

## The ILO and the protection of wages

*The Protection of Wages Convention, 1949 (No. 95) and Recommendation, 1949 (No. 85) are the first international labour instruments dealing in a comprehensive manner with all practical aspects of labour remuneration and seeking to accord the fullest possible protection to workers' earnings. A close look at these instruments shows that they have not lost any of their relevance.*

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Remuneration is, together with working time, the aspect of working conditions that has the most direct and tangible impact on the day-to-day lives of workers. Since its early days, the questions of decent wage levels and fair labour remuneration practices have been at the centre of the ILO's action and the ILO has advocated labour standards seeking to guarantee and protect workers' rights in respect of wages. The original Constitution of the ILO, which was established in 1919, referred to the "provision of an adequate living wage" as one of the improvements urgently required to promote universal peace and combat social unrest, hardship and privation affecting large numbers of people. It listed among the methods and principles which were considered to be well fitted to guide the policy of member States "the payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country".

The 1944 Declaration of Philadelphia concerning the aims and purposes of the Organization reaffirmed that "poverty anywhere constitutes a danger to prosperity everywhere" and stressed the need for world programmes which will achieve "policies in regard to wages and earnings, hours and other conditions of work cal-

culated to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection".

### Origins and objectives of Convention No. 95

National laws relating to the protection of wages are among the oldest measures of social protection. The question of adopting standards with a view to regulating the medium of wage payment as well as other aspects such as wage deductions, the attachment of wages and wage guarantees in case of bankruptcy was first placed on the agenda of the International Labour Conference in 1947. Until then, the Conference had given only incidental consideration to the problems of wage protection, adopting a number of resolutions and also some provisions in various Conventions and Recommendations. At its 19th Session in 1935, for instance, the Conference adopted a resolution inviting the Office to undertake an inquiry into the "truck system" (the obligation to spend wages on goods supplied by the employers) and related practices, but the inquiry was later suspended because of the outbreak of the Second World War. At its 25th Session in

1939, the Conference included in the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64), certain provisions relating to the question of the protection of wages, in the form of a requirement that contracts of employment are to contain particulars concerning, inter alia, the rate of wages, the method of wage calculation, the manner and periodicity of wage payments, and advances of wages. Finally, the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), adopted at the 30th Session of the Conference in 1947, contains specific provisions on workers' remuneration and, in particular, provisions on wage payment in legal tender and at regular intervals, wage deductions, record keeping and wage statements, payments in kind, the place of wage payment and advances on wages. These principles had been for the most part set forth in the Social Security (Seafarers) Convention, 1946 (No. 70), adopted in 1944 by the 26th Session of the Conference, and in the Certification of Able Seamen Convention, 1946 (No. 74), adopted in 1945 by the 27th Session of the Conference.

The origins of Convention No. 95 are to be found in the report on the "Future policy, programme and status of the International Labour Organization", prepared by the Office for the 1944 Conference, in which it was pointed out that "wage policy lies at the core of the preoccupations of the International Labour Organization" and further suggested that:

... a Convention or Recommendation on methods of wage payment dealing with the periodicity of wage payments, deductions from wages, advances of wages, the prohibition of truck, the adequacy of remuneration in kind, the protection of wages in legal proceedings and similar subjects would also be of great value in relation to many parts of the world, especially in regard to rural workers.<sup>1</sup>

The preliminary report prepared by the Office for the 31st Session of the Conference in San Francisco introduced the subject in these terms:

... the general purpose of legal measures for the protection of wages is to guarantee the worker against practices which would tend to make him unduly dependent on his employer and to ensure that he receives promptly and in full the wages which he has earned. To achieve these ends it is necessary that he should normally receive his wages in the form of money which he can spend as he wishes, that he should be paid regularly and at intervals short enough to allow him to live on a cash rather than a credit basis, that he should be protected against any unjustified or arbitrary deductions from his nominal earnings and, in general, that he should be kept informed of his wage conditions of employment.<sup>2</sup>

### Scope and content

The Convention (Article 2) applies to all persons to whom wages are paid or payable, although the competent authority may, after consultation with employers' and workers' organizations, exclude persons who are not employed in manual labour or are employed in domestic service or similar work and whose conditions of employment are such that the application to them of all or any of the provisions of the Convention would be inappropriate. To make use of exemption possibilities, a ratifying State has to specify in its first annual report submitted under article 22 of the Constitution any categories of persons which it proposes to exclude from the application of the Convention, additional exclusions not being possible after the date of its first annual report, while in subsequent reports it has to indicate any progress made with a view to the application of the Convention to such categories of persons. The term "wages" (Article 1) is used in a generic sense to cover all earnings or remuneration, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for

work done or to be done or for services rendered or to be rendered.

**Wage payment in legal tender.** The Convention (Article 3) guarantees that the remuneration owed by the employer to the worker by virtue of a contract of employment must be paid in cash. This requirement for legal tender may also take the form of a prohibition of payment in the form of promissory notes, vouchers, coupons or other tokens taking the place of money.

**Payment in kind.** In the earlier stages of industrial development wages were paid in other media such as food, clothing and shelter. This method of payment, known as the “truck system”, led to abuses and was thus generally prohibited. It has always been recognized, however, that in particular industries and occupations, such as agriculture, mining, construction work in remote areas, merchant marine, hotels and restaurants, hospitals and domestic service, allowances in kind offer certain advantages to the workers and are often equally beneficial to their family members. In a number of countries, therefore, labour laws and regulations provide for exceptions to the principle of payment in cash, while seeking to protect the wage earners by laying down concrete conditions which authorized payment in kind should meet. In some cases, regulations specify that the goods supplied to workers should be of suitable quality and sufficient quantity, while in other cases employers are required to supply allowances at cost price, or at specially favourable rates. Strict regulation is all the more necessary as, in many cases, the value of the goods provided in lieu of wages can be deducted from the cash wages. By way of safeguard, the labour legislation in certain countries specifies that deductions cannot be authorized except with the express consent of the worker concerned, whereas in other countries regulations fix the maximum percentage of cash wages which may be deducted.

The Convention (Article 4) recognizes that in those industries or occupations where the partial payment of wages in the

form of allowances in kind is customary or desirable because of the nature of the industry or occupation concerned, national laws or regulations, collective agreements or arbitration awards may authorize such payment subject to the following conditions: (i) the payment of wages in the form of liquor of high alcoholic content or of noxious drugs is not permitted in any circumstances; and (ii) when authorized, adequate measures have to be taken to ensure that such allowances are appropriate for the personal use and benefit of the worker and his family and also that the value attributed to such allowances is fair and reasonable.

**Freedom of workers to dispose of their wages.** It is not enough that workers should receive the wages due to them in full and in a regular fashion. They must also be able to spend them as they choose. Any constraint on the part of the employer on the use of the wage should be forbidden. The Convention (Articles 6 and 7) expressly prohibits employers from limiting in any manner the workers’ freedom to dispose of their wages and recognizes the workers’ right to make use of a company store, where one exists, only if they so wish. It also provides that the competent authority has to take appropriate measures to ensure that works stores are not operated for the purpose of securing profit, but for the benefit of the workers concerned, and that the goods are sold at fair and reasonable prices, where access to other stores and services is not possible. These provisions are supplemented by another clause included in the Recommendation (Paragraph 9) suggesting appropriate measures to encourage arrangements for the association of representatives of the workers concerned, and more particularly members of works welfare communities or similar bodies, in the general administration of works stores or similar services established in connection with an undertaking for the sale of commodities or provision of services to the workers.

**Wage deductions.** The regulation of deductions is necessary to protect workers from arbitrary, unfair or excessive deduc-

tions which would amount to an unjust decrease of their remuneration. The Convention (Article 8) sets out the principle that deductions should be permitted only under prescribed conditions and that such conditions should be required to be brought to the notice of the workers in the manner deemed most appropriate by the competent authority.

***Attachment and assignment of wages.*** The Convention (Article 10) provides that the conditions under which and the limits within which wages may be attached or assigned should be prescribed by national laws or regulations. It also stipulates that wages should be protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his family. The rationale behind this provision is similar to that regarding deductions, i.e. there must be a proportion of the worker's wage which is absolutely essential to the maintenance of the worker and his family and which for that reason must be immune from attachment or seizure.

***Wage guarantee in the event of bankruptcy.*** One of the oldest established measures of social protection consists of provisions to protect workers' claims in the event of the insolvency of their employer, since wages are recognized as being essential for the worker's maintenance and often equally vital for the subsistence of the worker's family. To avoid a situation where wage earners are deprived of their livelihood upon the bankruptcy of their employer, provisions have to be made to guarantee the immediate and full settlement of debts owed by the employer to workers. The Convention (Article 11) spells out the almost universally recognized principle according to which wage claims should be treated as privileged debts in the event of the bankruptcy or judicial liquidation of an undertaking. However, the Convention allows each State to determine the relative priority of wages constituting a privileged debt, as well as the overall limits, in terms of a maximum period of service or amount,

within which outstanding wage claims are to be accorded preferential treatment. The principle of the preferential treatment of wage claims in the event of the employer's insolvency was later substantially reinforced through the adoption of the Protection of Workers' Claims (Employer's Insolvency) Convention (No. 173) and Recommendation (No. 180), 1992.<sup>3</sup>

***Periodicity, time and place of wage payments.*** The Convention (Article 12) lays down the obligation to pay wages at regular intervals, to be prescribed by national laws or regulations or fixed by collective agreement or arbitration award. The rationale underlying this provision is to discourage long wage payment intervals and thus to minimize the likelihood of indebtedness among workers. The Recommendation (Paragraphs 4 and 5) deals with the periodicity of wage payments in greater detail and suggests that workers whose wages are calculated by the hour, day or week should be paid at least twice a month, and not less than once a month for salaried employees. It also recommends that workers whose wages are calculated on a piece-work or output basis should be paid, so far as possible, not less than twice a month, while in the case of workers employed by the task, the completion of which requires more than a fortnight, payments should be made on account, not less than twice a month in proportion to the amount of work completed, and the final settlement should be made within a fortnight of the completion of the task.

***Notification of wage conditions and statement of earnings.*** The Convention (Article 14) calls for effective measures, where necessary, to ensure that the workers are informed in an appropriate and easily understandable manner of the general wage conditions to which they are subject before they enter employment, as well as of the wage details concerning the calculation of their earnings in respect of each pay period. The provisions of the Convention are supplemented by more detailed provisions in the Recommendation. With respect to

notification of wage conditions, the Recommendation (Paragraph 6) specifies that the details of the wage conditions which should be brought to the knowledge of the workers should include: (i) the rates of wages payable; (ii) the method of calculation; (iii) the periodicity of wage payments; (iv) the place of payment; and (v) the conditions under which deductions may be made. As regards wage statements and payroll records, the Recommendation (Paragraphs 7 and 8) provides that, in all appropriate cases, workers should be informed with each payment of wages of the following particulars relating to the pay period concerned, in so far as such particulars may be subject to change: (i) the gross amount of wages earned; (ii) the amount of any deduction which may have been made including the reasons therefor; and (iii) the net amount of wages due. In addition, employers should be required in appropriate cases to maintain records showing, in respect of each worker employed, the above particulars.

***Implementation through national laws.*** The Convention (Article 15) requires that the laws and regulations giving effect to its provisions have to be made available for the information of persons concerned, define the persons or institutions responsible for compliance, prescribe effective sanctions or other remedies to punish infringements, and finally provide for the maintenance of adequate payroll records.

### **Role and impact of the supervisory bodies**

The number and nature of the comments made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in recent years concerning the practical application of the Convention in ratifying States attest to the continued relevance of most of its provisions.<sup>4</sup> While certain requirements of the Convention, such as those relating to the notification to workers of wage conditions, the payment of wages directly to the

worker concerned, the operation of works stores or the payment of wages on working days and at or near the workplace seem to be generally complied with, others, such as those regarding the payment of wages in kind, the wage deduction limits, or the preferential treatment of wage claims in case of bankruptcy, have not elicited the same degree of legislative conformity on the part of ratifying States. Yet, most importantly, the provision respecting the regular payment of wages has recently turned into an urgent issue for a growing number of countries, especially those of Central and Eastern Europe following their transition to a market economy, and also in Africa and Latin America.<sup>5</sup> In the last five years, practically all the observations formulated by the Committee of Experts in respect of Convention No. 95 have referred to problems of wage arrears and the failure of the governments concerned to ensure the regular payment of wages in accordance with Article 12, paragraph 1, of the Convention. Similarly, in the past ten years, the Conference Committee on the Application of Standards (CCACR) has regularly considered individual cases referring to persistent problems of wage arrears. In addition, in the past decade, the Governing Body has dealt with seven representations made under article 24 of the ILO Constitution alleging non-observance of Convention No. 95, mostly in respect of delayed payment of wages.

In relation to wage arrears, the Committee of Experts has consistently pointed out that delays in the payment of wages clearly contravene the letter and the spirit of the Convention and has stressed that the application of the Convention should comprise three essential elements in this respect: (i) efficient control; (ii) appropriate sanctions; and (iii) means to redress the injury caused, including not only the full payment of the amounts due, but also fair compensation for the losses incurred by the delayed payment.<sup>6</sup> Another remark frequently made by the Committee of Experts is that putting an end to the accumulation of wage arrears calls for sustained efforts, an open and continuous dialogue

with the social partners and a wide range of measures, not only at the legislative level, but also in practice.<sup>7</sup>

Apart from the issue of timely payment of wages and rapid settlement of outstanding wage debts, the Committee of Experts has made recurrent comments on other aspects of the Convention, such as the concept of the “wages” to be protected, the principle of wage payment in legal tender, the partial payment of wages in the form of allowances in kind, wage deductions and the attachment of wages. Concerning the notion of the “wage” to be protected under the Convention, the Committee has pointed out that while the wage nature of any sums paid by an employer to an employed person for work done may vary according to national legislation, all earnings, however termed or considered for the purpose of calculating the base wage, benefits and other allowances, have still to enjoy full wage protection in accordance with the provisions of Articles 3 to 15 of the Convention.<sup>8</sup> In relation to the payment of wages in legal tender, the Committee has stressed that the relevant provision is sufficiently clear and precise, and therefore practices such as providing convertible tokens of the currency in place of cash, or paying wages in local government bonds, or converting wage arrears into an internal debt are inconsistent with the requirements of the Convention.<sup>9</sup>

With regard to payments in kind, the Committee of Experts has principally focused its comments on the need for adequate guarantees that allowances in kind are indeed beneficial to workers and their families and they are valued reasonably.<sup>10</sup> In concrete terms, the Committee has underlined three main points: first, the modalities of such payments are to be regulated by legislation, collective agreement or arbitration award, and not left to individual agreement between the employer and worker. Secondly, setting an upper limit on the amount of wages which may be paid in kind does not resolve the problem of how the valuation of these allowances is to be made. Thirdly, when payment consists of allowances other than

food and lodging, specific provision needs to be made to ensure that allowances in kind are appropriate for the personal use and benefit of workers and their families. The Committee has also repeatedly emphasized the need for a legislative provision explicitly prohibiting the payment of wages in the form of alcoholic drinks or narcotic substances.<sup>11</sup>

With respect to deductions, the Committee of Experts has on a number of occasions drawn attention to the fact that provisions of national legislation authorizing deductions by virtue of individual agreement or consent are not compatible with the terms of the Convention. The Convention is considered as fully applied by States whose national laws or regulations specify the types and fix the overall limits of permissible deductions, and also prohibit any other deductions. In other instances, the Committee has emphasized that there is an obligation to keep workers informed of the legal provisions regulating wage deductions.

Regarding the attachment or assignment of wages, the Committee of Experts has concentrated its comments on whether or not the ratifying States have in fact adopted national laws and regulations which set out the conditions and the limits within which wages may be attached or assigned, and which protect wages against both of these procedures to the extent deemed necessary for the maintenance of workers and their families. Concerning the requirement for a prompt final settlement of outstanding wage payments upon the termination of the employment relationship, the ILO’s supervisory bodies have affirmed that such an obligation applies to all persons to whom wages are paid or payable, irrespective of the characteristics of their contracts, formal or non-formal, whatever the cause of the termination, and independently of the nationality of the workers concerned.<sup>12</sup>

Finally, it should be noted that, at its forthcoming annual session (Nov.-Dec. 2002), the Committee of Experts will be considering for adoption a general survey of national law and practice in regard to the

Protection of Wages Convention (No. 95) and Recommendation (No. 85) on the basis of reports which have been supplied by member States under article 19 of the ILO Constitution.

Notes

<sup>1</sup> See International Labour Conference, 26th Session, 1944, Report I, p. 51.

<sup>2</sup> See International Labour Conference, 31st Session, 1948, Report VI (c)(1), p. 3. For the Conference discussions which led to the adoption of the Convention and the Recommendation, see ILO, *Record of Proceedings*, International Labour Conference, 31st Session, 1948, pp. 459-469, and International Labour Conference, 32nd Session, 1949, pp. 324-332, 499-524. To date, Convention No. 95 has been ratified by 95 member States.

<sup>3</sup> Convention No. 173 entered into force in 1995 and has so far been ratified by 14 member States.

<sup>4</sup> It should be recalled that, following the recommendations of the Working Party on Policy regarding the Revision of Standards which was set up in 1995 for the purpose of assessing actual needs for the revision of standards, the Governing Body has decided to include Convention No. 95 among the Conventions which are considered up to date and the ratification of which should be encouraged since they continue to respond to current needs; see GB.283/LILS/WP/PRS/1/2, para. 17.

<sup>5</sup> See ILO, Report of the Committee of Experts, 1997, *General Report*, paras. 71-73, p. 21. In Ukraine, for instance, the non-payment of wages began in 1994 and by 1998 wage arrears had grown to more than 5 billion hryvnya (nearly US\$3 billion). This amount is greater than a six-month wage bill for the entire country. In total, nearly 200,000 enterprises reported an inability to pay wages; see ILO, *Ukraine: Country Employment Policy Review*, 1999, p. 50. Similarly, in the Russian Federation, the number of workers affected by arrears is huge. According to March 1996 data, only 60 per cent of workers received their last wage in full and on time. About a quarter of employees received a wage on time but were not paid in full, whilst around 11 per cent received their wage late and not in full; see H. Lehmann, J. Wadsworth and A. Acquisti: *Crime and punishment: Job insecurity and wage arrears in the Russian Federation*, 1998, p. 6. See also OECD: *Russian Federation*, Economic Surveys, 1997, pp. 36-37.

<sup>6</sup> See, for instance, ILO, Report of the Committee of Experts, 2000, p. 215 (Russian Federation); 1998, p. 212 (Russian Federation); 1997, p. 227 (Ukraine); 1995, p. 233 (Turkey). See also the report of the Committee set up to examine the representation under article 24 of the Constitution alleging non-observance by the Russian Federation of Convention No. 95, Nov. 1997, GB.270/15/5, paras. 30-40, pp. 7-10; and the

report of the Committee set up to examine the representation under article 24 of the Constitution alleging non-observance by Congo of Convention No. 95, Mar. 1996, GB.265/12/6, paras. 21-24, pp. 6-7.

<sup>7</sup> See, for instance, ILO, Report of the Committee of Experts, 2001, p. 354 (Congo); 1999, p. 319 (Ukraine); 1998, p. 216 (Ukraine). See also ILO, *Record of proceedings*, International Labour Conference, 86th Session, 1998, p. 18/101, and International Labour Conference, 75th Session, 1988, p. 28/48.

<sup>8</sup> See, for instance, ILO, Report of the Committee of Experts, 1998, p. 217 (Venezuela). See also the report of the Committee set up to examine the representation under article 24 of the Constitution alleging non-observance by Venezuela of Convention No. 95, Mar. 1997, GB.268/14/9, paras. 17-23, pp. 5-8.

<sup>9</sup> See, for instance, Report of the Committee of Experts, 2001, p. 355 (Costa Rica); 1997, p. 219 (Argentina). See also the report of the Committee set up to examine the representation under article 24 of the Constitution alleging non-observance by Congo of Convention No. 95, Mar. 1997, GB.268/14/6, para. 21, p. 5.

<sup>10</sup> See, for instance, Report of the Committee of Experts, 1996, p. 179 (Greece); 1993, p. 245 (Egypt).

<sup>11</sup> See, for instance, the report of the Committee set up to examine the representation made under article 24 of the Constitution alleging non-observance by the Republic of Moldova of Convention No. 95 which reads in part: "the Committee does not need to insist that Article 4 of the Convention may only be understood as laying down a comprehensive prohibition against replacing salaries and other contractual remuneration by harmful products such as alcoholic beverages, narcotic substances or tobacco. The Committee recalls, in this respect, that the Committee of Experts on the Application of Conventions and Recommendations has consistently read into the provision of Article 4, paragraph 1, of the Convention a clear proscription of wage payment in the form of alcoholic beverages or noxious drugs of any sort and in any circumstances. Moreover, the Committee is of the opinion that the exclusion of liquors and noxious drugs from permissible allowances in kind should be read in conjunction with the provision of Article 4, paragraph 2, of the Convention which limits payment in kind to those allowances which are appropriate and beneficial to the worker and his family"; GB.278/5/1, para. 32, p. 7.

<sup>12</sup> See, for instance, Report of the Committee of Experts, 2001, p. 356 (Côte d'Ivoire); 1997, p. 223 (Libyan Arab Jamahiriya); 1992, p. 260 (Iraq). See also the report of the Committee set up to examine the representation made under article 24 of the Constitution alleging non-observance by Mauritania of Convention No. 95, *Official Bulletin*, Vol. 74, 1991, Series B, Supplement 1, paras. 68-69, 71 and 75, pp. 15-16, and the report of the Committee set up to examine the representation made under article 24 of the Constitution alleging non-observance by Iraq of Convention No. 95, May-June 1991, GB.250/15/25, paras. 23-24, pp. 4-5.