

GLOBALISATION, THE DEVELOPMENT OF CONSTITUTIONALISM AND THE INDIVIDUAL EMPLOYEE

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Summary

To establish which legal system will govern the relationship between parties involved in an international employment contract, the rules of private international law (or conflict of laws) must be applied. Each country has its own rules of private international law and each country's courts will apply its own rules if the court is seized with a matter that involves foreign elements. There may be conflict between the potentially applicable legal systems of countries in terms of the level of protection afforded to employees who are parties to international employment contracts.

South Africa has constitutionalised the right to fair labour practices and the question is whether this right is applicable to South African employees working in other countries, or to foreigners working in South Africa who originate from countries where this right is not protected. The answer to this question is to be found in the influence of the Constitution on the rules of private international law as applied by South African courts.

It is evident from recent judgments of the Labour Court that the Court will readily assume jurisdiction and will furthermore readily hold that the proper law of the contract is South African law in order to protect the constitutional rights of employees involved in international employment contracts.

Had the Labour Court held that the place of performance was still the decisive connecting factor, (as previously decided in most South African cases on this

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aspect) the law of the other countries involved in the international employment relationship could have left employees in a worse position than under South African law. This possibility seems to be one of the important underlying reasons for the Labour Court's willingness to assume jurisdiction and to hold that the proper law was in fact South African law.

In the globalisation context the Labour Court has contributed to the advancement of constitutionalism by developing South Africa's common law rules of private international law to afford constitutional protection to employees involved in international employment contracts.