Rights „anti-smoking measures are particularly relevant for the compliance with article 11

[76] CESCR (n 7) para 8

[77] Council of Europe (n 3) p 112

[78] Ibid p 115

[ESC] since smoking is a major cause of avoidable death in developed countries. The WHO has set a target for European countries of raising the proportion of non-smokers in the population to at least 80% and protecting non-smokers against involuntary exposure to tobacco smoke."[79] The CESCR even counts the failure to discourage production, marketing and consumption of tobacco, narcotics and other harmful substances as a violation of the obligation to protect.[80] The European Committee of Social Rights urges that the same approach should apply to anti-alcoholism and drug addiction measures.[81]

In Scandinavian countries and Australia the approach to alcohol is already much stricter than in central Europe. In Australia drinking on the streets is prohibited and alcohol can only be purchased in liquor stores when showing valid ID. In Scandinavian countries high taxes are imposed on alcohol, acting as a disincentive. Liquor stores there also tend to only provide small carts, to reduce purchases. Furthermore advertisement of alcohol is prohibited. This is a stark contrast to Austria, where alcohol consumption is still deeply rooted within the culture, with a bottle of wine being the standard gift and sparkling wine for breakfast being considered elegant. Local breweries are part of the communities' identity and sommeliers are highly respected. All of this happens against the background of clear and meanwhile well known scientific findings that alcohol is highly addictive, destroying nerve cells and altering behaviour, even impacting the life and health of others through incidents in connection with domestic violence and car accidents. The European Committee of Social Rights states that „informing the public, particularly through awareness-raising campaigns, must be a public health priority." „Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs."[82] It will be interesting to see how the public attitude towards alcohol will change within the next century and at which point the Austrian State will react by stepping up to protect the health of its citizens in this regard.

Another substance towards which the perspective changes and that in recent years has gained the description of „poisonous", is sugar. It is no coincidence that obesity is called an epidemic in various countries. „People who are overweight have a higher risk of getting type 2 diabetes, heart disease and certain cancers. Excess weight can also make it more difficult for

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[79] Ibid p 119

[80] CESCR (n 7) para 51

[81] Council of Europe (n 3) p 119

[82] Ibid p 115

people to find and keep work, and it can affect self-esteem and mental health."[83] In 2018 Great Britain imposed a „sugar tax" (soft drinks industry levy - SDIL) that charges levy for soft drinks containing more than 5 grams of added sugar per litre. This constitutes another clear example of a State taking responsibility and protecting public health. Expected positive outcomes include a reduction of obesity-related NHS expenditure and wider labour market participation. The levy did not only cause recipe reformulation of soft drinks but was also aimed to change behaviour, encouraging consumers to choose cheaper lower-sugar drinks over more expensive high-sugar options. This resulted in a lower overall daily sugar intake for both children and adults.[84] The debate has reached Austria as well, with the (now former) minister of social affairs, health, care and consumer protection Johannes Rauch arguing for the introduction of a sugar tax („Kracherl-Steuer").[85]

As per definition of the WHO and the CESCR the highest attainable standard of health includes physical and mental health. Especially in the aftermath of the COVID-19 pandemic mental illnesses skyrocketed, shedding light on the alarming scarcity of therapy places. A positive trend can be witnessed in the increasing discussion and acceptance of mental illnesses. The open conversation is important to reduce stigma and help the persons concerned to play an active part in society, to the extent they are willing and able to. One can hope that this crisis leads to an increase of access to mental healthcare and education in the future.

Another pressing issue which is only slowly appearing on the radar is the fact of gender differences in symptoms and reactions to treatment. A lot of progress is still to be made, as the female body has not been studied enough over the past centuries to efficiently treat female patients in regard to various general as well as gender specific diseases. This goes against the demand that the right of access to health care must be ensured to everyone without discrimination, especially since this implies that healthcare must be *effective* to everyone, as stated by the European Committee of Social Rights. "States Parties must provide appropriate and timely care on a non-discriminatory basis, including services relating to sexual and

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[83] Department of Health and Social Care policy paper *2010 to 2015 government policy: obesity and healthy eating* 2015 https://www.gov.uk/government/publications/2010-to-2015-government-policy-obesity-and-healthy-eating/2010-to-2015-government-policy-obesity-and-healthy-eating accessed 26 December 2024

[84] Institute for Government *Sugar tax* https://www.instituteforgovernment.org.uk/explainer/sugar-tax accessed 26 December 2024

[85] ORF.at *Zuckersteuer hätte laut Studie positiven Effekt für Kinder* https://orf.at/stories/3382157/ (accessed 19 January 2025)

reproductive health. As a result, a health care system which does not provide for the specific health needs of women will not be in conformity with article 11“ ESC.[86]

The pressing health issues will keep transforming in the future, while „States Parties must ensure the best possible state of health for the population according to existing knowledge.“[87] As per the European Committee of Social Rights, „health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action“. Interestingly the Committee considers risks which result from environmental threats as avoidable, since article 11 ESC guarantees the right to a healthy environment.[88] Since the climate crisis can be considered the biggest and furthest reaching threat of the century, this puts a heavy weight on the governments' shoulders with uncertainty regarding the scope and outcome.

5.2 The right to work

The right to work is a fundamental right, found in several international documents, e.g. laid down in the UDHR, ICESCR and the ESC:

Article 23 UDHR

„1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3.Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.“

[86] Council of Europe (n 3) p 113, 114

[87] Ibid p 112

[88] Ibid

Article 6 ICESCR

„1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.“

Article 7 ICESCR

„The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays“

ESC Part II

Article 1 – The right to work

„With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

2. *to protect effectively the right of the worker to earn his living in an occupation freely entered upon;*
3. *to establish or maintain free employment services for all workers;*
4. *to provide or promote appropriate vocational guidance, training and rehabilitation.“*

Article 2 – The right to just conditions of work

„With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

1. *to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;*
2. *to provide for public holidays with pay;*
3. *to provide for a minimum of two weeks annual holiday with pay;*
4. *to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;*
5. *to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.“*

„The right to work is essential for realising other human rights and forms an inseparable and inherent part of human dignity.“ The right to work contributes to the survival of the individual as well as that of his or her family.[89] The right to work has several dimensions: Article 6 ESC enshrines the right to work in a general sense, article 7 ESC targets the individual dimension by stating the right of everyone to the enjoyment of just and favourable conditions of work. „The collective dimension of the right to work is addressed in article 8“ ESC which is the right to form and join trade unions.[90] Articles 6, 7 and 8 of the Covenant are interdependent. The right to work therefore is an individual right but at the same time a collective right. As stated at the outset this thesis will not concentrate on the collective aspects.

[89] CESCR (n 61) para 1

[90] Ibid para 2

When talking about work the international Covenants mean *decent work*. The characterization of work as decent presupposes that it respects the fundamental rights of the worker, including the rights in terms of work safety as well as remuneration. Decent work provides an income allowing workers to support themselves and their families. Remuneration that provides a decent living is dependent on outside factors such as the cost of living and other economic and social conditions. It must be sufficient to enable the worker and his or her family to enjoy other rights like health care, education, an adequate standard of living covering food, water, sanitation, housing, clothing and commuting costs.[91] „The concept of a decent standard of living goes beyond merely material basic necessities […] and includes resources necessary to participate in cultural, educational and social activities".[92] Additionally respect for the physical and mental integrity of the worker in the exercise of his or her employment is included in the definition of decent work.[93] It is easy to see that the right to work is interwoven with the right to life, the right to health and the right to private life, as it directly impacts the whole family.

Decent work is also part of the United Nations 2030 Agenda for Sustainable Development as SDG number 8 „Decent Work and Economic Growth" includes the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. The ILO Director General Guy Ryder considers decent work not only a goal but a driver of sustainable development. It even „reduces inequality and increases resilience".[94] Crucial aspects of decent work are broadly rooted in the targets of many of the other goals, e.g. SDG number 3 „Good Health and Well-Being" which targets to ensure healthy lives and promote well-being for all at all ages. „Healthy workers and decent and safe working conditions increase the productive capacity of the workforce. Conversely, lack of access to medically necessary health care, as well as occupational injuries and diseases, often drive people out of the workforce and into poverty. At the same time, the

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[91] CESCR (n 35) para 18

[92] Council of Europe (n 3) p 72

[93] CESCR (n 61) paras 7 and 8

[94] ILO *Decent Work and the 2030 Agenda for Sustainable Development* https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@europe/@ro-geneva/@ilo-lisbon/documents/event/wcms_667247.pdf (accessed 18 January 2025)

health sector is employing ever more people around the world who also need decent working conditions to deliver universal access to needed health care."[95]

A State can violate its obligation to respect the right to work through laws, policies and actions that contravene the standards laid down in the Covenants. Especially in regard to discrimination the CESCR finds clear words: Discrimination in access to the labour market or obtaining employment on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or any other situation with the aim of impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant. „The principle of non-discrimination mentioned in article 2, paragraph 2, of the Covenant [i.e. the ICESCR] is immediately applicable and is neither subject to progressive implementation nor dependent on available resources. It is directly applicable to all aspects of the right to work.“[96]

Within the per se vulnerable group of the workforce, there are even more vulnerable minorities which need extra protection, such as young workers or women, especially when expecting children, migrant workers or disabled persons. There are various norms tailored to their needs as well as special measures with the goal to protect them and end exploitation, which this theses will not look at in detail. Another vulnerable group, that should not be part of the workforce, but inevitably is, are children. While working towards the goal of erasing all child labour, protecting them from work injuries or hazards inflicted on them is of utmost importance.

5.3 The right to safe and healthy working conditions

As mentioned before, a healthy population constitutes a healthy workforce and is a benefit for every State. Work relationships are based on contracts, to which the rules of private autonomy apply. Workers can choose or refuse work, also based on their concerns surrounding the work environment. With no other rules in place this would put workers rights on a voluntary foundation, only dictated by supply and demand. Especially when considering

[95] Ibid

[96] CESCR (n 61) para 33

the collective dimension of workers' rights it becomes more clear, that it is unethical to let every worker fend for him- or herself. If one person decides to leave a job due to bad working conditions, the problem is simply passed on to the next person. As Hilgert puts it, voluntary negotiation between labor market actors is „important in a pluralistic society, but questions of fundamental human rights and the need for collective governance of the working environment challenge extreme visions of market voluntarism."[97] The right to health in the context of work safety is connected to the idea that individuals have the right to work in environments that do not harm their health or well-being. It acknowledges that work-related factors can significantly impact a person's physical and mental health. Preventing occupational accidents and diseases is an essential aspect of the right to just and favourable working conditions, and is closely related to other human rights, in particular the right to the highest attainable level of physical and mental health.[98]

As individuals are in a vulnerable and dependent position when facing the employer and as a result of the employers' duty of care, norms regulating this relationship are widely spread across the human rights catalogues. The rights include fair as well as safe and healthy working conditions.

The right of everyone to the enjoyment of just and favourable conditions of work is recognized in the UDHR (articles 23 and 24), ICESCR (article 7), CERD (article 5), CEDAW (article 11), CRC (article 32), CRPD (article 27) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, articles 25 and 70) as well as in other international legal instruments, especially in conventions and recommendations of the International Labour Organization (ILO).[99] Regional human rights treaties encompass this right too, while the wording of the provisions differs of course: The European Social Charter (ESC) in Part I paras. 2, 3, 4, and Part II articles 2, 3 and 4, the Charter of Fundamental Rights of the European Union (CFR) in article 31, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights in article 7 and the African Charter on Human and Peoples' Rights

[97] Hilgert (n 4) p 731

[98] CESCR (n 35) para 25

[99] see under 5.4

in article 15. Many of those Conventions also include special provisions for women and children (e.g. article 10 ICESCR, Part I paragraphs 7 and 8 ESC, article 32 CFR).

ESC

Part I

„The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

2. All workers have the right to just conditions of work.

3. All workers have the right to safe and healthy working conditions.

4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.“

Part II

Article 3 – The right to safe and healthy working conditions

„With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1. to issue safety and health regulations;

2. to provide for the enforcement of such regulations by measures of supervision;

3. to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health.“

Article 31 CFR

Fair and just working conditions

„1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.“

Article 24 UDHR

„Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.“

The European Committee of Social Rights states that „the right of every worker to a safe and healthy working environment is a widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights. The purpose of article 3 ESC is directly related to that of article 2 of the European Convention on Human Rights, which recognises the right to life.“[100]

The wording „everyone“, „all workers“ or „every worker“ reinforces the general prohibition of discrimination and the equality provision. Article 7 (a)(i) and (c) ICESCR (see under 5.2) states equality and freedom from distinctions when it comes to wages and promotions.

„The enjoyment of the right to just and favourable conditions of work is a prerequisite for, and [simultaneously a] result of, the enjoyment of the right to the highest attainable standard of physical and mental health, by avoiding occupational accidents and disease, and an adequate standard of living through decent remuneration.“[101]

Another confirmation of the interrelations is that Article 12 ICESCR - the main provision on the right to health - enshrines the right to a healthy workplace environment in para 2 (b). „The improvement of all aspects of environmental and industrial hygiene“ encompasses preventive measures in respect of occupational accidents and diseases.[102] Industrial Hygiene refers to the minimisation of the cause of health hazards in a working environment „so far as is reasonably practical“.[103] Hilgert points out that this phrase comes directly from ILO Convention No. 155 on occupational safety and health and is the product of heated negotiations between employers and workers in 1980-1981. This demonstrates the clash of values inherent in any work law related discussion.[104] As already mentioned above, the individual and the collective dimension of the right to work are closely linked and trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions of work.

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[100] Council of Europe (n 3) p 63

[101] CESCR (n 35) para 1

[102] CESCR (n 7) para 15

[103] ILO Convention No. 155 *Occupational Safety and Health Convention* 1981 article 4 para 2

[104] Hilgert (n 4) p 723

Furthermore article 12 para 2 (c) names the prevention, treatment and control of occupational diseases as a step to be taken by the States Parties to achieve the full realization of the right to health. This requires education programmes for behaviour-related health concerns and the promotion of social determinants of good health such as economic stability.[105]

Like the right to health (see under 5.1), the right to just and favourable conditions of work also imposes three levels of obligations on States. Firstly the State has an obligation to respect the right by refraining from interfering directly or indirectly with its enjoyment. This is particularly important when the State is the employer, including state-owned or state-controlled enterprises. The State has to prevent and remedy occupational accidents and diseases resulting from acts or omissions.[106] When it comes to the obligation to protect, the State has to ensure that the adopted laws are effectively enforced.[107] Meanwhile the obligation to fulfil includes measures to facilitate and promote this right. Measures for example include obligatory notification schemes in the event of occupational accidents. To promote the right, States have to ensure appropriate education, information and public awareness. This has to be conducted in relevant languages and accessible forms, for persons with disabilities as well as illiterate workers.[108]

To work against health hazards in the working environment, States should formulate, implement and periodically review a coherent national policy to prevent or minimize the risk of occupational accidents, injuries and diseases, as well as provide a coherent national policy on occupational safety and health services.[109] The adoption and implementation of a comprehensive national policy on occupational health and safety is one of the core obligations, States Parties to the ICESCR have to fulfil to ensure the satisfaction of a minimum essential level of the right to just and favourable conditions of work.[110] „While full

[105] CESCR (n 7) para 16

[106] CESCR (n 35) para 58

[107] see UN *Guiding Principles on Business and Human Rights*, principle 3 p 27

[108] CESCR (n 35) paras 60, 62 and 63

[109] CESCR (n 7) para 36

[110] CESCR (n 35) para 65

prevention of occupational accidents and diseases might not be possible, the human and other costs of not taking action far outweigh the financial burden on States Parties for taking immediate preventative steps that should be increased over time.“[111] In the same way as regarding the right to health „States Parties must comply with their core obligations and take deliberate, concrete and targeted steps towards the progressive realization of the right to just and favourable conditions of work, using maximum available resources.“[112] „States Parties must move as expeditiously and effectively as possible towards the full implementation of the right to just and favourable conditions of work, with a level of flexibility to choose the appropriate means.“[113] States Parties to the ICESCR must demonstrate that they have taken all steps necessary towards the realization of the right enshrined in article 7 within their maximum available resources, that the right is enjoyed without discrimination and that women enjoy conditions of work not inferior to men, as well as equal pay for equal work.[114] Furthermore the States have to „effectively enforce that right and sanction non-compliance by public and private employers.“[115] This is achieved by putting „into place an adequate monitoring and accountability framework by ensuring access to justice or to other effective remedies“.[116]

„A failure to take such steps amounts to a violation of the Covenant.“ The „Committee examines whether steps taken are reasonable and proportionate and whether they comply with human rights standards and democratic principles“ „Violations of the right to just and favourable conditions of work can occur through acts of commission as well as through acts of omission, which is the failure to take reasonable steps to fully realize the right for everyone.“[117]

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[111] Ibid para 25

[112] CESCR (n 56) paras 2 and 10

[113] CESCR (n 35) para 51

[114] Ibid paras 77

[115] Ibid para 51

[116] Ibid paras 80

[117] Ibid paras 77-79

The ILO estimates 860,000 people are victims of work related accidents daily and 2.3 million fatalities annually.[118] Discrimination, inequality and a lack of rest and leisure as well as the gender pay gap are persistent and global issues. Increased competition, new technology, self-employment, outsourcing and increased work intensity are all trends of this time. All of those „favour the development of psychosocial factors of risk, leading to work-related stress or even harassment.“[119]

„Rest and leisure, limitation of working hours and paid periodic holidays help workers to maintain an appropriate balance between professional, family and personal responsibilities and to avoid work-related stress, accidents and disease.“[120] The direct connection between these guarantees and physical and mental health is undeniable. Mental health problems can have far-reaching „consequences in terms of work performance, illness rates, accidents and staff turnover. These factors of risk have also been identified as some of the most significant factors of disease and disability worldwide, cutting across age, sex and social strata, impacting low-income and high-income countries alike.“[121] „Stress at work is associated with a 50% excess risk of coronary heart disease, and there is consistent evidence that high job demand, low control, and effort-reward imbalance are risk factors for mental and physical health problems.“[122] Poor mental health is also associated with precarious employment and uncertainty like temporary contracts. „Workers who perceive work insecurity experience significant adverse effects on their physical and mental health.“[123]

It goes to show that the fundamental rights of health and work, with its specification of the right to safe and healthy working conditions are interconnected and inseparable in the way that one cannot be looked at individually without considering the other. Human rights Committees emphasize that safe working environments are a prerequisite for protecting

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[118] ILO (n 94)

[119] Council of Europe (n 3) p 63

[120] CESCR (n 35) para 34

[121] Council of Europe (n 3) p 63

[122] WHO Commission on Social Determinants of Health *Closing the gap in a generation - Health equity through action on the social determinants of health* 2008, p 8, https://iris.who.int/bitstream/handle/10665/69832/WHO_IER_CSDH_08.1_eng.pdf?sequence=1 accessed 6 January 2025

[123] Ibid

public health. Besides the human rights framework, these rights are also part of the international labour law discussion.

5.4 International labour standards

International organizations such as the International Labour Organization (ILO) provide guidelines and recommendations to promote occupational health and safety globally. As the UN specialised agency focused on work, the ILO undoubtedly has the greatest expertise in this area. The key function of the ILO is protecting and implementing the right to work at the international, regional and national levels[124] - of course including all dimensions of the right to work as interpreted by the CESCR. In their own words „the ILO is devoted to promoting social justice and internationally recognized human and labour rights, pursuing its founding mission that social justice is essential to universal and lasting peace. The only tripartite UN agency, since 1919 the ILO brings together governments, employers and workers of 187 Member States [including Austria], to set labour standards, develop policies and devise programmes promoting decent work for all women and men.“[125] The CESCR points to the ILO to assist States in drafting and reviewing legislation as the ILO „has considerable expertise and accumulated knowledge concerning legislation in the field of employment“.[126]

The CESCR encourages the incorporation of international instruments - particularly of ILO conventions - setting forth the right to work into the domestic legal order, to strengthen the effectiveness of measures. The Committee argues that such incorporation or the recognition of their direct applicability significantly enhances the scope and effectiveness of remedial measures. By doing so courts would then be empowered to adjudicate violations of the right to work by directly applying obligations under those international conventions.[127]

There are numerous ILO conventions which relate directly and indirectly to the human right of just and favourable conditions of work. Some of them date back over 100 years like the Hours of Work Convention from 1919 (No. 1) for Industry. Conventions on working hours

[124] CESCR (n 61) para 53

[125] About the ILO https://www.ilo.org/about-ilo (accessed 5 January 2025)

[126] CESCR (n 61) para 40

[127] Ibid para 49

for other sectors were added later on (Commerce and Offices 1930, Road Transport 1979). The most relevant Convention for this thesis' topic is the one on Occupational Safety and Health from 1981 (No. 155) with its Protocol to the Occupational Safety and Health Convention of 2002. Other conventions dealing with particular circumstances of groups of individuals are the Workers with Family Responsibilities Convention, 1981 (No. 156); Night Work Convention, 1990 (No. 171), the Part-Time Work Convention, 1994 (No. 175), the Maternity Protection Convention, 2000 (No. 183) and the Domestic Workers Convention, 2011 (No. 189) to only name a few.

Gillian MacNaughton and Diane F. Frey in their essay „Decent Work for All: A Holistic Human Rights Approach" criticize that many of these Conventions only cover limited groups of workers. With now well over one hundred ILO Conventions, which each address different categories of workers and different aspects of work, many have not been widely ratified.[128] In contrast the work rights enshrined in the ICESCR are universal. They cover all human beings regardless of the sector in which they work.[129] Furthermore the holistic human rights approach which is reaffirmed in the preambles of both the ICESCR and the ICCPR encompasses all individuals and groups, extending beyond the limited area of the ILO.[130]

In regard to the creation of „decent work"[131] the ILO played a central role. The 2008 Declaration on Social Justice for a Fair Globalization commits the ILO and its members to place full and productive employment and decent work at the centre of economic and social policies with the Decent Work Agenda as the overarching framework. The concept of "decent work" was introduced in 1999. „The word "work" is intended to be broader than employment or labor, reflecting "the variety of ways in which people contribute to the economy and society." The word "decent" denotes that work must be of acceptable quality in terms of income, working conditions, job security, and rights."[132]

The work rights of the ICESCR overlap with the pillars of the ILO Decent Work Agenda. The second pillar „social protection" corresponds to the rights to social security and safe and

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[128] MacNaughton and Frey (n 5) p 446

[129] Ibid p 447

[130] Ibid p 453 and 454

[131] see under 5.2

[132] MacNaughton and Frey (n 5) p 449

healthy working conditions. The fourth pillar „rights at work“ correspond to the ILO Core Labor Standards which are the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, elimination of discrimination in employment, the freedom of association and a safe and healthy working environment. The ILO Declaration on Fundamental Principles and Rights at Work (adopted in 1998 and amended in 2002) requires all members of the ILO to respect these rights, regardless of the specific Conventions to which they are a party. However the “rights at work” in the fourth pillar of the ILO Decent Work Agenda are limited to the ILO Core Labor Standards even though decent work encompasses numerous other rights such as the rights to fair wages or reasonable limitations on working hours.[133] MacNaughton and Frey conclude that the ILO’s definition of decent work fails to capture the full essence of worker’s rights recognized in the ICESCR.[134]

Jeffree Hilgert looks critical at the role of the ILO in his paper „The future of workplace health and safety as a fundamental human right“ as well: At the Nineteenth World Congress on Safety and Health at Work in Istanbul 2011, organized by the ILO, the Istanbul Declaration on Safety and Health at Work affirmed that „promoting the rights of workers to a safe an healthy working environment should be recognised as a fundamental human right“.[135] The exact same phrase had been used at the Eighteenth World Congress in Seoul in 2008.[136] This shows a directional change, since other ILO declarations like the Declaration on Fundamental Principles and Rights at work from 1998 or the Declaration on Social Justice for a Fair Globalization from 2008 excluded safety and health from the list of „core“ labour rights.[137]

Hilgert analyzes that the ILO’s model of protection is a „flexible self-regulation approach“ which „impedes the realization of worker health and safety as a fundamental human right.“ In his eyes the basic human rights values of anti-discrimination, non-interference and interdependence besides other fundamental human rights principles are not respected in the ILO’s primary labor conventions. He criticizes that the ILO’s main labor

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[133] Ibid p 445, 446

[134] Ibid p 466

[135] Istanbul Declaration on Safety and Health at Work 2011 https://www.ilo.org/resource/istanbul-declaration-safety-and-health-work accessed 27 January 2025

[136] Seoul Declarationon Safety and Health at Work 2008 https://www.ilo.org/resource/seoul-declaration-safety-and-health-work accessed 27 January 2025

[137] Hilgert (n 4)

convention on worker health and safety (No. 155) includes weak or absent language that leaves workers unprotected. Flexible clauses weaken protection, permitting implementation „according to national conditions and practice“ or „so fas as is reasonably practicable“.[138] Meanwhile the ILO considers specific provisions of Convention No. 155 as „a careful balance between the interest of employers […], on the one hand, and the protection of life and health at work, on the other.“[139] According to Hilgert this approach loses sight of the fact that worker health and safety is a fundamental human right and therefore „fails to recognise basic human rights principles in the working environment“.[140]

As mentioned before the estimated number of people dying per year from work-related illnesses and injuries is roughly 2.3 million. Furthermore in 2011 around 317 million workers were reported to suffer injuries causing absences from work of four days or more each year, which results in 850.000 injuries daily. This number does not include occupational diseases, which is estimated to cause an even greater number.[141] It goes without saying that those statistics show a failure of effective human rights protection. Of course labor protection is challenging in a hyper competitive global economy and the ILO's goal is to create a balance between economic productivity and the protection of workers' health and rights. However as established above a healthy workforce is essential for economic productivity. One also has to remember that ILO labor conventions derive from negotiation. Nevertheless effectuating rights is essential to the human rights approach.[142] Hilgert criticizes that the debate around health and safety has often been extracted from other workers' rights, even though they are interconnected. He urges that human rights „should serve as a baseline for the interpretation of international labour law“ and „acceptance of divergent national practices“ should only be granted „where they do not violate basic human rights principles“.[143]

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[138] Ibid p 724

[139] International Labour Conference 98th Session, 2009 Report III (Part 1B) *General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981*, p 24 and 50

[140] Hilgert (n 4) p 725

[141] ILO, Nineteenth World Congress on Safety and Health at Work *Introductory Report: Global Trends and Challenges on Occupational Safety and Health* September 2011 http://www.ilo.org/safework/info/publications/WCMS 162662/lang—en/index.htm

[142] see Hilgert (n 4)

[143] Ibid p 735

Beside the ILO there are other important supranational players at EU level. The European Agency for Safety and Health at Work (EU-OSHA) is the European Union information agency for occupational safety and health. Its goal is to improve working conditions in Europe through promoting a culture of risk prevention for the benefit of increased productivity. EU-OSHA engages in various topics like ageing, digitalisation and psychosocial risks and mental health at work. The Agency „develops, gathers and provides reliable and relevant information, analysis and tools to advance knowledge, raise awareness and exchange occupational safety and health (OSH) information and good practices […].“[144]

Another entity is the Senior Labour Inspectors Committee (SLIC) with the mandate to give its opinion on all matters relating to the enforcement of EU legislation on health and safety at work. SLIC consists of representatives of the labour inspection services of the Member States. The Committee defines common principles of labour inspection, develops methods of assessing the national systems of inspection and promotes knowledge and mutual understanding of the different national systems and practices. It is also a platform for the labour inspectorates to connect and develop a reliable and efficient system of rapid information exchange about health and safety issues.[145]

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[144] European Agency for Safety and Health at Work *Mission and Vision* https://osha.europa.eu/en/about-eu-osha/what-we-do/mission-and-vision (accessed 19 January 2025)

[145] Senior Labour Inspectors Committee https://employment-social-affairs.ec.europa.eu/policies-and-activities/rights-work/health-and-safety-work/senior-labour-inspectors-committee-0_en (accessed 19 January 2025)

6. National Law

6.1 Enforcing human rights through national law

As already mentioned above the State face different duties when it comes to human rights: to respect, to protect and to fulfil them. Human rights conventions however only bind the States as parties to those contracts and are therefore not directly enforceable by individuals. Nevertheless human rights are undoubtedly rights of the individual. A right that cannot be enforced however cannot be considered a right but only a lex imperfecta. To create a possibility to hold the State accountable a revisal through an independent judiciary is indispensable. Within the nature of human rights lies the dependency on statutory law to be made enforceable. The right to health and the right to safe and healthy working conditions are no exception.

Additionally one should not forget that even though the States Parties are the ones ultimately accountable for compliance with the international conventions, every member of society (individuals, health professionals, families, private businesses, civil society organizations, etc.) has responsibilities and possibilities to enable the enjoyment of the right to health.[146]

In its General Comment No. 18 the CESCR states that „in accordance with article 2, paragraph 1, of the Covenant, States Parties are required to utilise „all appropriate means, including particularly the adoption of legislative measures“ for the implementation of their Covenant obligations.“[147] In doing so every State Party has a margin of discretion in assessing which measures are the most suitable for the concrete circumstances. However every State has a clear duty to take whatever steps are necessary to ensure that everyone can enjoy the highest attainable standard of physical and mental health as soon as possible.[148]

The Committee also names benchmarks that legislative measures should fulfil: „establish national mechanisms to monitor implementation of national plans of action and contain provisions on numerical targets and a time frame for implementation. They should also provide means of ensuring compliance with the benchmarks established at the national level and the involvement of civil society, including experts, the private sector and international

[146] CESCR (n 7) para 42

[147] CESCR (n 61) para 37

[148] CESCR (n 7) para 53

organizations."[149] This encompasses the recommendation that States should adopt a national strategy, based on human rights principles. When setting up a strategy, a prerequisite is the identification of the resources available including the most efficient ways of using them.[150] With respect to articles 6 and 7 ICESCR the Office of the United Nations High Commissioner for Human Rights (OHCHR) put out a non exhaustive list of indicators.[151]

Especially in the world of human rights the judiciary is an important actor, interpreting broadly formulated provisions, developing and consolidating individuals' rights. There is valid criticism in regard to the blurring of the separation of power when judges develop law in that way, becoming part of a political debate that can shape the law and therefore have a legislative effect. Especially since the civil rights tradition in contrast to the common law, does not generally know the judiciary as a law maker. However it is an inherent part of general principles to be interpreted and concretisized according to the particular case. Also this does not stop political actors and the executive forces to take the chance to shape broad principles through law and other provisions and act upon them accordingly themselves.

The CESCR in General Comment No. 3 states clearly that „among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable." States which are also parties to the ICCPR are obligated (by virtue of article 2 paras. 1 and 3, articles 3 and 26) of that Covenant to ensure that any person whose rights or freedoms recognized in that Covenant are violated, "shall have an effective remedy" (article 2 para. 3 a).[152] Any victim of a violation should have access to effective judicial or other appropriate remedies to resolve disputes at the national level. Furthermore „all victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or a guarantee of non-repetition."[153] In particular, States Parties should ensure that workers suffering from an accident or disease and the dependants of those

[149] CESCR (n 61) para 38

[150] Ibid para 41

[151] OHCHR *Human Rights Indicators: A Guide to Measurement and Implementation* (Geneva, 2012) (HR/PUB/12/5); page 95

[152] CESCR (n 56) para 5

[153] CESCR (n 61) para 48

workers alike, receive adequate compensation, including for costs of treatment, loss of earnings as well as access to rehabilitation services.[154]

„Not only courts, but also national human rights institutions, labour inspectorates and other relevant mechanisms, should have authority to address violations of the right to just and favourable conditions of work. States should review and, if necessary, reform their legislation and codes of procedure to ensure access to remedies, as well as procedural fairness.“[155] The system of penalties in the event of breaches must be efficient and dissuasive.[156]

The Austrian legal order does not give direct effect to the ICESCR. The Optional Protocol, which provides for the possibility of an individual complaints procedure before the Committee in article 2 („Communications“), has not yet been ratified by Austria despite recommendations from the international community.[157] The ICESCR Optional Protocol which has been adopted by the UN General Assembly in December 2008 provides the first international complaint mechanism independent of the ILO for violations of economic and social rights, including the right to decent work.[158] The domestic law is therefore still the main instrument for individuals to gain access to their fundamental human rights.

6.2 The Federal Employee Protection Act

Legal regulations play a crucial role in ensuring the right to health at the workplace. Governments should establish and enforce laws that set standards for occupational health and safety, and employers should comply with these regulations. „States Parties' primary obligation under article 3 ESC is to ensure the right to safe and healthy working standards of the highest possible level. Under article 3 no. 1, this obligation entails issuing safety and health regulations providing for preventive and protective measures against workplace risks recognised by the scientific community and laid down in international regulations and standards. […] Domestic law must include framework legislation setting out employers'

[154] CESCR (n 35) para 29

[155] Ibid para 57

[156] Council of Europe (n 3) p 71

[157] see Human Rights Council *Report of the Working Group on the Universal Periodic Review Austria 2021* A/HRC/47/12

[158] MacNaughton and Frey (n 5) 441-483

responsibilities and the workers' rights and duties as well as specific regulations."[159] The framework legislation and specific occupational safety and health regulations must embrace all workers, all workplaces and all sectors of activity.[160] To cover different sectors, the wording should make use of general terms, all while being sufficiently precise to allow for effective application.

The Austrian Federal Employee Protection Act (the full German title is „Bundesgesetz über Sicherheit und Gesundheitsschutz der in Dienststellen des Bundes beschäftigten Bediensteten", in short Bundes-Bedienstetenschutzgesetz or B-BSG) deals with the protection of federal employees. This includes various safety regulations as well as provisions on reporting or the obligation to provide for an occupational health practitioner. Together with workplace health promotion („Betriebliche Gesundheitsförderung") this creates a preventive healthcare system within the work environment. The B-BSG came into force in 1999 and can be found in BGBl. I Nr. 70/1999.

As mentioned under 5.3 the CESCR requires States to adopt and implement comprehensive national policies. The drafting process and implementation of a national strategy should pay full respect to the principles of accountability, transparency, and participation by the groups concerned. They should be an integral part of the decision-making of all policies, programmes and strategies intended to implement the obligations of States Parties under article 6 ICESCR.[161] Also all health-related decision-making is to be targeted with the participation of the population.[162] The B-BSG creates positions for groups or individuals which empower them to speak for the workforce.

The national policy should cover all categories of workers, including apprentices and interns.[163] In the Austrian public sector an internship („Verwaltungspraktikum") is a very common way of starting into public service and is considered an educational contract as opposed to a work contract. Additionally within the public sector one can find different types

[159] Council of Europe (n 3) p 66

[160] Ibid p 67

[161] CESCR (n 61) para 42

[162] CESCR (n 7) para 11

[163] see ILO Convention No. 155 (n 103)

of employees, mainly „Beamte“ and „Vertragsbedienstete“, whose employment relations are governed by different laws. The provisions of the B-BSG apply to all of these different types of workers.[164] If employees who are not federal staff are employed at a federal workplace (e.g. through the arrangement of labor leasing), the federal government is obligated to ensure that external employees are informed about the hazards present in the workplace and are provided with appropriate training.[165]

The ILO names elements of national policies which are aimed at minimising the risk of occupational accidents and diseases.[166] Those elements are besides others the identification and control of dangerous materials, equipment, substances, agents and work processes;[167] the maintenance of tools, machinery and equipment including chemical substances;[168] the provision of health information to workers and of adequate protective clothing when necessary; the enforcement of laws and regulations through adequate inspection; the requirement of notification of occupational accidents and diseases and the production of annual statistics; and the provision of occupational health services with essentially preventive functions.[169] As the following pages will show, the B-BSG puts all of these elements in a domestic law corset.

It is the fundamental responsibility of the employer to protect the health and safety of workers. § 3 B-BSG norms the general obligations of the employer: The employer must take all necessary measures to protect the life and health of the employees, including measures to prevent work-related hazards, provide information and instruction and necessary resources. The employer must stay informed about the latest developments in technology, taking existing risks into account. The employer has to ensure, that employees, in the event of a serious, immediate, and unavoidable danger, suspend their work activities and secure their safety by

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[164] see Österreichischer Nationalrat, Bundes-Bedienstetenschutzgesetz (B-BSG) 1999, BGBl. I Nr. 70/1999, § 2 (1)

[165] § 8 (2) no 1 B-BSG; Disclaimer: translation software has been used to translate the Federal Employee Protection Act from German to English

[166] see ILO Convention No. 155 (n 103) article 5

[167] CESCR (n 7) para 36

[168] CESCR (n 35) para 27

[169] CESCR (n 7) para 36; see ILO Convention No. 161 *Occupational Health Services Convention*

immediately leaving the workplace. Furthermore the employer is obligated to ensure, through instructions and other suitable measures, that employees are able to take the necessary steps to reduce or eliminate danger in the event of serious and immediate risk themselves. The employees' knowledge has to be at the center of attention in the preparation for such instances.

As there are multiple facets which all contribute to fulfil the guarantees under the human rights instruments, the following grouping of B-BSG provisions into topics should highlight certain areas in which the B-BSG effectuates the human rights to health and to safe and healthy working conditions.

6.2.a Participation

„The right to health encompasses a right to participation in all health-related decision making and places a priority on the participation of the human rights holder in the governance of his or her own human rights."[170] Workers have the right to participate in decision-making processes related to health and safety at the workplace. This includes the right to be informed about potential hazards, the right to voice concerns, and the right to participate in the development and implementation of safety policies.

In case of the B-BSG participation is supposed to be achieved through the position of a representative for work safety („Sicherheitsvertrauensperson"). Safety representatives must be appointed in workplaces where more than ten employees are regularly employed.[171] They act as a contact person for the other workers and their concerns and are supposed to voice those concerns to the employer. The employer is obligated to meet with the safety representatives and listen to all matters they bring up concerning safety and health protection.[172] To not lead this system ad absurdum, the representative should be part of the workforce, a peer so to say, to maximise approachability and make sure he or she has the same interests. A very important factor is that safety representatives are not part of the hierarchy in the performance of their

[170] Hilgert (n 4) p 721

[171] § 10 (2) B-BSG

[172] § 11 (4) B-BSG

duties, which means they are free from orders from the employer.[173] Only employees who meet the necessary personal and professional requirements for their tasks may be appointed as safety representatives. They must be given the opportunity to acquire and expand the specialized knowledge required for their role as well as the time to fulfil their duties.[174] Those duties include informing, advising, and supporting the employees, advising the employer on the implementation of employee protection regulations, ensuring the presence of appropriate measures and informing the employer about existing deficiencies as well as monitoring the application of necessary protective measures.[175]

The B-BSG lacks a direct complaint mechanism for employees to management. Nevertheless the employer has to listen to all matters related to safety and health at the workplace voiced by workers. However if a representative for work safety is appointed, the communication is supposed to be carried out in a consolidated manner through them. It is debatable if this is necessary to give complaints a formal and therefore official format. What this definitely does however is adding another step and therefore barrier on the worker's way to being heard.

Another important stakeholder is the safety officer („Sicherheitsfachkraft"), who is responsible for advising the employer, employees and safety representatives on occupational safety and human-centered workplace design. They support the employer in fulfilling their duties in these areas. They must be involved in matters related to work physiology, work psychology, ergonomic and occupational hygiene issues as well as matters of fire protection and evacuation measures.[176]

If there are at least 100 employees (or 250 in workplaces with a low hazard potential) the employer is obligated to establish a workplace safety committee („Arbeitsschutzausschuss"). The workplace safety committee's task is to ensure mutual information sharing, exchange of experiences, and coordination of occupational safety measures. It aims to improve safety, health protection, and working conditions by addressing all matters related these topics. In

[173] § 11 (2) B-BSG

[174] § 10 (6) and (7) B-BSG

[175] § 11 (1) B-BSG

[176] § 74 (1) and (3) B-BSG

particular, it should discuss the reports and proposals of safety representatives, safety officers, and occupational health practitioners. The committee is responsible for promoting cooperation within the workplace on all questions of safety and health protection and developing principles for advancing employee protection. The head of the workplace, safety officers, occupational health practitioners and safety representatives are all part of the committee, which makes it an important institution to enhance participation. Overall safety representatives, safety officers and health practitioners are meant to be working together continuously to form a functioning opposition to the interests of the employer.

6.2.b Safe working conditions

Individuals have the right to work in conditions that do not pose a threat to their health or safety. This also implies that all workers, regardless of their position or status, have an equal right to a safe and healthy working environment. Discrimination based on factors such as gender, age, or disability must not impact access to safe working conditions.

The European Committee of Social Rights puts risks in four categories, which are psychosocial risks (e.g. work-related stress or harassment in the workplace), workplaces and equipment (particularly machines, display screens, hygiene, air pollution, noise or personal protective equipment), hazardous agents and substances (such as chemical agents, carcinogens including asbestos and radiation) and sectoral risks (for example work on boats, in construction and mines, in agriculture and transportation).[177]

Workplaces must be designed in a manner that respects human dignity. Workplaces in buildings must receive as much natural daylight as possible and should have a visual connection to the outside. Moreover they have to be equipped with artificial lighting, have sufficient floor space and height, as well as adequate air volume, so that employees can perform their work without impairing their safety, health and well-being.[178] Workers must have access to a sufficiently sized area to move freely. Furthermore the indoor climate must be suitable for the human organism and regarding outdoor workplaces protection from

[177] see Council of Europe (n 3) p 66

[178] §§ 21 (2) and 22 (3), (5) and (6) B-BSG

weather conditions must be ensured as much as possible.[179] Workplaces generally have to be designed in a way that ensures that employees are not significantly affected by glaring light, radiant heat, drafts, malodorous smells, heat, cold, wetness or humidity.[180] Further staff must be provided with drinking water or a different non-alcoholic beverage that is safe to drink.[181]

If health-endangering stressors cannot be avoided or reduced to an acceptable level other measures must be taken to compensate for the burden, such as limited working hours, work breaks and rest periods. This applies to tasks involving physical stresses, like working under particularly challenging climatic conditions (e.g. in chill rooms).[182]

The European Committee of Social Rights explicitly names noise pollution to be within the scope of article 11 ESC.[183] § 65 B-BSG lays out that noise exposure has to be reduced to the lowest practicable level. Measurements must be taken at regular intervals. Furthermore employees must be informed and instructed about the potential dangers of noise exposure. Hearing protection must be provided, which the workers are required to use. Noise zones must be marked and technical measures should be implemented to reduce noise exposure.[184]

Just like the main ILO labour convention on worker health and safety (No. 155) which has been discussed above, the B-BSG in parts suffers from imprecise wording. This opens the door to inconsistent interpretation and enforcement, which can lead to less protection for the individual. Examples for such unclear phrasing can be found in the preceding paragraphs including „*as much* daylight *as possible"*, *„sufficient* space"*, „adequate* air volume"*, „not significantly affected* by glaring light"*, „*stressors have to be reduced to an *acceptable level"* or „noise has to be reduced to the *lowest practicable level"*. Without precedents it is impossible to know what is to be considered *sufficient* or *significant*. Since the majority of the provisions are precise and do not leave space for misinterpretation, the instances where the law does not provide for clear instructions are even more striking and seem intentional.

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[179] §§ 22 (3) and § 61 (7) B-BSG

[180] § 66 (2) B-BSG

[181] § 27 (9) B-BSG

[182] § 66 (3) B-BSG

[183] Council of Europe (n 3) p 118

[184] § 65 (1), (2) and (4) B-BSG

Naturally every Austrian law has to be backed by a majority in parliament to come into existence. In the preceding assessment process stakeholders are invited to comment on the draft law. Regularly those official comments are taken into account to alter the draft law, basing legal acts on common ground. Even though the B-BSG is mainly protecting federal workers, interests of the employer are catered to as well through imprecise phrasing which can stretch the scope of what is considered legal. Again, this balance of interests loses sight of the fact that workers' health and safety is a fundamental human right and should not fall victim to misinterpretation due to imprecise provisions.

When it comes to non-smoker protection, the B-BSG lags behind the current state of the science. § 30 provides that the employer shall ensure that non-smoking staff are protected from the effects of tobacco smoke in the workplace, *insofar as this is possible given the nature of the workplace*. Smoking shall be prohibited for staff in buildings, *if non-smoking staff members are employed* in the workplace. If a sufficient number of rooms are available, the employer may set up individual rooms in which smoking is permitted. It needs to be ensured that the tobacco smoke does not penetrate into the areas of the workplace where smoking is prohibited. Work rooms, common rooms, standby rooms, first-aid rooms and changing rooms must not be set up as smoking rooms.[185] This level of protection is not sufficient, as it is almost physically impossible to confine smoke to a certain area without advanced artificial ventilation. Also smokers cannot be expected to endure smoke throughout the whole work day. Furthermore the employment of a non-smoker would automatically lead to massive changes for all the others, disrupting the onboarding of the new employee, cueing harassment in the worst cases.

Another risk category are hazardous working substances which include explosive, flammable, and health-endangering substances, as well as biological agents. Health-endangering substances can be toxic, corrosive, irritant, carcinogenic, mutagenic, radioactive and reprotoxic.[186] The employer must determine the characteristics of the substances used in the workplace and assess the risks they may pose. Particularly scientific findings have to be taken into account. The extent and duration of exposure of workers to health-endangering

[185] § 30 B-BSG

[186] § 40 B-BSG

substances and biological agents has to be redetermined regularly. Any combined effects of multiple hazardous substances must be taken into account.[187]

The B-BSG prohibits the use of carcinogenic, mutagenic, reprotoxic substances, and some biological agents if an equivalent work result can be achieved with non-hazardous substances or, if this is not possible, with less hazardous substances. Before using carcinogenic, mutagenic, or reprotoxic substances the intent of usage must be reported in writing to the labor inspectorate.[188]

The case *Brincat and Others v Malta* before the European Court of Human Rights concerned ship-yard repair workers who were exposed to asbestos, which led to them suffering from asbestos related conditions. The applicants complained about the failure of the Maltese Government to protect them or their relatives from fatal consequences. The Court held that there had been a violation of article 2 ECHR (right to life) in respect of the applicants whose relative had died, and a violation of article 8 ECHR (right to respect for private and family life) in respect of the other applicants.[189] „It found in particular that, in view of the seriousness of the threat posed by asbestos, and despite the room for manoeuvre ("margin of appreciation") left to States to decide how to manage such risks, the Maltese Government had failed to satisfy their positive obligations under the Convention, to legislate or take other practical measures to ensure that the applicants were adequately protected and informed of the risk to their health and lives."[190]

If there are hazardous areas in a workplace they must be clearly visible and permanently marked (e.g. where there is a risk of falling or the danger of objects falling, electrical voltage, radioactive materials, noise or other physical influences). Moreover unauthorized employees are to be prevented from entering these areas.[191] At workplaces with an increased risk of accidents an employee may only work alone if effective supervision is ensured.[192]

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[187] § 41 (2) and (5) B-BSG

[188] § 41 (1) and (5) B-BSG

[189] ECtHR *Brincat and Others v Malta* (Applications nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11) 2014

[190] ECtHR *Factsheet - Work-related rights* 2024, p 35

[191] § 20 (2) B-BSG

[192] § 60 (6) B-BSG

Finally, of course all workstations have to evacuate quickly and safely in case of danger. The escape routes and emergency exits must be kept clear so they can be used at any time. Escape routes and emergency exits must be equipped with permanent and clearly visible signs.[193]

6.2.c Prevention of hazards

According to the statement on COVID-19 and social rights by the European Committee of Social Rights, the State has to „conduct a thorough review of occupational risk prevention at national policy level as well as at company level.“[194] „The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment.“[195]

Also according to the Committee occupational risk prevention has to be an integral aspect of the public authorities at all levels. The preventive measures have to be monitored and information and training for employees must be provided.[196] Furthermore a basis is provided in article 11 ESC, which obliges States to take steps to prevent accidents, which includes accidents at work.[197]

The „objective must be to foster and preserve a culture of prevention in respect of occupational health and safety“.[198] "A culture of prevention implies that all the partners – authorities, employers and workers – are actively involved in occupational risk prevention, working within a well-defined framework of rights and duties and predetermined structures.“[199] An indication of a functioning culture of prevention can also be an internal system of health promotion which might offer free vaccinations, sight or back examinations

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[193] § 21 (4) B-BSG

[194] European Committee of Social Rights *Statement on COVID-19 and social rights* 2021, p 3

[195] Council of Europe (n 3) p 64

[196] Ibid p 64

[197] Ibid p 119

[198] Ibid p 64

[199] Ibid p 65

or sports programs to the employees and invite speakers on healthy eating habits or mental health.

Nevertheless the main focus lies on the employers to identify, assess and mitigate workplace hazards.[200] This involves implementing measures to prevent accidents and exposure to harmful substances, as well as providing necessary and fitting protective equipment.[201]

§ 7 B-BSG sets forth the principles of hazard prevention, which include the avoidance of risks, the assessment of unavoidable risks, combating hazards at their source, consideration of the "human factor" in the workplace, especially in the design of workstations or selection of work equipment and issuance of appropriate instructions to employees.

Ensuring that electricity, work equipment, personal protective equipment, as well as fire alarm or firefighting systems are regularly checked for proper condition is crucial and any identified deficiencies must be rectified promptly.[202]

Precautions have to be taken to prevent fires and, in the event of a fire, to avoid endangering the lives and health of employees. Appropriate measures are the provision of sufficient fire extinguishing equipment, as well as fire detectors and alarm systems. Fire extinguishing equipment must be clearly visible and permanently marked. Appointing individuals responsible for the evacuation of employees is beneficial. Also a sufficient number of employees must be familiar with the operation of the fire extinguishers.[203]

For occurrence of minor injuries there have to be sufficient and appropriate means for first aid, including instructions. The storage locations for the necessary first aid equipment must be easily accessible and clearly visible. A sufficient number of individuals must be appointed to be responsible for first aid.[204]

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[200] § 4 (1) B-BSG

[201] see § 70 (1) B-BSG

[202] § 17 (2) B-BSG

[203] § 25 B-BSG

[204] § 26 (2) and (3) B-BSG

Only work equipment that, according to the state of the art, minimizes risks to the safety and health of employees as much as possible may be used.[205] If it is necessary to ensure the safety and health of employees, work equipment must be checked for proper condition, correct assembly and stability before it is put into operation for the first time or after major repairs and significant modifications. This applies in particular to cranes, elevators or lifting platforms. These work equipments must also be inspected regularly to ensure their proper condition. Moreover periodic inspections shall be carried out on work equipment that is exposed to heavy use and effects that may damage it, which could lead to dangerous situations for employees.[206]

If hazardous substances are in use, preventive measures must be taken to limit the quantity of hazardous substances to the absolute minimum. Also the number of employees exposed to those hazardous substances has to be restricted to the absolute minimum necessary as well as the duration and intensity of the exposure.[207]

The B-BSG also prescribes obligations for the employees. They are obliged to apply protective measures in accordance with their training and the instructions of the employer. Moreover they must behave in a way that minimizes the risk of danger as much as possible. Employees must not place themselves or others at risk by using alcohol, medication, or drugs that could impair their ability to work safely. Any workplace accident, any serious and imminent danger to safety or health and any defect found in the safety systems must be reported immediately.[208] This collection of obligations shows that it is part of every individual worker's responsibility to make the work place a safe space for everyone.

6.2.d Occupational health services

The right to health at the workplace involves access to occupational health services. This includes regular health check-ups, monitoring of workplace hazards, and medical care for work-related injuries or illnesses.

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[205] § 33 (5) B-BSG

[206] § 37 (1) and (2) B-BSG

[207] § 43 (2) B-BSG

[208] § 15 B-BSG

States Parties to the ESC „are required to promote the progressive development of occupational services.“ As discussed under 5.1 this means „that a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.“ „Any strategy to promote the progressive development of occupational health services must include the full national territory, cover nationals of other States Parties, and not only some branches of activity, […] but all types of workers.“[209]

„Occupational health services, which are specialised in occupational medicine, have preventive and advisory functions, beyond mere safety at work. They contribute to conducting workplace-related risk assessment and prevention, worker health supervision […] as well as assessing working conditions impact on worker health.“[210] § 77 (1) B-BSG states that occupational health practitioners are responsible for advising the employer, employees and safety representatives on health protection, workplace-related health promotion and human-centered workplace design. They also have to support the employer in fulfilling their duties in these areas. Just like safety officers they are to be involved in matters related to work physiology, work psychology, ergonomic and occupational hygiene issues. In addition they must be involved in the organization of first aid.[211]

In accordance with the B-BSG a preventive medical examination has to take place before employees start activities where there is a risk of occupational diseases.[212] Work processes should be designed in such a way that forced postures are avoided as much as possible, and the burdens caused by monotonous tasks, one-sided strain, time pressure and other psychological stressors are kept to a minimum. Interestingly the B-BSG states that work processes should be designed in a way that they can be performed (entirely or partially) while sitting down.[213] Newer findings suggest, that regular low-impact movement and alternating positions are preferable compared to sitting down entirely. The purchase of height adjustable tables became a widespread measure to design work stations more ergonomically. § 61 (5) B-

[209] Council of Europe (n 3) p 72

[210] Ibid

[211] § 77 (3) B-BSG

[212] § 49 (1) B-BSG

[213] § 60 (2) and (3) B-BSG

BSG however allows for an interpretation in that light, as it states that employees must be provided with *suitable seating and work tables*. There is even a section devoted to computer workstations (§§ 67 and 68 B-BSG) which is also steering in that direction. It obliges the employer to design computer workstations ergonomically. As part of the hazard identification and assessment, special attention must be given to potential impairments to vision as well as physical and psychological stress in regard to computer workstations.[214] The equipment has to meet the state of the art and ergonomic requirements. Here the B-BSG states again that suitable work tables and seating must be provided. Sufficient space has to be available to allow for varying work postures and movements. Moreover proper lighting must be ensured to avoid reflections and glare.[215]

Work at display screen devices has to be interrupted regularly by breaks or other activities that reduce the strain of screen work. Employees have the right to an examination of their eyes and vision before starting the activity and at regular intervals thereafter. They also must be provided with specialized visual aids (i.e. glasses) if the results of the examinations indicate that these are necessary.[216]

The manual handling of loads should be avoided. If it is unavoidable the employer has to ensure that the musculoskeletal system is not harmed or that the risks are minimized. Employees may only be assigned to manual handling of loads if they are medically fit for it and have sufficient knowledge and proper training. They must receive clear instructions on how to handle loads properly. Moreover they must be informed about the risks to their musculoskeletal system and, when possible, provided with exact information about the weight.[217]

In general examinations are to be carried out at regular intervals. This also applies to activities where respiratory protective equipment must be worn frequently and for extended periods, and to activities involving particularly harmful heat exposure.[218] Before workers face

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[214] § 68 (1) B-BSG

[215] § 67 (2) and (3) B-BSG

[216] § 68 (3) B-BSG

[217] § 64 (2) - (5) B-BSG

[218] § 49 (1) and (2) B-BSG

health-endangering noise exposure a medical examination of hearing ability has to be conducted. Workers who are exposed to health-endangering noise are to be checked regularly regarding their hearing ability.[219] The results of the examinations must be documented in a report. The report, along with the findings, must be transmitted promptly to the labor inspectorate.[220]

6.2.e Information and education

To comply with the ESC, training of qualified staff, information through the dissemination of knowledge and quality assurance for example through certification systems for facilities and equipment are of utmost importance.[221] Realizing the right to decent work is facilitated by raising general awareness and educating workers.

§ 12 B-BSG provides that the employer is obligated to ensure adequate information for employees regarding the hazards to safety and health, as well as the measures for hazard prevention. The information must be provided before the commencement of the activity and it must be repeated regularly. The information must be provided in an understandable way and the employer must make sure that the employees have understood the information.

In *Vilnes and Others v. Norway* the European Court of Human Rights found a violation of article 8 ECHR (right to respect for private life) when the applicants complained that Norway had failed to provide them with adequate information about the risks when working in the North Sea as deep sea divers. The Norwegian authorities failed to ensure that the applicants received essential information enabling them to assess the risks to their health and lives.[222]

Training of qualified staff is crucial to protect the safety and health of the employees. As mentioned above the safety representative must be given the time and opportunity to acquire and expand the specialized knowledge required for their role. Individuals who are responsible

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[219] § 50 B-BSG

[220] § 52 B-BSG

[221] Council of Europe (n 3) p 64

[222] ECtHR *Vilnes and Others v. Norway (*Applications nos. 52806/09 and 22703/10) 2013

for fire fighting and the evacuation of employees have to be trained accordingly. Individuals who are appointed to be responsible for first aid must have adequate training in first aid.[223] Also only individuals who gained the required expertise through specialized training may be appointed as safety officers.[224]

Workers may only be assigned to particularly dangerous tasks if they are medically fit for this task, have verification of the required expertise, and possess the necessary professional experience. This applies for example to diving, the operation of cranes and forklifts, blasting operations, and other work with comparable risks.[225] Of course the verification of expertise must be revoked if the person is no longer suitable for performing the work in question. The same applies if there has been misconduct that led to an accident and the safe execution of the work by this person can no longer be guaranteed.[226] Evidently this provision gives effect to the obligation to protect by preventing further possibilities for the worker to harm neither him- or herself nor bystanders.

6.2.f Monitoring

To ensure the effective exercise of the right to safe and healthy working conditions, the enforcement of the regulations has to be supervised.[227] The responsibility for checking compliance with the provisions of the B-BSG lies with the labor inspection authorities.[228] The aim is to guarantee the effective implementation, with one measure of supervision being the monitoring of the development of the number of injuries at work and occupational diseases. The frequency of and trends in occupational injuries are a helpful indicator when assessing the effective implementation. § 16 B-BSG norms that the employer is required to keep records of all fatal work-related accidents and of all work-related accidents that result in an employee's injury causing a work absence of more than three days. Upon request of the labor inspectorate the employer has to submit a report on specific workplace accidents.

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[223] § 26 (3) B-BSG

[224] § 73 (2) B-BSG

[225] § 62 (1) and (2) B-BSG

[226] § 63 (3) B-BSG

[227] Council of Europe, European Social Charter (Revised) (ESC) (n 54) Article 3 no 2

[228] § 88 (1) B-BSG

The European Committee of Social Rights also monitors the total number of work-related accidents. The accidents are looked at in relation to the workforce and compared to the number of workers in each economic sector. This leaves the Committee with „the standard incident rate per 100.000 workers defined by EUROSTAT, which takes into account the relative importance of each sector in the economy of the country.“[229] The States Parties have to further provide the number of recognised and reported occupational diseases as well as the measures taken. „An ineffective or failing system of reporting of accidents and diseases may lead to a finding of non-conformity.“[230]

Besides the ones in connection to work accidents and diseases, the B-BSG constitutes several other documentation and reporting responsibilities: The results of the identification and assessment of risks, as well as the measures to be implemented for risk prevention, must be recorded in writing in safety and health protection documents („Sicherheits- und Gesundheitsschutzdokumente“).[231] The inspections of work equipment like cranes, elevators or lifting platforms as well as their results have to be documented in writing as well.[232]

As mentioned above, occupational health practitioners have to document the findings of examinations in a report.[233] The results are reviewed by the medical staff of the labor inspectorate.[234] Together with safety officers the occupational health practitioners are also required to maintain records of inspections they have conducted, as well as their results. Access to these documents must be provided to the labor inspection authorities upon request.[235]

The representatives for work safety, safety officers and the occupational health practitioners function as inner monitoring institutions. They are entitled to request the

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[229] Council of Europe (n 3) p 69

[230] Ibid

[231] § 5 B-BSG

[232] § 37 (6) B-BSG

[233] § 52 B-BSG

[234] § 53 B-BSG

[235] § 80 (1) B-BSG

necessary measures from the employer in all matters of safety and health protection, make suggestions for improving working conditions, and demand the elimination of deficiencies.[236] Meanwhile the employer is obligated to grant them access to the safety and health protection documents, as well as to the records and reports on workplace accidents. They are also allowed to look into the results of measurements, records concerning substances and noise and are to be informed about any exceedances of threshold limits.[237] These rights to information and involvement make it immensely more difficult to conceal any known dangers and keep this knowledge from the workforce.

According to the CESCR „the [national] policy should incorporate appropriate monitoring and enforcement provisions, including effective investigations, and provide adequate penalties in case of violations, including the right of enforcement authorities to suspend the operation of unsafe enterprises."[238] To comply with this requirement and in order to ensure accountability, States should establish a functioning system of labour inspectorates to provide advice to workers and employers and to raise abuses with authorities. Labour inspectorates should be independent, trained specialists and medical experts, who have the authority to enter workplaces freely and without prior notice.[239] Inspectors must „have sufficient and appropriate means of information and powers of investigation and enforcement, in particular powers to take emergency measures where they notice an immediate danger to the health or safety of workers."[240]

§ 88 (2) B-BSG provides that the labor inspection authorities have to support and advise the employer and employees matters related to their protection. Any inspection has to be conducted without prior notice. Notification or scheduling of a visit is only permitted if the circumstances absolutely require it. The labor inspection authorities must treat the source of any complaints as strictly confidential. They are also prohibited from suggesting that an inspection was prompted by a complaint.

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[236] § 11 (3) B-BSG

[237] §§ 11 (6), 74 (2) and 77 (2) B-BSG

[238] CESCR General Comment No. 23 *The right to just and favourable conditions of work (Article 7)* 2016 E/C.12/GC/23 para 29

[239] CESCR (n 35) para 54

[240] Council of Europe (n 3) p 70

Labor inspectors are authorized to enter and inspect any workplace at any time. They can request the starting of machinery and work equipment to get a full picture of the functioning.[241] The labor inspector is authorized to request information from the employer as well as the employees, which in turn are obligated to provide the necessary information. The labor inspection authorities must be granted access to all documents related to employee protection upon request.[242] Moreover they can conduct measurements and investigations themselves to assess the need and effectiveness of measures for protecting the life and health of workers.[243]

In accordance with the specifications of the Council of Europe, the Austrian labour inspectorates have the power to react to evidently hazardous conditions with emergency measures. In cases of imminent danger to the life or health of employees, the labor inspection authority must order the employer to immediately restore the conditions that comply with the provisions of the B-BSG. If necessary, the labor inspectorate can stop work processes and even command the complete or partial closure of the workplace as well as the shutdown of machinery.[244]

The Committee of Experts on the Application of Conventions and Recommendations of the ILO „reaffirms that labour inspection is a vital public function. It is at the core of promoting and enforcing decent working conditions and respect for fundamental principles and rights at work. Effective labour inspection systems are also integral to achieving the 2030 Sustainable Development Goals in the coming years, thereby contributing significantly to social cohesion. Labour inspectorates are instrumental in the protection of labour rights and the promotion of safe and secure working environments for all workers, and they play a major role with respect to the rule of law and ensuring equal access to justice for all.“[245]

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[241] § 89 (1) B-BSG

[242] § 89 (4) B-BSG

[243] § 89 (5) B-BSG

[244] § 90 (1) B-BSG

[245] Committee of Experts on the Application of Conventions and Recommendations General observation *Labour Inspection Convention 1947 (No. 81) and Labour Inspection (Agriculture) Convention 1969 (No. 129)* 2020, p 1

To help the culture of prevention come to live, it is the duty of inspectors, to share the knowledge about risks and risk prevention acquired during inspections and investigations.[246] Further the labor inspection authorities themselves have reporting duties laid down in § 92 B-BSG. At the beginning of each year, they submit a report to the Federal Minister for Labor about their activities and observations in the previous year regarding federal employee protection. These reports are to be presented by the Federal Minister for Labor to parliament. This requirement brings us full circle to the first subheading in this chapter, serving as another key guarantee for ensuring participation on the national stage, as members of parliament are directly elected by the Austrian people.

[246] Council of Europe (n 3) p 65

6. Conclusion

Based on the concluded doctrinal research, the results show that the B-BSG enforces the right to health and the right to safe and healthy working conditions in various ways. The research illustrates that efforts to improve working conditions and advancing work rights, simultaneously advances the right to health. At the same time this helps to realise fair employment and the right to decent work which again is one of the key determinants of health.[247] In summary, the right to health in the context of working safety emphasizes the importance of creating workplaces that prioritize the well-being of individuals, free from hazards and risks that could adversely affect their health.

„Safety and health as a human right requires respecting human rights principles and creating effective enforcement strategies in response.“[248] The B-BSG plays a vital role in enforcing the rights to health and to safe and healthy working conditions for Austrian federal employees. Covering multiple obligations set forth by international treaties such as the ICESCR and ESC, the B-BSG demonstrates what implementing human rights domestically can look like. By stipulating employer responsibilities, establishing preventive health measures, and enabling employee participation, the B-BSG ensures a close meshed framework for protecting workplace health and safety. There is room for improvement in regard to sporadically unspecific language which can create ambiguities in implementation and enforcement. Also emerging occupational challenges, such as mental health issues will require further adaptations. Additionally, the enforcement mechanisms are mostly dependent on the labour inspectorate, which has restricted resources. Therefore its ability to oversee compliance effectively is limited. Additional personnel or alternative oversight mechanisms could significantly enhance the effectiveness of the B-BSG.

By clarifying legal language, adapting to future challenges and strengthening enforcement capacities the B-BSG can continue to serve as a positive example for protecting workers' health and safety in Austria.

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[247] WHO Commission on Social Determinants of Health (n 122) p 8

[248] Hilgert (n 4) p 734

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8. Abstract

This thesis explores how the Austrian Federal Employee Protection Act (Bundes-Bedienstetenschutzgesetz B-BSG) enforces the fundamental human rights to health and the right to safe and healthy working conditions. By examining the framework of international legal obligations, this research outlines the role of the B-BSG in transforming abstract human rights into concrete protections for federal employees. It showcases how the legislation aligns with Austria's commitments under international treaties, such as the ICESCR and ESC as it addresses employer obligations, workplace safety measures, and participatory structures. The findings highlight the effectiveness of the B-BSG as a mechanism to implement preventative and responsive occupational health measures, albeit with opportunities for improvement. This thesis concludes that the B-BSG covers the broad guarantees of the international conventions in various ways, giving them substance to ensure workplace safety and health. By doing so the B-BSG does not only fulfil Austria's international obligations but also creates a foundation for a just and decent labor system.

Deutsch

Die gegenständliche Arbeit beschäftigt sich mit der Frage, inwiefern das österreichische Bundes-Bedienstetenschutzgesetz (B-BSG) die grundlegenden Menschenrechte auf Gesundheit sowie auf sichere und gesunde Arbeitsbedingungen schützt und durchsetzt. Durch die Untersuchung des Umfangs internationaler rechtlicher Verpflichtungen, wird die Rolle des B-BSG bei der Übersetzung abstrakter Menschenrechte in konkrete Schutzmaßnahmen für Bundesbedienstete beleuchtet. Es wird aufgezeigt, wie das Gesetz auf Österreichs Verpflichtungen aus internationalen Konventionen wie dem Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte und der Europäischen Sozialcharta eingeht, indem es Verpflichtungen des Arbeitgebers, Maßnahmen zur Sicherheit am Arbeitsplatz und Strukturen zur Mitbestimmung regelt. Die Ergebnisse unterstreichen die Wirksamkeit des B-BSG als Werkzeug zur Umsetzung präventiver und reaktionärer Gesundheitsmaßnahmen am Arbeitsplatz, wenn auch mit Verbesserungsmöglichkeiten. Diese Arbeit kommt zu dem Schluss, dass das B-BSG die weitreichenden Garantien der internationalen Konventionen auf verschiedenste Weisen abdeckt und sie konkretisiert, um Sicherheit und Gesundheit am Arbeitsplatz zu gewährleisten. Damit erfüllt das B-BSG nicht nur Österreichs internationale Verpflichtungen, sondern dient auch als Grundlage für ein gerechtes und menschenwürdiges Arbeitssystem