International Labour Conference
59th Session 1974

Report III
(Part 4B)

Termination of Employment

General Survey by the Committee of Experts on the Application of Conventions and Recommendations

International Labour Office Geneva

International Labour Conference
59th Session 1974

Report III
(Part 4B)

Third Item on the Agenda:
Information and Reports on the Application
of Conventions and Recommendations

General Survey of the Reports
lating to the Termination of Employment Recommendation, 1963 (No. 119)

port of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)/volume B

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INTRODUCTION

Background to the Survey

1. In accordance with article 19 of the Constitution of the International Labour Organisation, the Governing Body of the International Labour Office decided to request the governments of all member States of the ILO to supply reports in 1973 indicating the position of their law and practice in regard to the matters dealt with by the Termination of Employment Recommendation, 1963 (No. 119). This is the first occasion on which reports on this Recommendation have been requested under article 19 of the Constitution and is thus the first opportunity the Committee has had to examine reports of governments on their law and practice relating to termination of employment.

2. While several aspects of the question of termination of employment had been treated in a number of international labour Conventions and Recommendations relating to other matters and by various ILO meetings in connection with other questions [1], comprehensive treatment of termination of employment as such was not formally envisaged until the adoption in 1950 by the International Labour Conference of a resolution which noted the absence of international standards on the matter and called for the preparation of a report on the law and practice of different countries in respect of termination of employment and for consideration of the question at a future session of the Conference.[2] The Office subsequently undertook a series of studies [3] in this field, certain of which formed the basis of discussion at technical meetings.[4] The Governing Body, at its 147th Session (November 1960), decided to place the question of termination of employment (dismissal and lay-off) on the agenda of the 46th Session of the International Labour Conference (1962) with a view to possible adoption of an international instrument on the subject.

3. The adoption of the Termination of Employment Recommendation by the International Labour Conference in 1963 marks the culmination on the international

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[1] A list of the relevant instruments and decisions is given in ILO: *Termination of employment (dismissal and lay-off)*, Report VII (1), International Labour Conference, 46th Session, 1962, Appendix.

[2] ILO: *Record of Proceedings*, International Labour Conference, 33rd Session (1950), p. 579.

[3] See E. Herz: "The Protection of Employees on the Termination of Contracts of Employment", in *International Labour Review*, Vol. LXIX, No. 4, Apr. 1954, p. 311; studies on dismissal procedures in nine countries (Argentina, Egypt, France, Federal Republic of Germany, India, Japan, USSR, United Kingdom, United States), published in ibid. (Vol. 79, No. 6, June 1959, and Vol. 80, Nos. 1–6, July–Dec. 1959); "Dismissal Procedures: A Comparative Study", ibid., Vol. LXXXI, No. 5, May 1960, pp. 403–435; and "Some aspects of labour-management relations in the American region" (Report II: Dismissals and lay-off procedures and job security), Labour-Management Relations Series: No. 11A (Geneva, ILO, 1962).

[4] See report of the Technical Meeting concerning Certain Aspects of Industrial Relations Inside Undertakings, *Industry and Labour* (Geneva, ILO), Vol. 23, No. 7, 1 Apr. 1960, pp. 224–243; summary of the discussions of the Inter-American Study Conference on Labour Management Relations, published in the Labour-Management Relations Series, No. 11 (1961); the report of the Study Conference appears in *Industry and Labour* (Geneva, ILO), Vol. 25, No. 8, 15 Apr. 1961, pp. 254–268.

level of the growing recognition that the individual worker required protection against arbitrary and unwarranted termination of his employment and against the economic and social hardship resulting from the loss of employment. The protection of security of employment which the Recommendation seeks to guarantee is one aspect of the right to work, which relates to both access to and security of employment. The right to work is an internationally recognised human right, proclaimed in the Universal Declaration of Human Rights [1] and in the International Covenant on Economic, Social and Cultural Rights.[2] It is also one of the rights recognised by the American Declaration of the Rights and Duties of Man [3] and the European Social Charter.[4] The Termination of Employment Recommendation sets forth an internationally agreed upon statement of the principles which should govern this aspect of the right to work. Although the Recommendation is essentially intended to provide protection of the worker's security of employment, it also embodies an attempt to balance the several interests involved: that of the worker in job security, since loss of his job may mean loss of his and his family's livelihood; that of the employer in retaining authority over matters affecting the efficient operation of the undertaking; that of the community in maintaining peaceful labour relations and avoiding unnecessary dislocations due either to unemployment or unproductive economic units.[5]

Contents of the Recommendation and Related Standards

4. The Recommendation [6] sets forth standards relating generally to termination of the employment of workers at the initiative of the employer supplemented by a number of further standards applicable to cases of termination of employment involving reduction of the work force. With regard to standards of general application, the Recommendation provides that termination of employment by the employer should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. The reasons to be considered valid for this purpose are left to be defined nationally. However, it is provided that certain enumerated reasons should not constitute valid reasons for termination of employment, namely union membership or participation in union activities, seeking office as, acting or having acted as a workers' representative, filing of a complaint or participating in proceedings against an employer involving alleged violation of laws or regulations, or race, colour, sex, marital status, religion, political opinion, national extraction or social origin. A worker who feels that his employment has been unjustifiably terminated should be entitled to appeal against such termination, within a reasonable time and with the assistance of a person representing him, to a body established under a collective agreement or to a neutral body (such as a court,

[1] Article 23.

[2] Article 6.

[3] Article XIV. The need to protect security of employment is also recognised by the Inter-American Charter of Social Guarantees, Article 19, which provides that the law should guarantee stability of employment, due consideration being given to the nature of the respective industries and occupations and justifiable causes for dismissal, and that in case of unjustifiable dismissal the worker shall have the right to compensation.

[4] Article 1; article 4, paragraph 1 (4), of the Charter further lays down the right of all workers to a reasonable period of notice (see Ch. V of the present survey).

[5] Report VII(1), op. cit., International Labour Conference, 46th Session, Geneva, 1962, pp. 1–2, 7–9; *Record of Proceedings*, International Labour Conference, 46th Session, Geneva, 1962, p. 788, para 8.

[6] The full text of the substantive provisions of the Recommendation is reproduced in Appendix I to the present survey.

arbitrator, or arbitration committee). This body should be empowered, if it finds that the termination of employment was unjustified, to order that the worker concerned, unless reinstated, with payment of unpaid wages where appropriate, should be paid adequate compensation or afforded other relief. A worker whose employment is to be terminated should be entitled to a period of notice or compensation in lieu thereof, to time off without loss of pay during the period of notice to seek other employment, and to a certificate concerning his employment containing nothing unfavourable to him. In addition, some form of income protection (in the form of unemployment insurance or some type of separation allowance payable by the employer, or a combination thereof) should be provided. In case of termination of employment for serious misconduct, a period of notice or compensation in lieu thereof need not be required and separation allowances paid for by the employer may be withheld.

5. The above-mentioned standards, applicable to all cases of termination of employment, are supplemented by provisions dealing specifically with reduction of the work force. The Recommendation provides in the first instance that appropriate measures should be taken by all parties concerned to avert or minimise such reductions, without prejudice to the efficient operation of the undertaking. Consultation with workers' representatives should take place on all appropriate questions when a reduction of the work force is contemplated. If the proposed reduction would have a significant bearing on the manpower situation in a given area or branch of the economy, the competent public authorities should be notified in advance. The selection of the workers to be affected should be made according to precise criteria, established wherever possible in advance, giving due weight to the interests of the undertaking and those of the workers. Workers whose employment has been terminated owing to a reduction of the work force should have priority of re-engagement to the extent possible when the employer again engages workers. National employment agencies should be fully utilised to find alternative employment for the workers affected.

6. The Recommendation (Paragraph 19) stipulates that, in accordance with article 19, paragraph 8, of the ILO Constitution, it does not affect any provisions more favourable to the workers concerned. In addition, the Recommendation (Paragraph 20) declares that it should be considered as having been implemented in respect of workers subject to special laws or regulations which provide for conditions at least as favourable, in their entirety, as the totality of those provided for in the Recommendation.

7. As previously mentioned, a number of international labour Conventions and Recommendations dealing with other matters include provisions relating to dismissal. Certain of these instruments provide protection against dismissal in particular circumstances (i.e. during maternity leave [1]), or for certain reasons (such as union membership or participation in union activities [2], seeking or holding office or acting as workers' representatives [3], and grounds constituting racial, religious or other discrimination [4]). Others provide for special measures to be taken in certain cases in

[1] Maternity Protection Convention, 1919 (No. 3), Article 4; Maternity Protection Convention (Revised), 1952 (No. 103), Article 6; Maternity Protection Recommendation, 1952 (No. 95), Paragraph 4.

[2] Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 1.

[3] Workers' Representatives Convention, 1971 (No. 135), Article 1 and Workers' Representatives Recommendation, 1971 (No. 143), Part III.

[4] Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Articles 1–2; Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), Paragraph 2. The principle of non-discrimination on grounds of race, creed or sex and that of equality of opportunity were already laid down by the Declaration concerning the Aims and Purposes of the International Labour Organisation, adopted by the Conference at its 26th Session (Philadelphia, 1948).

the event of dismissal (as in the case of redundancy of migrants during their term of employment [1]) or for certain rights upon dismissal (i.e. the right to receive the holiday pay for the part of holiday entitlement not taken at the time of termination of employment [2]). The protection provided by certain of these standards has been incorporated in Paragraph 3 of the Recommendation, which defines the reasons which should not be considered valid reasons for termination of employment.

Information Available

8. The present survey is based on reports supplied under article 19 of the ILO Constitution by 99 countries (93 States and 6 territories) (see Appendix III to this survey).[3] The Committee, in addition to examining the information contained in these reports, has sought to take account of relevant legislation and, where possible, collective agreements. Account has also been taken of comments received from employers' and workers' organisations to which the government reports have been communicated in accordance with article 23, paragraph 2, of the ILO Constitution.[4]

Arrangement of the Survey

9. The survey which follows, after considering the methods of implementing the Recommendation and the scope of the Recommendation and that of relevant national provisions, will deal successively with the principle that a worker's employment should not be terminated by his employer without a valid reason; the procedural safeguards, right of appeal and remedies available to a worker who feels that his employment has been unjustifiably terminated; the requirement of a reasonable period of notice of termination or compensation in lieu thereof and the right to a certificate of employment; the existence of some form of income protection for workers whose employment has been terminated; and reduction of the work force.

10. In pursuance of a decision taken by the Governing Body at its 188th Session (November 1971), member States were requested to include in their reports information on the application of the Recommendation to foreign workers. This question is dealt with in the section of the survey concerning scope (Chapter II).

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[1] Migration for Employment Recommendation (Revised), 1949 (No. 86), Articles 22, 24, 26 of the Annex to the Recommendation.

[2] See, for example, the Holidays with Pay Convention (Revised), 1970 (No. 132), Article 11.

[3] It has not been possible to take account of the information contained in the report of Senegal, which was received during the Committee of Experts' session.

[4] Comments were received from: the Association of Employers of Bangladesh, the German Confederation of Trade Unions and the Federation of Employers of Kenya.

CHAPTER I

METHODS OF IMPLEMENTATION

11. The Termination of Employment Recommendation, 1963, provides, in Paragraph 1, for its implementation by national laws or regulations, collective agreements, works rules, arbitration awards, or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions. This Paragraph was intended to provide for the widest possible latitude regarding the methods of implementation of the instrument, having regard to the great national differences in methods of regulation in the field of labour-management relations.[1]

12. It is apparent, however, that not all of the methods referred to in Paragraph 1 of the Recommendation are equally capable of giving effect to the Recommendation as regards all matters and all persons covered by it. While legislation and collective agreements may contain comprehensive rules on the subject and provide for procedures of redress and remedies, judicial decisions or arbitral awards usually involve the application to individual cases of general rules established pursuant to other methods.[2] Works rules frequently contain rules and provide for procedures internal to the undertaking relating to disciplinary dismissal and sometimes redundancy; they do not readily lend themselves to the establishment of procedures of appeal to neutral bodies against termination of employment unless they are negotiated between the parties, in which case they partake of the nature of collective agreements. Common law, custom and usage, where relied upon in this field, typically involve enunciation and individualisation of certain specific principles—such as the right to damages for breach of contract in case of summary dismissal in the absence of serious misconduct ("wrongful dismissal" under the common law in certain countries [3]) or the length of the notice period required for termination of employment in a given activity and locality—and are not capable of providing the full range of protection envisaged by the Recommendation. Implementation of certain provisions of the Recommendation, such as those regarding income protection (where effectuated through unemployment insurance) and measures to assist workers whose employment has been terminated as a result of reduction of the work force to find alternative employment, generally presupposes the existence of legislative provisions and administrative bodies.

13. It should be noted, furthermore, that where methods other than legislation, such as collective agreements, arbitral awards or works rules provide certain of the guarantees envisaged by the Recommendation, difficulties in fully implementing the

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[1] See ILO: *Termination of employment (dismissal and lay-off)* Report VII(2), International Labour Conference, 46th Session, Geneva, 1962, pp. 182–183.

[2] However, in certain countries, such as Australia and New Zealand, arbitral awards frequently fulfil the role played by collective agreements in other countries; in some countries judicial decisions establish general principles of law on specific questions in the absence of express provisions in legislation.

[3] In many countries following the British common law tradition.

Recommendation may arise from the fact that such agreements, awards and works rules do not cover the whole working population, whereas the Recommendation is general in scope.[1] This problem is less serious in countries in which the provisions concerned are contained in general collective agreements between central organisations of workers and employers applicable to a large proportion of the work force or in model works rules containing minimum standards which must be met by the works rules of individual undertakings.

14. From the information supplied by governments, it would appear that all reporting countries have measures of one kind or the other to give effect to at least certain provisions of the Recommendation.[2] Legislation is the principal or an important source of regulation in the vast majority of countries in which such measures exist. Frequently, collective agreements or arbitral awards contain provisions on some aspects of the Recommendation not covered by legislation, or supplement the legislation by stipulating higher or more detailed standards in regard to certain matters. Occasionally, collective agreements have been mentioned as the sole source of regulation.[3] In most countries, it would appear that the subject-matter dealt with by the Recommendation is regulated, to some extent, at least, by a varying mixture of legislation, collective agreements, arbitral awards, court decisions, custom or usage and works rules.[4] On occasion, also, constitutional provisions, particularly those concerning the equal protection of the laws or prohibiting discrimination, are invoked by courts in cases concerning termination of employment.[5]

15. In this connection, it is interesting to note that a number of countries envisage the adoption of legislation with a view to giving effect to certain provisions of the Recommendation not yet implemented by national law or practice, or to improving the protection already provided.[6]

16. The diversity of sources of regulation and the varying scope of application of different sources make it difficult to assess the precise extent to which the Recommendation is implemented in a number of countries. Some countries, in which important aspects of the Recommendation are implemented by collective agreements, have given particulars of the contents of some of these agreements and a number of general agreements which cover dismissal and redundancy have been otherwise available to

[1] See Para. 18 of the Recommendation and Ch. II of this survey.

[2] The Government of Australia states in respect of Norfolk Island that, due to its small size, population and range of activities, there has been no need, in the territory, to apply measures of the kind contained in the Recommendation.

[3] The reports concerning the United Kingdom (Guernsey, Isle of Man and Jersey) have referred only to provisions in collective agreements specifying the period of notice required for termination of employment; however, the Government of Guernsey states that appeal against dismissal may be made to the States Labour and Welfare Committee, which does not recognise the right of the employer to discriminate against any worker on the grounds mentioned in Paragraph 3*(d)* of the Recommendation and that insured workers are entitled to unemployment benefits under certain conditions; while the Government of Jersey indicates that the adoption of legislation on termination of employment is envisaged.

[4] A list of the principal legislation and generally applicable collective agreements is contained in Appendix II to the present survey.

[5] See, for example, in the United States, the decision of the Supreme Court of 25 June 1973 (Sugarman *v.* Dougall), in *Fair Employment Practices Cases* (Washington, DC) Vol. 5, p. 1152.

[6] Algeria, Guatemala, Jamaica, Kenya, Kuwait, Lebanon, Liberia, Morocco, Nigeria, Singapore, Thailand, United Kingdom (the Government indicates that a Review Body on industrial relations in Northern Ireland—to which the Industrial Relations Act, 1971, and Code of Industrial Relations Practice do not apply—was conducting a review of industrial relations in Northern Ireland, with a view to recommending what changes are necessary and desirable to promote the most effective system there); Netherlands (Surinam), United Kingdom (Jersey).

the Committee. In other cases, however, information regarding the relevant agreements has been scanty and in most cases it has not been possible to determine to what percentage of the national work force the relevant agreements apply. Few government reports contain information regarding court decisions, arbitral awards, custom, usage and works rules. The present survey will on occasion refer to court decisions enunciating important points of principle for purposes of illustration.

CHAPTER II

SCOPE

17. The scope of the Termination of Employment Recommendation is determined, in the first instance, by the object of the Recommendation, which is to regulate termination of employment at the initiative of the employer. Accordingly, the Recommendation is concerned with *termination* (not with other interruptions of the employment relationship, such as suspension or temporary lay-off, during which that relationship is not extinguished [1]) of the *employment* relationship (not other business relationships [1]) at the *initiative of the employer* (not at the initiative of the employee [2] or by agreement of the parties).

18. Paragraph 18 of the Recommendation provides that the Recommendation applies to all branches of economic activity and to all categories of workers, but that four categories of persons may be excluded, namely: *(a)* workers engaged for a specified period of time or a specified task in cases in which, owing to the nature of the work to be effected, the employment relationship cannot be of an indeterminate duration; *(b)* workers serving a period of probation determined in advance and of a reasonable duration; *(c)* workers engaged on a casual basis for a short period; and *(d)* public servants engaged in the administration of the State to the extent only that constitutional principles preclude the application to them of one or more provisions of the Recommendation.

19. The limitations of scope inherent in the method employed to give effect to different provisions of the Recommendation (e.g. collective agreements, works rules) have been alluded to in the previous chapter. Even within one country, the different provisions regulating different aspects of the subject of termination of employment may differ considerably in scope. In this connection, mention should be made at least of the limitations of scope of provisions relating to unjustified termination of employment in those countries where such provisions exist, since protection against such termination is basic to the protection envisaged by the Recommendation.[3]

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[1] See Report VII(2), International Labour Conference, 46th Session, Geneva, 1962, p. 180; and *Record of Proceedings*, International Labour Conference, 46th Session, Geneva, 1962, p. 789, para. 11, and idem, 47th Session, Geneva, 1963, p. 579, para. 10.

[2] Termination of employment by the employee for certain reasons imputable to the employer is in some countries assimilated to unjustifiable termination by the employer. See para. 55 below.

[3] The General Confederation of German Trade Unions, in its comments on the Government's report on the Recommendation, states that for national legislation to be brought into conformity with the Recommendation, it would be necessary to repeal the limitations (in respect of age, length of service and size of the undertaking) on the applicability of the relevant provisions of the Protection against Dismissal Law, as proposed by the last Congress of the General Confederation. These limitations of the scope of the relevant legislation are referred to below.

20. Provisions concerning unjustified termination of employment in countries in which such provisions are to be found[1], frequently apply only to workers employed under contracts of indeterminate duration; if workers employed under contracts for a specified period of time or task are covered at all they are covered only during the currency of their contract and not with respect to its expiration.[2] These limitations on the scope of the provisions in question result either from express limitation of these provisions to contracts of indeterminate duration [3] or from other provisions stipulating that contracts for a specified period of time or specified task terminate on expiration of that period or performance of the task.[4] Under Paragraph 18*(a)* of the Recommendation, the exclusion of workers employed under the latter types of contracts is allowed only if the nature of the work to be effected is such that the employment relationship cannot be of an indeterminate duration. These conditions appear to be met in countries where contracts for a specified period of time or task are prohibited if the work to be performed is not of a casual or temporary nature.[5] The possibility of having recourse to fixed-term contracts as a means of avoiding restrictions on unjustified termination of employment (or other obligations towards workers employed under contracts of indeterminate duration) may be limited by provisions empowering the competent tribunal to treat the contract as a contract of indeterminate duration[6]; whether the conditions laid down in Paragraph 18*(a)* of the Recommendation are met in this case depends upon how these powers are used. Limitations on the possibility of recourse to successive fixed-term contracts exist where such contracts are deemed to be of indeterminate duration if the worker continues to render his services or to perform the same task after the expiration of the original

[1] The countries concerned and the question whether the relevant provisions fully provide the protection contemplated by Paragraphs 2 and 3 of the Recommendation will by considered in Ch. III.

[2] Even if workers employed under contracts for a specified duration or task are not covered by the relevant provisions during the currency of their contract, termination by the employer before expiration of the specified period or performance of the specified task generally entitles the worker to recover damages for breach of contract.

[3] Belgium, Act respecting Workmen's Contracts of Service, section 24*ter*; France, Labour Code, section 24b (inserted by Act No. 73-680 of 13 July 1973).

[4] For example, Bulgaria, Labour Code, section 29*(b)-(c)*; Cameroon, Labour Code, section 30; Chile, Act No. 16455 to Issue Rules for the Termination of Contracts of Employment, section 2(12) (expiration of a fixed-term contract deemed to be valid reason for termination rather than to automatically terminate the contract); Cyprus, Termination of Employment Law, section 5*(d)* (expiration of fixed-term contract deemed to be a valid reason for termination); Egypt, Labour Code, sections 71, 73; Finland, Contracts of Employment Act, section 36; General Agreement on Protection against Dismissal, 1966, section 1; Guatemala, Labour Code, section 86*(a)*; Haiti, Labour Code, section 30*(a)-(b)*; Hungary, Labour Code, section 28; Iraq, Labour Code, section 26*(b)*; Italy, Act No. 604 of 14 July 1966, section 1; Khmer Republic, Labour Code, section 69; Libyan Arab Republic, Labour Code, section 46; Luxembourg, Act respecting Workmen's Contracts of Service, section 4; Mexico, Federal Labour Act, section 53 (III); Netherlands, Civil Code, section 1639*e*; Nicaragua, Labour Code, sections 32(4), (9) and 115(1), (2); Panama, Labour Code, section 210(2)-(3); Romania, Labour Code, section 129; Tunisia, Labour Code, section 14, paragraph 1.

[5] Guatemala, Labour Code, section 26; Iraq, Labour Code, section 17; Mexico, Federal Labour Act, sections 36-37; Peru, Legislative Decree No. 18138 of 6 February 1970 to Prescribe of the Conditions for the Conclusions of Individual Contracts of fixed duration or for a Specified Piece of Work, sections 1-2; Sweden, Job Security Act (to enter into force on 1 July 1974), section 5 (such contracts of employment may be concluded only if required by the special nature of the job; contracts for a specified period are also allowed for training work and for temporary work as a substitute worker).

[6] For example, Cyprus, Termination of Employment Law, section 5*(d)* (Tribunal empowered to consider the contract or a series of such contracts as a contract of indeterminate duration).

contract[1], or if successive contracts of these types are made.[2] In one country, the expiration of a fixed-term contract of employment without renewal is deemed by the legislation to be termination of employment by the employer for the purpose of protection against unfair termination; however, a worker employed under a fixed-term contract of two years or more may waive his rights to such protection if he does so in writing before expiration of the term.[3]

21. Workers serving a period of probation—who may be excluded from the scope of the Recommendation under Paragraph 18*(b)* thereof on condition that the period of probation is determined in advance and of reasonable duration—are often excluded from protection against unjustifiable termination of employment.[4] Sometimes the legislation provides that periods of probation may not exceed a given maximum length of time.[5] Workers engaged on a casual basis for a short period, who may be excluded from the scope of the Recommendation under Paragraph 18*(c)*, while occasionally treated separately in the relevant national provisions[6], would generally be assimilated either to workers employed under contracts of specified duration or for a given task. In connection with both employment for a period of probation and casual employment, it should be noted that in a number of countries entitlement to protection against unjustified termination of employment—or to the full benefit thereof—is subject to a qualifying period of from 6 months to 2 years[7], thereby

[1] For example, Bulgaria, Labour Code, section 28 (if employment continues for three days after the expiration of the contract without objection by the undertaking); Congo, Labour Code, section 32; Egypt, Labour Code, section 71; Gabon, Labour Code, section 30; Hungary, Decree No. 34 of 8 October 1967 to apply the Labour Code, section 21(3) (in case of fixed-term contracts of more than 30 days' duration); Panama, Labour Code, section 77(1)–(2).

[2] Panama, Labour Code, section 77(3). In Luxembourg, under the Act of 24 June 1970 respecting Workmen's Contracts of Service, section 16, paragraph 3, non-renewal of a fixed-term contract after successive extensions may be assimilated to termination by the employer.

[3] United Kingdom, Industrial Relations Act, sections 23(2)*(b)*, 30*(b)*.

[4] For example, Czechoslavakia, Labour Code, section 58; Egypt, Labour Code, section 76(2); Finland, Contracts of Employment Act, section 3; France, Labour Code, section 24*(b)* (inserted by Act No. 73–680 of 13 July 1973); Guatemala, Labour Code, section 81; Italy, Act No. 604 of 15 July 1966, section 10; Hungary, Labour Code, section 23; Khmer Republic, Labour Code, section 78; Turkey, Labour Act, 1971, section 12.

[5] For example, Czechoslovakia, Labour Code, section 31 (maximum of 1 month); Finland, Contracts of Employment Act, section 3 (maximum of 3 months); Guatemala, Labour Code, section 81 (maximum of 2 months); Hungary, Labour Code, section 23(2) (maximum of 3 months); Italy, Act No. 604 of 15 July 1966, section 10 (protection to apply when employment relationship becomes definitive, and in any case 6 months after the date it began); Khmer Republic, Labour Code, section 65 (probationary period may not last longer than the time necessary for the employer to judge the worker's qualifications and the worker to judge the conditions of work, and in no case longer than 3 months for employees, 2 months for specialised workmen and 1 month for workmen without special qualifications); Turkey, Labour Act, 1971, section 12 (maximum of 1 month, subject to extension of up to 3 months by collective agreement).

[6] For example, Egypt, Labour Code, section 88*(a)* (excepting from the relevant provisions persons engaged on temporary work of a type not coming within the scope of the employer's business and which does not last longer than 6 months); Panama, Labour Code, sections 80–81, 212(2) (excepting from the relevant provisions casual employment on tasks directly linked to the employer's type of activity, which may be for no longer than 6 months, and occasional or irregular employment for short-term tasks not so linked, which may be for no more than 1 month).

[7] For example, Chile, Act No. 16455 of 5 April 1966, section 3 (6-month qualifying period); Cyprus, Termination of Employment Law, sections 3, 16 (26 weeks—which may be increased by agreement of the parties up to 104 weeks—for protection against unjustifiable termination of employment; 104 weeks for right to redundancy benefits); Denmark, Act respecting Legal Relations between Employers and Salaried Employees, section 2*(b)*(1) (12 months); Finland, General Agreement on Protection against Dismissal, section 1 (9 months); France, Labour Code, section 24r (inserted by Act No. 73–680 of 13 July 1973) (certain remedies available only after 2 years' service;

(footnote continued opposite)

excluding from coverage not only most workers employed during a period of probation or on a casual basis, but also workers employed on a permanent basis who have not been in continuous employment for the required length of time. A requirement of such a qualifying period is not provided for by the Recommendation.

22. The general legislation concerning unjustified termination of employment is sometimes not applicable to certain categories of workers, such as agricultural workers[1], public servants [2] or seamen[3], who are frequently covered by separate legislation.[4] Exceptions from the relevant provisions are sometimes made in respect of workers who are under a given age [5] or have reached the age of retirement or are over a given age[6], workers in undertakings employing less than a given number of

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certain procedural rights available only after 1 year's service); Federal Republic of Germany, Protection Against Dismissal Act, section 1 (6 months); Iran, Labour Act, section 3 (3 consecutive months or 6 non-consecutive months); Norway, Protection of Workers Act, section 43 (2 years); Panama, Labour Code, section 212(3); Sri Lanka, Termination of Employment of Workmen (Special Provisions) Act, section 3*(b)* (1 year); United Kingdom, Industrial Relations Act, section 28*(a)* (2 years).

[1] For example, Libyan Arab Republic, Labour Code, section 1; Norway, Protection of Workers Act, section 1.

[2] For example, Cameroon, Labour Code, section 1(3); Central African Republic, Labour Code, section 1; Denmark, Act respecting the Legal Relations between Employers and Salaried Employees, section 1(3); Gabon, Labour Code, section 1; Finland, Contracts of Employment Act, section 1; Iraq, Labour Code, section 6; Italy, Act No. 604 of 15 July 1966, section 1; Khmer Republic, Labour Code, section 1; Libyan Arab Republic, Labour Code, section 1; Luxembourg, Consolidated text of Laws on Contracts of Service of Salaried Employees, 1971, section 3 (excluded only if subject to more favourable rules); Madagascar, Labour Code, section 1; Mali, Labour Code, section 1; Mauritania, Labour Code, section 1; Mexico, Federal Labour Act, section 1; Netherlands, Extraordinary (Employment Relations) Decree, 1945, section 2 (employees of public bodies excluded from requirement of prior administrative authorisation of termination); Nicaragua, Labour Code, section 9; Panama, Labour Code, section 2; Peru, Legislative Decree No. 18471 of 10 November 1970, section 1; Rwanda, Labour Code, section 2; Spain, Contracts of Employment Act, section 8; Sri Lanka, Termination of Employment of Workmen (Special Provisions) Act, section 3*(c)–(e)*.

[3] For example, Denmark, Act respecting the Legal Relations between Employers and Salaried Employees, section 1(3); Libyan Arab Republic, Labour Code, section 1; Madagascar, Labour Code, section 1; Mauritania, Labour Code, Book I, section 1; Norway, Protection of Workers Act, section 1; Panama, Labour Code, section 212(5).

[4] The following countries indicate that civil servants or public servants are covered by separate legislation: Guatemala (Civil Service Law); Guinea (Ordinance No. 48/PRG of October 1959 instituting the Civil Service Law); Mexico (Federal Law on Workers in the Service of the State); Morocco (Dahir of 24 February 1958 instituting the Civil Service Law); Madagascar, Act No. 60.003 of 15 February 1960 and Decree No. 64.212 of 27 May 1964); Peru (Act No. 11.377 of 29 March 1950 on Dismissal of Civil Servants); Switzerland (the Government states that administrative law governs civil servants); Netherlands (Surinam) (Public Servants Decree, 1963). The previously cited provisions of the Labour Codes of Libyan Arab Republic, Madagascar and Mauritania indicate that seamen are covered by Merchant Marine or Maritime Codes, while the Government of Norway provides detailed information concerning the position of seamen in its report.

[5] Denmark, Act respecting the Legal Relations between Employers and Salaried Employees, section 2*(b)*(1) (20 years of age); Finland, General Agreement on Protection Against Dismissal, section 1 (18 years of age); Federal Republic of Germany, Protection against Dismissal Act, section 1 (18 years of age); Norway, Protection of Workers Act, section 43 (20 years of age).

[6] Italy, Act No. 604 of 15 July 1966, section 11 (excluded from protection when entitled to an old-age pension and in any case at 65 years of age, but protection against dismissal because of political opinion, religion, trade union membership or activities and right to length of service allowance is retained after this age); United Kingdom, Industrial Relations Act, section 28*(b)* (exclusion from protection after normal retirement age or 65 years of age, if a man, or 60 years of age if a woman). In certain other countries, attainment of a given age is considered to be a valid reason for termination of employment. The question of age will be further considered in the following chapter.

persons[1], close relatives of the employer[2], domestic workers[3], persons employed in managerial positions or in positions of responsibility or trust[4], workers employed part time (for fewer than a given number of hours per week [5]), or apprentices.[6]

23. As regards foreign workers, the Termination of Employment Recommendation makes no provision for their exclusion from its scope. It may be recalled that the International Labour Conference, at its 57th Session in June 1972, adopted a Resolution concerning Conditions and Equality of Treatment of Migrant Workers[7], in which it called upon all governments and employers' and workers' organisations to take every measure to ensure effective equality in treatment and rights for migrant workers and to ensure the strict observance of measures of protection applicable to migrant workers so that they may receive benefits of all kinds and guarantees equal to those given to national workers, inter alia, as regards dismissal. In connection with consideration of the action to be taken pursuant to this Resolution, the Governing Body, at its 188th Session (November 1972), asked the Director-General to request governments to include in their reports on the Termination of Employment Recommendation, submitted under article 19 of the ILO Constitution, as much detailed information as possible on the measures taken or envisaged to ensure that foreign workers enjoy the safeguards provided for in the Recommendation. Of the 98 reports received, only 17 provide information on the position of foreign or migrant workers.[8] In most of these cases, the reports merely indicate that the law governing termination of employment is of general application and thus applies equally to nationals and foreign workers. In many countries not replying expressly to this question, the position appears to be the same, as the provisions governing termination of employment are not limited in their application on the basis of nationality. Several countries indicate that foreign or migrant workers are subject to certain restrictions in respect of unemployment insurance: in one country, the unemployment insurance system does not apply to foreign workers if they are covered by the unemployment system of their

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[1] France, Labour Code, section 24r (inserted by Act No. 73–680 of 13 July 1973) (certain rights applicable only in undertakings employing more than 11 workers); Federal Republic of Germany, Protection against Dismissal Act, section 23 (5 persons or less); Italy, Act No. 604 of 15 July 1966, section 11 (35 workers or less) and Act No. 300 of 20 May 1970, section 35 (15 or less); Sri Lanka, Termination of Employment of Workmen (Special Provisions) Act, section 3*(a)* (less than 15); United Kingdom, Industrial Relations Act, section 27(1)*(a)* (3 or less).

[2] Libyan Arab Republic, Labour Code, section 1; Mauritius, Termination of Contracts of Service Ordinance, section 1A; Nicaragua, Labour Code, section 9; Sweden, Job Security Act, section 1; United Kingdom, Industrial Relations Act, section 27*(b)*.

[3] Chile, Act No. 16455 of 5 April 1966, section 3; Egypt, Labour Code, section 5; Khmer Republic, Labour Code, section 1; Libyan Arab Republic, Labour Code, section 1; Netherlands, Extraordinary Labour Relations Decree, 1945, section 2 (women domestic workers); Panama, Labour Code, section 212(4); Sweden, Job Security Act, section 1; Trinidad and Tobago, Industrial Relations Act, section 2(3)*(f)*.

[4] Chile, Act No. 16455 of 5 April 1966, section 3; Panama, Labour Code, section 212(1); Sweden, Job Security Act, section 1; Trinidad and Tobago, Industrial Relations Act, section 2(3)*(e)*.

[5] Denmark, Act respecting Legal Relations between Employers and Salaried Employees, section 1(2) (less than 15 hours per week); United Kingdom, Industrial Relations Act, section 27(1)*(f)* (less than 21 hours per week).

[6] Denmark, Act respecting Legal Relations between Employers and Salaried Employees, section 1(3) (persons covered by the Apprentices Act, 1934); Panama, Labour Code, section 212(6); Trinidad and Tobago, Industrial Relations Act, section 2(3)*(g)*.

[7] International Labour Conference, 57th Session (June 1972), *Record of Proceedings*, op. cit., pp. 705–706.

[8] Austria, Belgium, Bulgaria, Canada, Cuba, Czechoslovakia, Dahomey, Guatemala, Japan, Kuwait, Liberia, Mali, Niger, Norway, Sri Lanka, Sweden, United States.

country[1]; in another country, unemployment benefits are granted to citizens or to residents of that country and certain other countries[2], and in a third country (a federal State), migrant workers are generally agricultural workers who are excluded from unemployment insurance coverage in all but a few jurisdictions.[3] The Committee had no additional information available to it which would provide a fuller picture of the position of migrant workers in respect of termination of employment. It should be mentioned in this connection that the Committee on Employment of the ILO Second European Regional Conference (January 1974) expressed the opinion in its report [4] that migrant workers should not be the first to suffer in the case of reduction in employment.

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[1] Japan.

[2] Norway.

[3] United States.

[4] ILO: *Provisional Record*, No. 10, Second European Regional Conference, para. 34.

CHAPTER III

JUSTIFICATION OF TERMINATION OF EMPLOYMENT AT THE INITIATIVE OF THE EMPLOYER

24. The Termination of Employment Recommendation, 1963, provides in Paragraph 2(1) that termination of employment at the initiative of the employer should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operation requirements of the undertaking, establishment or service. The Recommendation thus embodies the principle that the worker should be entitled to remain in his employment unless the employer has a valid reason for terminating the employment relationship.

25. The adoption of this principle involves a reversal, for the employer, of the previously existing position according to which both employer and worker are free to terminate employment relationships of indeterminate duration unilaterally, for any reason whatsoever, by giving due notice or payment in lieu of notice. As several governments refer in their reports, in connection with the application of this provision of the Recommendation, to the reasons which, under national legislation, justify dimissal without notice or the payment of a severance allowance, it appears that there may be some misunderstanding of the basic import of this provision of the Recommendation. It should be made clear in this regard that under the Recommendation termination of employment by the employer should not take place at all without a valid reason, even if he gives proper notice of termination and pays to the worker the severance allowance due. Summary dismissal, with possible loss of separation benefits by the worker, is a particular instance of termination of employment, which is envisaged by the Recommendation only in case of serious misconduct. Paragraph 11 of the instrument lays down special rules and procedures to be observed in such cases, which will be discussed separately.

26. It is important to note that the requirement of a valid reason for termination of employment under the Recommendation applies only to termination by the employer. The Recommendation does not provide for a similar limitation on the worker, for whom freedom to terminate a contract of employment of indeterminate duration unilaterally by means of notice of reasonable length constitutes an essential guarantee of freedom of labour, which is protected by the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105).[1] The lack of symmetry in the rights of employers and workers in this respect is a reflection of the fact that the principle of freedom of labour is a fundamental right whose limitation is permissible only in certain very special circumstances.[2] It also reflects the fact that

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[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 52nd Session, Geneva, 1968, Part Three: Forced Labour, para. 70.

[2] See ibid, paras. 25–40, 76–87.

employment represents for the worker a guarantee of livelihood for himself and his family, the loss of which can produce considerable hardship. In this general context, the importance of employment has been underlined by the international recognition of the right to work as a human right.[1]

27. The definition of the reasons to be considered valid for the purpose of termination of employment at the initiative of the employer is left by Paragraph 2(2) of the Recommendation to the national methods of implementation discussed in Chapter I above. However, in accordance with Paragraph 2(1) of the Recommendation, the reasons which are deemed to justify such termination should relate only to the capacity or conduct of the worker or the operational requirements of the undertaking, establishment or service, while, in accordance with Paragraph 3, a number of specified grounds should never justify termination. It is proposed first to consider the extent to which the different countries reporting on the Recommendation apply the general principle that termination of employment at the initiative of the employer should not take place unless there is a valid reason of the kinds specified in Paragraph 2 of the Recommendation. Afterwards, special restrictions on the right of the employer to terminate the employment of a worker for certain particular reasons will be discussed. Finally, the special question of summary dismissal for serious misconduct will be considered.

The Justification Requirement

28. Limitations of one kind or another on the power of employers arbitrarily to terminate the employment of a worker have been adopted in a large number of countries. Of the countries covered by this survey, and according to the information available, the principle that a worker's employment should not be terminated without a valid reason appears now to have been expressly adopted in legislation or generally applicable collective agreements in 45 countries.[2] Remedies for termination of employment by the employer which involves an abuse of power or is harsh or unreasonable are provided for in 12 countries[3], while 3 countries have referred to the possibility of recourse to the concept of abuse of power as providing some protection in this regard.[4] In 8 countries [5] legislation, without expressly imposing a requirement of a valid reason for termination, provides administrative or disputes settlement bodies with powers of kinds which might lend themselves to the development of such a requirement or such restrictions. In 25 countries [6] no general limitation appears to

[1] See para. 3 of the present survey.

[2] This principle appears to be embodied in generally applicable legislation in the following countries: Brazil, Bulgaria, Byelorussian SSR, Central African Republic, Chile, Congo, Cuba, Cyprus, Czechoslovakia, Dahomey, Egypt, Ethiopia, Finland (where no specific remedies appear to have been provided for its infringement), France, Gabon, Federal Republic of Germany, Guatemala, India, Iraq, Italy, Ivory Coast, Khmer Republic, Libyan Arab Republic, Madagascar, Malta, Mauritius, Mexico, Morocco, New Zealand, Niger, Norway, Panama, Peru, Romania, Rwanda, Singapore, Spain, Sri Lanka, Sweden, Ukrainian SSR, USSR, United Kingdom, Upper Volta, Yugoslavia; in legislation applicable only to salaried employees in Denmark; in genarally applicable collective agreements in Denmark, Finland, Italy and Sweden.

[3] Australia (South Australia), Austria, Belgium, Cameroon, Guinea, Haiti, Luxembourg, Mali, Netherlands, Trinidad and Tobago, Tunisia, Republic of Viet-Nam.

[4] Greece, Poland, Switzerland.

[5] Ghana, Hungary, Indonesia, Iran, Kenya, Liberia, Netherlands, Pakistan.

[6] Argentina, Australia (apart from South Australia), Bangladesh, Burma, Canada, Guyana, Ireland, Jamaica, Kuwait, Lebanon, Malawi, Nicaragua, Nigeria, Qatar, Thailand, Turkey, United States (the majority of the working population is not covered by collective agreements containing provisions on the matter), People's Democratic Republic of Yemen, Zambia; Australia (Norfolk Island, Papua New Guinea), Netherlands (Surinam), United Kingdom (Guernsey, Isle of Man, Jersey).

have been imposed on the freedom of the employer to terminate the employment relationship, apart from the requirement in many of these countries to give advance notice and to pay a severance allowance, and sometimes specific restrictions on termination of employment by the employer for defined reasons. The legal position in these various groups of countries will be considered in turn.

Express Requirement of a Valid Reason for Termination of Employment at the Initiative of the Employer

29. The requirement of a valid reason for termination of employment by the employer is variously defined in national legislation. In some countries a "valid reason"[1], an "objective cause"[2], "specified serious grounds"[3], or "real and serious grounds" [4] are required for termination; or the legislation may provide remedies in case of termination which is "without legitimate grounds"[5], is "not justified"[6], is "unjustifiable"[7], or is "without just cause"[8]; in addition, the legislation of these

[1] Egypt, Labour Code, section 74.

[2] Sweden, Job Security Act, section 7 (no objective cause is deemed to exist if it can be reasonably required that the employer should provide another job for the worker in the undertaking).

[3] Finland, Contracts of Employment Act, section 37 (while the principle is clearly stated, specific remedies for its infringement do not appear to be provided for, other than damages for breach of contract, referred to in section 51).

[4] France, Labour Code, sections 24*n*, 24*o*, 24*p* (inserted by Act No. 73-680 of 13 July 1973).

[5] Central African Republic, Labour Code, section 47; Congo, Labour Code, section 42; Dahomey Labour Code, section 38; Gabon, Labour Code, section 40; Ivory Coast, Labour Code, section 40; Madagascar, Labour Code, section 31; Mauritania, Labour Code, Book 1, section 24; Niger, Labour Code, section 41; Rwanda, Labour Code, section 43; Upper Volta, Labour Code, section 39.

[6] India, Industrial Disputes Act, 1947, section 11A (inserted by section 3 of the Industrial Disputes (Amendment) Act, 1971. Under the case law of the labour tribunals and Supreme Court prior to the adoption of this amendment, the employer, before discharging or dismissing a worker for misconduct, had to notify him of the charges against him and hold a domestic inquiry in accordance with the principles of natural justice; the competent board, tribunal or court could set aside the employer's decision only if it was satisfied that the conduct of the employer suffered from want of good faith, that there was victimisation or unfair labour practice, that in holding the inquiry the employer was guilty of a basic error for violation of the principles of natural justice or that the findings recorded by the inquiry were completely baseless; it was not empowered to review the evidence considered in the domestic inquiry and reach its own conclusions concerning the justification of discharge or dismissal. See, for example, Buckingham and Carnatic Co. Ltd. *v.* Workers of the Company (Labour Appellate Tribunal), *Labour Law Journal*, 1953, p. 181, and Indian Iron and Steel Co. *v.* Their Workmen (Supreme Court), ibid., 1958, p. 260. In a recent decision, the Supreme Court has held that the 1971 amendment to the Industrial Disputes Act empowers the labour court, tribunal or national tribunal to reappraise the evidence considered in the domestic inquiry and to satisfy itself that the evidence relied upon by the employer established the alleged misconduct, as well as to determine, where misconduct is deemed to be established, whether it is such as to justify discharge or dismissal or some lesser punishment. See The Workmen of Firestone Tyre and Rubber Co. *v.* the Management and Others (Supreme Court, Decision of 6 March 1973), *Indian Factories and Labour Reports*, Vol. 26, 15 May and 1 June 1973, p. 359. It is noteworthy that the recent amendment, in addition to widening the powers of the competent bodies in assessing the evidence in question, stipulates in a proviso that these bodies shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

[7] New Zealand, Industrial Relations Act, section 117 (1) and (7), which provides for reinstatement, payment of lost wages, or payment of compensation, or a combination of these remedies, in case of a finding of unjustifiable dismissal made pursuant to the procedure for the settlement of personal grievances established by this section. Whether these new provisions (enacted in 1973) modify the previous substantive law under which remedies existed only in case of "wrongful" dismissal (that is dismissal without due notice in the absence of serious misconduct), will depend upon how they are interpreted in practice by the bodies responsible for settling personal grievances.

[8] Libyan Arab Republic, Labour Code, sections 49-50; Singapore, Industrial Relations Act, section 34(2) (appeal against termination of employment must be made through the worker's trade

(footnote continued opposite)

countries stipulates in other provisions specific grounds of misconduct which justify termination of employment without notice.[1] The Government of another country states that a "rational reason" for termination of employment by the empoyer is required by the courts, although not by general legislation.[2] In two countries the terms of Paragraph 2(1) of the Recommendation are reproduced almost verbatim[3]; here too the grounds permitting termination without notice are separately defined. In most other countries in which a valid reason for termination of employment by the employer is expressly required, the reasons deemed by the legislation to justify such termination, although varying widely in wording and detail of definition, fall generally within the three types of reasons mentioned in Paragraph 2(1) of the Recommendation, that is reasons relating to the conduct of the worker, to his capacity or to the operational requirements of the undertaking, establishment or service.[4]

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union to the Minister, who has the power of final decision). The Government indicates that action is being taken to provide the same protection to workers who are not members of a trade union.

[1] See para. 56 et seq. below.

[2] Japan. The Government, in addition, states that termination of the employment of public employees for other than given reasons is prohibited by the legislation governing the public service.

[3] Khmer Republic, Labour Code, section 70; Mauritius, Termination of Contracts of Service Ordinance, section 7(3) (this provision states that the Court, in considering complaints of unjustifiable termination, should have regard to the principle that termination of employment should only take place for the type of reasons mentioned in the Recommendation).

[4] Brazil, Consolidated Labour Laws, section 492, read together with sections 493 and 501 (concerning workers with more than 10 years' service) and Act No. 5107 to establish a Length-of-Service Guarantee Fund, 1966, section 6, read together with section 482 of the Consolidated Labour Laws (concerning all employees opting for the scheme of indemnity provided for in the 1966 Act) (this provision increases entitlement in case of unjustified dismissal); Bulgaria, Labour Code, sections 31 and 33; Byelorussian SSR, Labour Code, sections 29(6)–(7) and 33; Chile, Act No. 16455 to issue rules for the termination of contracts of employment, section 2; Cuba, Act relating to the Settlement of Labour Disputes, sections 6-7, 11, 48, 69-70 (concerning termination because of violation of labour discipline) and Resolution No. 459 of 31 August 1969, section 43 (concerning redundancy); Cyprus, Termination of Employment Law, sections 3 and 5; Czechoslovakia, Labour Code, sections 46 and 53; Denmark, Act respecting Legal Relations between Employers and Salaried Employees, section 2 *b* (applicable only to salaried employees as defined in section 1); Ethiopia, Civil Code, sections 2572-2576, 2578-2583, as amended by Minimum Labour Conditions Regulations, section 9; Federal Republic of Germany, Protection against Dismissal Act, section 1 (definition of "socially unjustified dismissal"); Guatemala, Labour Code, sections 77 and 85, para. 1 *(b)* (reasons related to the operational requirements of the work force, generally, are not included, although closure of the undertaking and *force majeure* are valid reasons); Italy, Act No. 604 of 15 July 1966, sections 1 and 3, read together with section 2119 of the Civil Code; Malta, Conditions of Employment (Regulation) Act, section 25(2) and (10) (termination permissible without notice for "good and sufficient cause" and with notice only on grounds of redundancy); Mexico, Federal Labour Act, sections 46, 47, 53 (III), (IV) and (V), and 434; Morocco, Order of 23 October 1948 fixing Model Works Rules, section 4 of the Model Works Rules (the right of appeal against termination of employment and remedies for unjustified termination appear to be expressly provided for only in cases of disciplinary dismissal for serious fault, by section 6 of the Model Works Rules), and Act No. 1-72-219 of 24 April 1973, section 7 (it is not clear whether the remedies for unjustified termination provided for in section 12 are applicable to all cases of unjustified termination or only to cases relating to termination without notice for serious fault, referred to in section 11 concerning the right of appeal); Norway, Protection of Workers Act, section 43; Panama, Labour Code, sections 211, 213; Peru, Legislative Decree No. 18471 of 10 November 1970 to prescribe Grounds for Dismissal of Workers Employed in the Private Sector, section 1; Romania, Labour Code, section 130; Spain, Contracts of Employment Act, sections 76, 77; Ukrainian SSR, Labour Code, sections 36(6)–(7), 40 and 41; USSR, Fundamental Principles of Labour Legislation, sections 15(6)–(7) and 17 (Russian SFSR, Labour Code sections 29(6)–(7) and 33); United Kingdom, Industrial Relations Act, section 24; Yugoslavia, Act respecting the Mutual Relationships between Workers Engaged in Collective Work, sections 54-58 (termination is permissible in case of failure by the worker to discharge the obligations in connection with work, if serious prejudice is thereby caused to the common interests of the other workers, and in case of closure of the work organisation; in case of redundancy due to technological or economic reasons termination is not allowed, and the organisation must ensure that the worker obtains another post in the same or another organisation.

30. In several countries a requirement of a valid reason for termination of employment by the employer is included not only in legislative provisions but in generally applicable collective agreements providing for remedies in case of "unjustified" termination [1] or where termination is not based on "adequate" grounds (defined as grounds relating to the worker himself, including various types of misconduct, or to reasons of economy or production necessitating reduction of personnel) [2] or where termination is unfair and unwarranted by the circumstances of the worker or of the undertaking.[3] In another country a generally applicable collective agreement provides rules relating to reduction of the work force and termination of employment based on reasons relating to the worker himself and provides for remedies in the latter case, where it is found that the termination is unfounded.[4] In certain countries the requirement of a valid reason for termination of employment, although not incorporated in general legislation, is sometimes included in collective agreements of individual undertakings. In one country, for example, most collective agreements of individual undertakings require a just cause for termination of employment either in general terms or through an enumeration of grounds for termination relating generally to misconduct or incompetence, while reduction of the work force under these agreements is generally effectuated through lay-off, which may or may not involve termination of the employment relationship.[5] Several other countries have referred in their reports to collective agreements of individual undertakings covering the matter dealt with in Paragraph 2 of the Recommendation.[6]

31. Where the relevant provisions of the above-mentioned legislation or collective agreements are worded in general terms, the precise definition of the grounds considered to be valid reasons for termination of employment by the employer depends upon how these provisions are interpreted by the courts, labour tribunals, arbitrators or other bodies responsible for ruling upon the justification of termination. In the absence of information on the case law or practice of the various bodies concerned, the Committee is not in a position to determine to what extent the reasons held in practice to justify termination of employment by the employer correspond to the valid reasons mentioned in the Recommendation.

32. Reasons relating to the conduct of the worker are stated to be valid reasons for termination of employment by the employer in all of the above-mentioned countries expressly requiring a valid reason for such termination. The reasons relating to the conduct of the worker are sometimes enunciated in general terms, by references to the fault of the worker or conduct justifying termination, but more frequently are subject to detailed definition, and include grounds based on dishonesty, improper behaviour and failure to fulfil or negligence in the fulfilment of obligations relating to employment. In most countries the grounds for termination based on the conduct of the worker enumerated in the legislation not only justify termination of employment, but also justify termination without a period of notice. To the extent that the grounds in question fall within the concept of serious misconduct as provided for in Paragraph 11 of the Recommendation, it may be inferred that the tendency in many of these countries is to admit termination of employment by the employer for reasons

[1] Italy, Interconfederal Agreement on Individual Dismissals, 1965, sections 2-3, 11.

[2] Finland, General Agreement on Protection Against Dismissal, 1966, section 3.

[3] Denmark, General Agreement of 31 October 1973, section 4(3).

[4] Sweden, Basic Agreement, sections 2, 4, 6.

[5] United States. See Bureau of National Affairs, *Collective Bargaining: Negotiations and Contracts* (Washington, DC, loose-leaf), Ch. 40, pp. 1-2, 11-16; Ch. 60.

[6] Ghana, Kenya.

related to the conduct of the worker only when the reasons are of a degree of seriousness warranting summary dismissal. These grounds for termination of employment, and whether they all may be considered to constitute serious misconduct, will be discussed further at the end of this chapter.

33. In most of the above-mentioned countries in which the grounds justifying termination of employment at the initiative of the employer are defined in more than very general terms, lack of capacity, whether due to incompetence or invalidity, is included among the enumerated grounds.[1] In several other countries lack of capacity would seem to fall within the concept of "reasons related to the worker" which justify termination[2], or may possibly be deduced from the concepts of "conduct" of the worker[3], or of failure to fulfil contractual obligations.[4] It should be noted that, as far as incapacity due to illness or accident is concerned, many countries provide for safeguards against termination of employment in cases other than prolonged or permanent incapacity.[5]

34. Reasons relating to the operational requirements of the undertaking, establishment or service are mentioned in most of the countries in which valid reasons for termination of employment by the employer are defined in more than general terms. Such grounds for termination are defined either by reference to redundancy or to reduction of the number of posts for economic or technical reasons or due to *force majeure* or accident. However, in several countries termination on these grounds is either prohibited [6] or is assimilated to unjustified termination through provision for the payment of compensation, additional to the normal severance allowance or equivalent or similar to compensation for unjustified termination of employment.[7] It would seem that this approach to termination of employment due to the operational requirements of the undertaking is based on the consideration that, where termination is not due to the fault, incompetence or incapacity of the worker, he should be entitled to compensation for loss of his employment at a rate similar to that granted to workers

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[1] Bulgaria, Byelorussian SSR, Chile, Cyprus, Czechoslavakia, Ethiopia, Guatemala, Khmer Republic, Mauritius, Mexico, Morocco, Panama, Romania, Spain, Ukrainian SSR, USSR, United Kingdom, United States.

[2] Finland (General Agreement on Protection against Dismissal, 1966), Federal Republic of Germany, Norway, Sweden.

[3] Denmark.

[4] Italy.

[5] For example, Bulgaria, Labour Code, section 29*(f)*; Byelorussian SSR, Labour Code, section 33, para. 1(2) and (5) and para. 2; Chile, Act No. 16455 of 5 April 1966, section 2(9) and (13); Cyprus, Termination of Employment Law, section 5*(a)*; Czechoslovakia, Labour Code, sections 46(1)*(d)*, 48(1)*(a)*; Guatemala, Labour Code, section 82*(e)* (illness or permanent invalidity are recognised grounds for termination of employment only if the worker concerned is entitled to an invalidity or sickness pension); Mexico, Federal Labour Act, sections 53(IV), 54; Panama, Labour Code, section 213(B)(4)–(5); Ukrainian SSR, Labour Code, section 40, para. 1(2) and (5) and para. 2; USSR (Russian SFSR), Labour Code, section 33, para. 1(2) and (5) and para. 2; Yugoslavia, Act respecting Mutual Relationships between Workers Engaged in Collective Work, section 56(1).

[6] Yugoslavia, Act respecting Mutual Relationships between Workers Engaged in Collective Work, section 57 (the work organisation must ensure that the worker affected obtains another post in the same or another organisation; the worker's status is terminated if he refuses to work in another post provided for him if it corresponds to his qualifications in his occupation or trade).

[7] For example, Brazil, Consolidated Labour Laws, sections 492, 495–498 (applicable only to workers with 10 years' service); Mexico, Federal Labour Act, sections 434, 436, 439; Panama, Labour Code, sections 213(C) and 225. In Guatemala, termination due to redundancy is not expressly provided for and would constitute unjustified termination; termination due to bankruptcy or *force majeure* entailing the absolute impossibility of fulfilling the contract of employment is covered by section 85*(b)* of the Labour Code, and could entitle the employer to pay a compensation lower than that for unjustified termination of employment.

whose employment was unjustifiably terminated. Other special schemes of compensation in case of reduction of the work force will be considered in Chapter VII.

35. In a number of countries the reasons enumerated as justifying termination of employment at the initiative of the employer include, in addition to those usually enumerated in most countries, detention or imprisonment of a worker or enforcement of another penalty preventing the worker from working in his post[1], reinstatement of another worker whose employment has previously been terminated[2], attainment of a certain age or the age of retirement or of entitlement to an old-age pension[3], or reasons due to a statutory requirement or "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held".[4] Detention or imprisonment, or generally subjection of a worker to a penalty which for a significant period deprives him of his liberty, may be considered to affect the capacity of the worker to fulfil his engagement and thus also the operating requirements of the undertaking, since it makes it impossible for the worker to carry out his obligations under the contract of employment.[5] Moreover, the offence for which the worker was sentenced may be of a type which would justify termination of employment due to the worker's conduct, as where the worker was convicted of offences committed in the workplace. Termination of a worker's employment due to reinstatement of another worker in the post he formerly held would seem to be a necessary consequence of the protection which the Recommendation seeks to ensure, to the extent that the worker cannot be transferred to another post.[6] The question of termination of employment for the reason that the worker has reached a given age or the age of retirement or of entitlement to an old-age pension is more complex. Where a retirement age is fixed by collective agreements or by special texts (such as staff regulations), termination of employment at such age may not be regarded as being at the initiative of the employer and may therefore not be considered as falling within the scope of the Recommendation.[7] However, in all other cases

[1] Brazil, Consolidated Labour Laws, section 492, read together with section 482*(d)*; Bulgaria, Labour Code, section 33*(a)*; Byelorussian SSR, Labour Code, section 29(7); Czechoslovakia, Labour Code, section 53(1); Guatemala, Labour Code, section 77, para. 1*(j)*; Mexico, Federal Labour Act, section 47(XIV); Panama, Labour Code, section 213*(b)*(2); Romania, Labour Code, section 130(1)*(k)*; Ukrainian SSR, Labour Code, section 36(7); USSR (Russian SFSR, Labour Code, section 29(7); Yugoslavia, Act respecting Mutual Relationships between Workers Engaged in Collective Work, section 56(3)–(4).

[2] Bulgaria, Labour Code, section 31*(d)*; Byelorussian SSR, Labour Code, section 33(6); Romania, Labour Code, section 130*(f)*; Ukrainian SSR, Labour Code, section 40(6); USSR (Russian SFSR, Labour Code, section 33(6)).

[3] Bulgaria, Labour Code, section 31*(f)*; Cyprus, Termination of Employment Law, section 5*(d)*; Panama, Labour Code, section 213(B)(3); Romania, Labour Code, section 130(1)*(g)*; Sweden, Job Security Act, section 33; Yugoslavia, Act respecting Mutual Relationships between Workers Engaged in Collective Work, section 53, para. 1(3).

[4] United Kingdom, Industrial Relations Act, section 24.

[5] However, unless the interruption of the employment is likely to be so long as to rule out the maintenance of the employment relationship, it would seem desirable to seek, where possible, merely to suspend the relationship and retain the worker's job for him with a view to helping him to return to normal life after his sentence is served. Indeed, certain of the provisions concerned permit termination of employment only where the worker is subject to detention or emprisonment for more than a minimum period (Bulgaria and Romania – 60 days; Czechoslovakia – 1 year).

[6] The right to terminate the employment of a worker because of reinstatement of another is expressly limited to cases where transfer to another post is not possible in the legislation of the Byelorussian SSR, Russian SFSR, and Ukrainian SSR.

[7] At the first Conference discussion leading to the adoption of the Recommendation, a proposal to exclude from the scope of the Recommendation "workers leaving their employment under a

(footnote continued opposite)

where termination is left to the initiative of the employer, the fact that the worker has reached a certain age or has become entitled to an old-age pension should not in itself constitute a justified ground for termination. Finally, whether termination due to a statutory requirement or "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held" would come within the terms of Paragraph 2(1) of the Recommendation would depend upon what kind of statutory requirement is involved and upon the interpretation given by the responsible bodies to the concept of a substantial reason justifying termination of employment.

Limitations on Termination of Employment by the Employer Which Involves an Abuse of Power, Is Harsh or Unreasonable

36. In a number of countries the relevant provisions do not expressly impose a requirement of a valid reason for termination of a worker's employment, but rather provide remedies in cases of termination of employment found to involve an abuse of power or to be harsh or unreasonable by the bodies responsible for hearing appeals against termination of employment. In most of these countries these restrictions are laid down in the provisions directly governing termination of contracts of employment, while in several others they derive from the general civil law concepts of abuse of power. In a number of countries the legislation relating to termination of contracts of employment provides workers with means of redress in case of termination of employment qualified as "abusive".[1] This has been defined in several of these countries to include termination of employment for illegitimate reasons and termination which constitutes an economically or socially abnormal act [2] or termination for which the reasons given are inexact.[3] The Government of another country states that termination of a worker's employment without a valid reason is considered to be "abusive" under these provisions.[4] In several other countries the legislation provides remedies for termination of a worker's employment that is "manifestly unreasonable" (defined to include dismissal where the employer does not indicate the reasons therefor, where the reasons invoked are not the true reasons or where the consequences to the worker outweight the advantages to the employer [5]), is "harsh and oppressive or not in accordance with the principles of good industrial

retirement system" was rejected by the competent Conference Committee. It was pointed out that such a clause seemed superfluous since the instrument was to deal with termination at the initiative of the employer. See *Record of Proceedings*, International Labour Conference, 46th Session, Geneva, 1962, p. 791, para. 20, and *Minutes* of the Committee on Termination of Employment, seventh sitting, p. 2.

[1] Belgium, Act respecting Workmen's Contracts of Service, section 24*ter* (applicable only to "workmen"; salaried employees, subject to the Consolidated Text of the Laws respecting Contracts of Salaried Employment, 1955, are protected from dismissal mainly by extended periods of notice, although they may seek to invoke the principle of abuse of power under civil law); Cameroon, Labour Code, section 41; Guinea, Labour Code, section 73; Haiti, Labour Code, section 41; Luxembourg, Act respecting Workmen's Contracts of Service, section 16, and Consolidated text of Laws respecting Contracts of Service of Salaried Employees, section 22; Mali, Labour Code, section 42; Tunisia, Labour Code, section 23; Republic of Viet-Nam, Labour Code, section 32.

[2] Luxembourg.

[3] Mali.

[4] Tunisia. Several other countries in which the relevant provisions expressly define "abusive" termination to include termination without legitimate reasons have been mentioned above. See para. 29, fifth footnote.

[5] Netherlands, Civil Code, section 1639 S (section 1639 P contains an enumeration of "imperative reasons" justifying dismissal without notice). Identical provisions are proposed in a Bill to amend the Surinam Civil Code, which has been submitted to the Parliament in Netherlands (Surinam).

relations practice"[1], "harsh, unjust or unreasonable"[2], or "constitutes a particularly harsh measure from the social point of view and is not justified by the situation of the undertaking".[3] In certain of these countries the concept of "abusive" termination is expressly stated to include termination of a worker's employment for certain of the reasons enumerated in Paragraph 3 of the Recommendation and special protection of certain categories of workers mentioned in that Paragraph is provided.[4] Whether or not the concept of termination which involves an abuse of power or is harsh, unjust or unreasonable may be equivalent to the requirement of a valid reason for termination, depends upon how the provisions concerned are applied or interpreted by the courts, labour tribunals or other bodies responsible for their enforcement. The position in this regard will depend both upon conceptions of what constitutes abuse or what is harsh, unjust or unreasonable and upon where the burden of proof lies.

37. The governments of several countries, in which the legislative provisions governing termination of employment do not restrict the right of the employer freely to terminate contracts of employment subject only to the obligation to give due notice, have referred to the general principle of abuse of power under civil law as permitting some measure of review of the exercise by the employer of this particular right.[5] In general, in the absence of any indications of development by the courts of the principle of abuse of power into a concrete system of rules restricting the arbitrary exercise by the employer of the right to terminate contracts of employment, it would not seem that recourse to the principle of abuse of power is itself sufficient to give effect to the principle laid down in Paragraph 2 of the Recommendation. However, the Government of one of the countries concerned states that the bodies which decide upon disputes relating to termination of employment consider all the circumstances of the case on their own initiative, and whether, having regard to the worker's conduct and work, termination of his employment is in conformity with the principles of social life; if they decide either that reasons attributable to the worker do not justify terminating his employment or that the employer had no valid reason for his decision, in particular based on the principles relating to the operation of the undertaking, reinstatement is ordered.[6]

Powers of Certain Bodies Which, Notwithstanding the Absence of an Express Requirement of a Valid Reason for Termination of Employment, May Lend Themselves to the Imposition of Such a Requirement

38. In one country the legislation requires the prior approval of a tripartite disputes-settlement body for all cases of termination of employment by the employer.[7]

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[1] Trinided and Tobago, Industrial Relations Act, section 10(5).

[2] Australia (South Australia, Industrial Conciliation and Arbitration Act, section 15(1)*(e)*).

[3] Austria, Works Councils Act, section 25.

[4] See below para. 42 et seq.

[5] Greece, Civil Code, section 281 (prohibiting the exercise of a right in a manner transgressing the limits of good faith or morals or of the social or economic purposes of the right); Poland, Civil Code, section 5 (which provides that the exercise of a right in a manner contrary to its social and economic purpose or to the principles of social co-existence is not protected); Switzerland, Civil Code, section 2, para. 2 (which provides that the manifest abuse of a right is not protected by law).

[6] Poland.

[7] Indonesia, Law No. 12 of 23 September 1964, sections 3-11.

In several other countries prior administrative approval of termination for other than certain given reasons is required.[1] Although in these cases the legislation itself does not specify the standards to be applied by the authorities in according or refusing authorisation, and would thus leave them a considerable degree of discretion, the result may in practice be that authorisation will not be granted unless a sufficient justification is established.[2]

39. In a number of other countries, where neither the justification requirement nor a limitation on abusive, harsh or unreasonable termination are expressly laid down, provision is made for submission of disputes relating to termination of employment of a worker (either directly or through administrative authorities [3]) to disputes-settlement bodies, which are empowered by the legislation to order reinstatement or the payment of compensation[4], or the payment of compensation additional to that provided for as a severance allowance[5], or which in practice, according to the Governments' reports, may order reinstatement or the payment of compensation.[6] In several countries the legislation empowers the competent bodies to order reinstatement or award compensation in case of "wrongful" termination of employment.[7] In another country the legislation provides for reinstatement where the competent body finds termination to be unlawful; it also provides for annulment of the termination of a worker's employment where that body finds that the reasons invoked by the employer, which must be stated in the notice of termination given to the worker, do not correspond to the facts.[8] In this case, although the legislation requires the employer to motivate his decision and authorises the competent body to verify the motives invoked, it does not expressly limit the kind of reasons for which a worker's employment may be terminated. In the above-mentioned countries, although the legislation does not expressly lay down substantive limitations on the right of an employer to terminate the employment of a worker at his discretion,

[1] Netherlands, Extraordinary Employment Relations Decree, 1945, section 6 (requirement of administrative authorisation for termination of employment otherwise than where for imperative reasons, which justify summary dismissal); Sri Lanka, Termination of Employment of Workmen (Special Provision) Act, 1971, section 2 (requirement of administrative authorisation for termination of employment otherwise than as a disciplinary measure).

[2] These cases, as well as others in which the prior approval of a trade union committee, tripartite body or public authority is required before termination of a worker's employment under legislation specifying the reasons which justify termination, are further considered in Ch. IV.

[3] With regard to the procedure of submission of complaints concerning termination of employment, see below, para. 75 et seq.

[4] Sri Lanka, Industrial Disputes Act, section 33 (these powers would presumably apply in respect of persons subject to termination of employment as a disciplinary measure, who are excluded from the scope of the Termination of Employment of Workmen (Special Provisions) Act, 1971, which requires prior authorisation for termination, referred to in para. 38 above); Malaysia, Industrial Relations Act, sections 27(1) and (5) and 29(3)*(b)* (the Government states that these powers may be exercised if it is found that the worker's employment was terminated without just cause or excuse).

[5] Iran, Labour Act, section 33.

[6] Ghana (the Government states that the courts have jurisdiction to determine cases in which persons are not satisfied with the grounds for dismissal and may order reinstatement or payment of compensation for loss of employment where the grounds for termination are adjudged invalid; however, the provisions referred to by the Government as providing the basis for this power (Part IV of the Labour Decree) refer only to remedies for breach of contract); and Pakistan (the Government states that an aggrieved worker may apply to the court for reinstatement; section 25A of the Industrial Relations Ordinance entitles a workman aggrieved of the termination of his employment to apply to the Labour Court which may make such orders as may be just and proper in the circumstances of the case).

[7] Kenya, Trades Disputes Act, section 9A; Liberia, Act to Amend the Labour Practices Law with respect to Administration and Enforcement, section 9.

[8] Hungary, Labour Code, sections 26(2), 29, 31.

subject perhaps to an obligation to give due notice, the powers accorded to the disputes-settlement bodies would seem to lend themselves to the development by these bodies of standards related to the justification of termination. Whether they do in fact develop such standards can only be determined from an analysis of the practice of these bodies. In most cases, information on this practice has not been available to the Committee. However, in one country recent decisions indicate that the court is entitled to look into the grounds for both summary dismissal and termination with notice and, where it finds that termination was in fact founded on misconduct, negligence or inefficiency, to examine the facts to see whether they support the allegations; the court will interfere with the termination if it finds a want of good faith, victimisation or unfair labour practice, a basic error or violation of the principles of natural justice, or that the employer's action was completely baseless or perverse.[1] In another country, although no information concerning the way these provisions are applied is available, the provisions governing calculation of compensation indicate that one kind of situation in which the powers concerned might be exercised is termination for the purpose of avoiding payment of a pension.[2]

Discretionary Termination of the Employment Relationship by the Employer

40. As may be seen from the foregoing paragraphs, the principle that there must be a valid reason for termination of employment by the employer has been adopted explicitly in a large number of countries, while in a number of others restrictions on termination of employment which involves an abuse of power or is harsh or unreasonable, or powers respecting authorisation of, or the award of certain remedies in cases of, termination, may lend themselves to the development and application of this principle. However, there are still many countries in which neither has the justification principle been explicitly adopted in legislation or generally applicable collective agreements, nor do restrictions or powers of the afore-mentioned kinds exist.[3] Even where restrictions on abusive, harsh and unreasonable termination or the previously mentioned powers exist, it is possible that they may not lead to the development by the competent bodies of this principle. The general legal position in the countries which have not adopted the justification principle appears to derive from common law, civil law or other traditional principles. Under these principles—frequently embodied in legislative provisions [4]—employers and workers are usually entitled to terminate contracts of employment of indeterminate duration by giving due notice, without having to invoke any reason whatsoever or being subject to complaint on grounds that the termination was unjustified. Protection of the worker against the consequences of termination of his employment where this principle is applicable, is limited to the requirement of due notice, or compensation in lieu of notice, and

[1] Kenya, Industrial Court, Kenya Local Government Workers' Union and Municipal Council of Thika, Cause No. 29 of 1973, *Gazette*, No. 2799 of 21 Sep. 1973.

[2] Liberia, Act to Amend the Labour Practices Law with respect to Administration and Enforcement, section 9.

[3] For example, Argentina (the Governement, however, refers, in relation to the application of Paragraph 2 of the Recommendation, to the provisions obliging employers to pay a severance allowance in case of termination for other than given reasons), Australia (apart from South Australia), Bangladesh (while it would seem that termination with notice need not be motivated, there is judicial control over termination as a disciplinary measure and special rules in respect of retrenchment), Burma, Canada, Democratic Yemen, Guyana, Ireland, Jamaica, Kuwait, Lebanon, Malawi, Nicaragua, Nigeria, Qatar, Thailand, Turkey, United States (the majority of the working population is not covered by collective agreements containing provisions on the matter), Zambia, Australia (Norfolk Island, Papua New Guinea), Netherlands (Surinam), United Kingdom (Guernsey, Isle of Man, Jersey).

[4] See below, Ch. V.

sometimes the obligation to pay the worker a severance allowance, both subject often to the exception that they need not be given where the worker is at fault. Termination of employment without notice, in the absence of fault by the worker, is frequently deemed to give rise only to the right to recover the amount of the remuneration to which the worker would have been entitled during the notice period, often subject to reduction in accordance with the principle that the worker is obliged to mitigate his loss by seeking a new job. The legal position would seem to be the same in the countries which have adopted the justification principle, with respect to workers excepted from coverage by the relevant legislative provisions or not covered by the collective agreements in which this principle is embodied. In the absence of an effective requirement of a valid reason for termination of employment by the employer, it cannot be considered that the principle embodied in Paragraph 2 of the Recommendation is applied. However, several of the countries in question have indicated that the adoption of legislation which would give effect to this provision of the Recommendation is envisaged.[1]

41. In countries in which there is no requirement of a valid reason for termination of employment by the employer, legislation sometimes exists, as it does in many countries in which such a requirement is applicable, prohibiting termination of employment for certain particular reasons concerning matters considered to merit special protection. This special protection will be discussed in the following paragraphs.

Prohibition of Termination of Employment by the Employer for Particular Reasons

42. As previously indicated, the principle stated in Paragraph 2(1) of the Recommendation that termination of employment by the employer should only be for a valid reason, is supplemented in Paragraph 3 by a list of reasons which should under no circumstances constitute valid reasons, namely *(a)* union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours; *(b)* seeking office as, or acting or having acted in the capacity of, a workers' representative; *(c)* the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of laws or regulations; or *(d)* race, colour, sex, marital status, religion, political opinion, national extraction or social origin.

43. Protection against dismissal for the reasons enumerated in Paragraph 3 of the Recommendation is afforded in many countries. In some cases, this protection derives from more general guarantees under constitutional and legislative provisions safeguarding freedom of association and prohibiting discrimination in employment, where effective procedures for invoking and enforcing these guarantees are available to workers. Several governments have referred in their reports to guarantees of this nature, which have been reviewed by the Committee in recent general surveys concerning instruments relating to freedom of association and discimination in employment and occupation.[2] In most countries in which legislative or other provisions

[1] Australia (Western Australia), Kuwait, Lebanon, Thailand, Netherlands (Surinam).

[2] *General Survey on the Application of the Conventions on Freedom of Association and Collective Bargaining*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), International Labour Conference, 58th Session, Geneva, 1973; and *General Survey on the Reports Relating to the Discrimination (Employment and Occupation) Convention and Recommendation, 1958*, Report III (Part 4B), International Labour Conference, 56th Session, Geneva, 1971.

require a valid reason for dismissal and define the grounds deemed to be valid, protection against termination of employment for the reasons mentioned in Paragraph 3 of the Recommendation is implicitly assured, since these reasons are not recognised as valid grounds for termination. In countries in which a valid reason for termination of employment is required in general terms, as well as in countries placing limitations on termination of employment which involves an abuse of power or which is harsh or unreasonable, and in countries in which standards of justification of termination may be developed by various bodies under general powers, whether the reasons enumerated in Paragraph 3 of the Recommendation are deemed to be invalid grounds for dismissal depends upon the way in which the provisions concerned are interpreted and the powers conferred are exercised by the courts, labour tribunals or other responsible bodies. The situation in countries among those reporting in which provisions of these types are operative have been examined earlier.[1]

44. In a number of the above-mentioned countries, as well as in countries in which there are no general limitations on a discretionary power of the employer in respect of termination, there are legislative provisions expressly prohibiting termination of employment by the employer for one or more of the reasons mentioned in Paragraph 3 of the Recommendation.[2] These specific prohibitions will be discussed in the paragraphs that follow, with separate indications in respect of each of the above-mentioned categories of countries.

Termination of Employment Motivated by the Worker's Trade Union Membership or Activities

45. Paragraph 3*(a)* of the Recommendation, which provides for protection against termination of a worker's employment because of his trade union membership or activities, is derived from Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)[3], and embodies one aspect of the more general protection to be afforded to workers and trade union leaders against acts of anti-union discrimination and victimisation by the employer under that Convention.[4]

46. Among the countries in which a valid reason for termination of employment by the employer is expressly required, some, in addition, specifically prohibit termination of employment because of the trade union membership or activities of a worker[5],

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[1] See above, paras. 29-39.

[2] Paragraph 3 is incorporated in total in Cyprus (Termination of the Employment Law, 1967, section 6(2)) and in respect of all reasons but marital status in Mauritius (Termination of Contracts of Service Ordinance, 1963, section 6). The Government of Morocco refers to a preliminary draft of a Labour Code which incorporates the provisions of Paragraph 3 of the Recommendation.

[3] Report VII(2), op. cit., International Labour Conference, 46th Session, Geneva, 1962, pp. 187-189.

[4] See *General Survey on the Application of the Conventions on Freedom of Association and Collective Bargaining*, op. cit., paras. 140-149.

[5] Central African Republic, Labour Code, section 47; Congo, Labour Code, section 42; Cyprus Termination of Employment Law, 1967, section 6(2); Dahomey, Labour Code, section 38; Egypt, Labour Code, section 231; El Salvador, Labour Code, section 205; Gabon, Labour Code, section 40; Finland, Contracts of Employment Act, 1970, section 37 (para. 2(3)); France, Labour Code, section L. 412-2; Italy, Act No. 604 of 1966, section 4, and Act No. 300 of 1970, section 15; Ivory Coast, Labour Code, section 41; Khmer Republic, Labour Code, section 283; Madagascar, Labour Code, section 31; Mauritania, Labour Code, Book 1, section 24; Mauritius, Termination of Contracts of Service Ordinance, section 6(1); Niger, Labour Code, section 41; Panama, Labour Code, section 388; Rwanda, Labour Code, section 43; Sweden, Act respecting the right of association and collective bargaining, section 3; Trinidad and Tobago, Industrial Relations Act, section 42; United Kingdom, Industrial Relations Act, section 5(2)*(b)*; Upper Volta, Labour Code, section 39.

while provisions prohibiting efforts by the employer to influence workers with regard to membership or participation in trade union activities have been also referred to as providing protection in this connection.[1] Specific prohibition of termination of the employment of trade union officers, delegates, or militants, except under certain conditions or with prior authorisation, may be found in the legislation of a certain number of countries.[2] Protection against termination of the employment of a trade union representative on a works council to prevent him from carrying out his duties or because of any action he has taken in that capacity, may also be provided by collective agreement.[3] The legislation in several countries refers expressly to participation in strikes as an activity for which termination is unlawful.[4]

47. Among countries in which limitations are placed on termination of employment which involves an abuse of power or which is harsh or unreasonable, or in which certain bodies have powers under which standards of justification may be developed, several countries expressly prohibit termination of employment motivated by trade union membership or activities[5], termination of trade union officers without prior authorisation[6], or attempts by employers to compel or influence workers to join, not to join or to withdraw from membership or not to participate in trade union activities.[7]

48. Of the countries in which there are no generally applicable legislative provisions or collective agreements restricting the freedom of the employer to terminate the employment relationship, a number prohibit termination or adverse treatment because of trade union membership or activities.[8]

Termination of Employment Motivated by the Worker's Seeking Office, Serving or Having Served as a Workers' Representative

49. Protection against termination of employment because of trade union membership and activities, both in Paragraph 3*(a)* of the Recommendation and in national

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[1] Brazil, Consolidation of Labour Laws, section 543(6); El Salvador, Labour Code, section 30(4)–(5); Guatemala, Labour Code, section 62*(c)*; Mexico, Federal Labour Act, section 133 IV and VII.

[2] Brazil, Consolidated Labour Laws, section 543(3); Bulgaria, Labour Code, section 38 (as regards trade union activists); Byelorussian SSR, Labour Code, section 238; Finland, Contracts of Employment Act, section 53, and Shop Steward Agreement, section 4(4); India, Industrial Disputes Act, section 33 (limitations on the right to dismiss trade union officials during pendency of disputes proceedings); New Zealand, Industrial Relations Act, section 150; Romania, Labour Code, section 132(1); Spain, Decree of 21 April 1966, sections 107-110, and Decree No. 1878 providing legal protection of and guarantees concerning trade unions officers, section 6; Ukrainian SSR, Labour Code, section 252; USSR, Fundamental Principles of Labour Legislation, section 99 (Russian SFSR, Labour Code, section 235).

[3] For example, Sweden, Works Councils Agreement, section 36.

[4] Finland, Contracts of Employment Act, section 37; France, Labour Code, section L.521-11 (as interpreted by the courts); Italy, Act No. 300 of 1970, section 15; Panama, Labour Code, section 388, para. 1(3).

[5] Cameroon, Labour Code, section 40; Guinea, Labour Code, section 73; Mali, Labour Code, section 42; Trinidad and Tobago, Industrial Relations Act, section 42.

[6] Iran, Labour Act, section 38(2) (cited in the Government's report).

[7] Belgium, Act to guarantee freedom of association, sections 3 and 4.

[8] Argentinia, Act No. 20615 of 29 November 1973, on Industrial Associations of Employees, section 60; Bangladesh, Industrial Relations Ordinance, section 15 (1)(2); Canada (according to the Government's report, all jurisdictions have unfair labour practice provisions prohibiting dismissal because of union membership, organising or office); Japan, Trade Union Law, section 7(1); National Public Service Law, section 108(7); Local Public Service Law, section 56; Pakistan, Industrial Rela-

(footnote continued overleaf)

legislation, generally includes protection of trade union delegates acting as workers' representatives for various purposes. Inclusion of a reference to workers' representatives in Paragraph 3*(b)* of the Recommendation was intended to ensure that similar protection is afforded to persons who act as workers' representatives outside the trade union framework, in accordance with the systems established in certain countries.[1] Protection against the termination of employment of workers' representatives based on their status or activities as workers' representatives, as well as on their union membership or activities, is also provided for in the Workers' Representatives Convention (No. 135) and Recommendation (No. 143), adopted in 1971.[2]

50. The legislation in a number of countries provides special protection for such persons. Among countries where a valid reason for termination of employment by the employer is required, additional protection is sometimes afforded workers' representatives by provisions prohibiting termination of their employment in the absence of prior approval by the labour inspectorate or other administrative authority, the works committee or the courts [3] or unless there are serious reasons justifying summary dismissal or the undertaking is closed down[4], or by provisions stipulating that seeking office or serving as workers' representatives shall not constitute valid grounds for termination.[5] In countries in which limitations are placed on termination of employment which involves an abuse of power or which is harsh or unreasonable, or in which certain bodies have powers under which standards of justification may be developed, legislative or other provisions frequently require prior authorisation for the termination of employment of workers' representatives, either by the labour inspectorate or administration, a works committee or a court[6], or prohibit termination of employment of such person except on grounds of serious fault [7] or for economic or technical reasons previously recognised by the competent joint committee.[8]

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tions Ordinance, section 15(1)*(d)*; Sudan, Trade Disputes Act, 1966, section 29; United States, Labour Management Relations Act, section 8 (the Governement states in its report that a number of constituent states have similar laws); Zambia, Industrial Relations Act, section 4.

[1] See *Record of Proceedings*, International Labour Conference, 46th Session, 1962, p. 792, para. 27.

[2] The Workers' Representative Convention and Recommendation, 1971, provide for comprehensive protection of workers' representatives, these being defined to include both trade union representatives and elected representatives (Article 3 of the Convention and Paragraph 2 of the Recommendation).

[3] Central African Republic, Labour Code, section 167; Chile, Termination of Contracts of Employment Act, sections 10-11; Congo, Labour Code, section 174; Dahomey, Labour Code, section 152; France, Labour Code, sections L.420-22, L.436-1; Gabon, Labour Code, section 164; Ivory Coast, Labour Code, section 139; Khmer Republic, Labour Code, section 273; Madagascar, Labour Code, section 110; Mauritania, Labour Code, Book V, section 18; Niger, Labour Code, section 163; Rwanda, Labour Code, section 163; Upper Volta, Labour Code, section 174 (special rules regarding consultation of the superior trade union body and, in certain cases, requiring prior approval of a trade union body, are laid down in Romania, Labour Code, section 132(1)).

[4] Federal Republic of Germany, Protection Against Dismissal Act, section 15.

[5] Cyprus, Termination of Employment Law, section 6; Mauritius, Termination of Contracts of Service Ordinance, section 6.

[6] Austria, Works Councils Act, section 18; Cameroon, Labour Code, section 129; Guinea, Labour Code, section 214; Iran, Labour Code, section 39, note 2 (cited in the Government's report); Luxembourg, Grand-Ducal Order regarding the establishment of Workers' Committees, 30 October 1958 (concerning manual workers), section 22; Mali, Labour Code, section 336; Netherlands, Works Councils Act, section 21; Tunisia, Labour Code, section 166 (in these cases, a worker may be provisionally dismissed in case of serious fault, pending the decision of the authority whose approval is required).

[7] Belgium, Act on the organisation of the economic life of the country, section 21; Luxembourg, Consolidated text of Laws on Contracts of Service of Salaried Employees, section 24.

[8] Belgium.

Termination of Employment Motivated by a Worker's Having Filed a Complaint or Participated in Proceedings against an Employer

51. Explicit prohibition of the termination of employment of a worker as retaliation for his having filed a complaint or participated in proceedings against the employer involving alleged violation of laws or regulations (Paragraph 3*(c)* of the Recommendation) is to be found in many countries, including some providing general protection against termination of a worker's employment without a valid reason[1], others placing limitations on termination which involves an abuse of power or which is harsh or unreasonable[2], and a number of countries in which there are no generally applicable provisions of either type.[3]

Termination of Employment Motivated by Race, Colour, Sex, Marital Status, Religion, Political Opinion, National Extraction or Social Origin

52. Protection against termination by the employer of a worker's employment on the grounds of race, colour, sex, marital status, religion, political opinion, national extraction or social origin has been incorporated in Paragraph 3*(d)* of the Termination of Employment Recommendation. The Recommendation thus adds marital status to the grounds on which employers should not practise or countenance discrimination in retaining any person in employment, according to the Discrimination (Employment and Occupation) Convention and Recommendation, 1958 (Nos. 111).

53. A number of countries prohibit discriminatory dismissal of a worker on one or more of the enumerated grounds.[4] Of those which have legislation expressly requiring a valid reason for termination of employment by the employer, several countries, in addition, specifically prohibit termination for all or most of the above-mentioned grounds[5]; others prohibit termination for reasons of race, colour, ethnic

[1] Cyprus, Termination of Employment Law, section 6(2); Mauritius, Termination of Contracts of Service Ordinance, section 6(1); El Salvador, Decree, No. 455 to reorganise the Ministry of Labour and Social Welfare, 1963, section 47; New Zealand, Industrial Relations Act, section 150, and Shops and Offices Act, section 34; Panama, Labour Code, section 388, para. 1(3). The absence of a specific prohibition in this connection has been invoked in comments on the report of the Federal Republic of Germany by the German Confederation of Trade Unions, which state that the fact of having initiated penal or administrative proceedings against the employer is considered in principle to be a reason for termination, most often without a period of notice, even if the employer did in fact commit a criminal action, and that the only exception to this rule is where the actions of the employer were directed against the worker himself. In its communication concerning these comments, the Government states that they reflect the legal situation under court decisions.

[2] Mali (according to the Government's report, dismissal on these grounds is considered by the courts to be "abusive" dismissal under section 42 of the Labour Code); Trinidad and Tobago, Industrial Relations Act, 1972, section 42(1)*(c)*.

[3] Argentina, Act No. 20615 of 29 November 1973 on Industrial Association of Employees, section 60; Canada (according to the Government's report, the law in all jurisdictions but one prohibits dismissal on these grounds); Japan, Labour Standards Law, section 104(2), Trade Union Law, section 7(4), Seamen's Law, section 112; Thailand, Notification of the Ministry of the Interior on Labour Relations, 1972, section 72; United States, Fair Labor Standards Act, section 15(2)(3), Labor-Management Relations Act, section 8(2)(4), Occupational Safety and Health Act, section 11 *(c)*, Age Discrimination in Employment Act, section 4*(d)* (the Government states that a number of constituent states have legislation prohibiting dismissal on these grounds generally or in respect of particular matters); Zambia, Industrial Relations Act, section 4.

[4] In Kenya, comments by the Federation of Kenya Employers on the Recommendation, communicated with the Government's report, state that Paragraph 3*(d)* is not capable of general application, because of the pressure on employers to reduce the number of Asians working in the country.

[5] Cyprus, Termination of Employment Law, 1967, section 6; Mauritius, Termination of Contracts of Service Ordinance, 1963, section 6 (all grounds but marital status).

or national origin[1], because of a worker's opinions[2], or as political or regligious discrimination.[3] Among countries restricting termination of employment which involves an abuse of power or which is harsh or unreasonable, or in which certain bodies have powers under which standards of justification may be developed, several countries prohibit termination of employment due to the opinions of the worker.[4] Among countries with no generally applicable provisions on the matter of justification for termination of employment, the legislation in one country prohibits terminating the service of a worker on grounds of race, colour, sex, marital status, religion, political opinion or affiliation, tribal extraction or social status[5], while in others there are prohibitions of termination based variously on race, colour, regligion, sex or national origin[6], or on race, colour or sex.[7] The Government of another country has stated that the courts have annulled dismissal based on reasons of race, colour, sex, marital status and religion.[8] In this connection, it may be noted that in various countries constitutional prohibition of discrimination on one or more of the grounds mentioned in Paragraph 3*(d)* of the Recommendation may provide the aggrieved worker with the possibility of seeking redress in the courts against discriminatory termination of his employment.

54. The legislation of one country provides that a worker may be dismissed "if his activity has been such as to constitute a breach of the socialist social order, and he is therefore not sufficiently reliable to hold his previous office or post"; according to information subsequently provided by the Government, this provision is to be replaced by a provision permitting dismissal "if the worker is justifiably suspected of activities prejudicial to the security of the State".[9] In certain other countries legislative provisions authorise termination of the worker's employment "if it is duly proved by administrative inquiry that the worker committed acts prejudicial to national security"[10], or if the worker makes political propaganda or conducts political activities or manifestations in the undertaking or workplace[11], or if the worker is

[1] New Zealand, Race Relations Act, section 5; United Kingdom, Race Relations Act, section 3 (the Government states that there have been cases in which dismissal due to sex discrimination was found to be unfair and that the Government has given an undertaking to introduce legislation in the near future to combat discrimination based on sex).

[2] Central African Republic, Labour Code, section 47; Congo, Labour Code, section 42; Dahomey, Labour Code, section 38; Gabon, Labour Code, section 40; Ivory Coast, Labour Code, section 41; Madagascar, Labour Code, section 31; Mauritania, Labour Code, Book I, section 24; Niger, Labour Code, section 41; Rwanda, Labour Code, section 43; Upper Volta, Labour Code, section 39. The reference in the legislation of these countries to the worker's "opinions" would seem to cover both political and religious views.

[3] Italy, Act No. 604 of 1966, section 4; Act No. 300 of 1970, section 15.

[4] Cameroon, Labour Code, section 41; Guinea, Labour Code, section 73; Mali, Labour Code, section 42.

[5] Zambia, Industrial Relations Act, section 114.

[6] United States, Civil Rights Act, section 703.

[7] Canada (the Government states that all jurisdictions prohibit dismissal because of race or colour; that most also prohibit dismissal based on sex; and that a few prohibit dismissal on grounds of political opinion, marital status, and social origin).

[8] Japan, Article 14 of the Constitution of Japan prohibits discrimination based on race, creed, sex, social status or family origin.

[9] Czechoslovakia, Labour Code, section 53(1)*(c)*; see also *Report of the Committee of Experts* (Part 4A), Convention No. 111, Czechoslovakia.

[10] Brazil, Consolidated Labour Laws, section 482, sole paragraph.

[11] Khmer Republic, Labour Code, section 79(B)(6); Republic of Viet-Nam, Labour Code, section 39.

considered to be an "extremist" or "a mere activist or agitator".[1] Whether these provisions permit termination of employment based on the political opinion of the worker will depend upon the manner in which they are interpreted by the bodies responsible for their application.[2] In any case, under Paragraph 2 of the Recommendation, such activities should not be considered to justify termination of the employment of a worker in the absence of a relation between the activities concerned and the work performed by the worker, as might be considered to exist where a worker in security-sensitive employment is suspected of activities making him a security risk or where political activities in the workplace affect the performance of work.

Worker's Resignation in Certain Circumstances Assimilated to Unjustified Termination of Employment by the Employer

55. In a number of countries the legislation provides that in certain cases of dishonest or dishonourable conduct by the employer, or of certain breaches by the employer of his obligations to the worker, such as failure to pay wages or endangering the worker's safety, the worker is entitled to terminate the employment relationship without notice and to claim compensation based on that awarded in case of unjustified termination by the employer.[3]

Termination without Prior Notice in Case of Serious Misconduct (Summary Dismissal)

56. The question of summary dismissal in case of serious misconduct is dealt with separately in Paragraph 11 of the Recommendation. In view of the very nature of this reason for termination of employment, the Recommendation provides on the one hand (subparagraph (1)) that the worker concerned may be deprived of certain rights (period of notice or compensation in lieu thereof, separation benefits), and on the other hand (subparagraphs (2-5)) that certain additional safeguards and procedures should be observed (dismissal to take place only where the employer cannot be expected in good faith to take any other course; waiver, by the employer, of the right to dismiss and, by the worker, of the right to appeal, if such action has not been taken within a reasonable time; right of the worker, before dismissal becomes finally effective, to state his case promptly and to be appropriately assisted). The definition

[1] Chile, Proclamation No. 36 of 18 September 1973; see also *Report of the Committee of Experts* (Part 4A); Convention No. 111, Chile.

[2] The General Confederation of German Trade Unions, in its comments on the Government's report on the Recommendation, states that the termination of a worker's employment because of the expression of political opinions by a worker in certain circumstances has been authorised by the courts despite constitutional protection of the right of free expression of opinion. Reference is made in this connection to a decision of the Federal Labour Tribunal authorising the termination of the employment of a worker who distributed tracts criticising the profession of his employer, on the grounds that a worker must not act against or to the detriment of the interests of his employer. In a communication concerning these comments, the Government states that the reason for the termination was not the political opinions of the worker but the manner in which they were publicly expressed and that in the particular case, the worker was not protected by the Dismissal Protection Act, as he had been employed for less than six months.

[3] See, for example, Chile, Act No. 16455 to Issue Rules for the Termination of Contracts of Employment, section 9; Cyprus, Termination of Employment Law, section 7; Egypt, Labour Code, sections 77 and 78; Mexico, Federal Labour Act, sections 51 and 52; Panama, Labour Code, section 223; United Kingdom (in the absence of an express provision to this effect in the Industrial Relations Act, industrial tribunals have, in certain cases, reached this result; see for example, Khan *v.*Metal Box Co. Ltd. (1972)); Redundancy Payments Act, section 3(1)*(b)*.

of "serious misconduct" and of "reasonable time", is left (subparagraph (6)) to the national methods of implementation referred to in Paragraph 1 of the Recommendation.

57. Circumstances in which a worker may be summarily dismissed would seem to be provided for in all countries in which a notice period is otherwise required, irrespective of whether or not limitations—under any of the forms previously discussed in this chapter—are imposed on termination of employment by the employer.

58. In a number of countries the legislation provides that a worker may be summarily dismissed for "serious fault" [1] or for reasons attributable to the worker's fault [2], it being left to the courts to determine what constitutes a fault justifying termination without prior notice. In other countries conduct deemed to justify summary dismissal is more fully defined, sometimes in great detail, and includes,most frequently, theft, fraud or dishonesty, assaulting, threatening or insulting superiors (or sometimes fellow workers), habitual violation of applicable rules (particularly those relating to safety), wilful failure to fulfil essential obligations under the contract of employment, disobedience of lawful orders, habitual negligence, acts causing serious damage to property, habitual absence without leave or lateness, habitual attendance at work in a state of drunkenness or under the influence of narcotic drugs, and conviction for a crime or an offence involving moral turpitude; definitions of the conduct justifying summary dismissal include also, but somewhat less frequently, breach of trust (including disclosure of industrial or commercial secrets), misleading the employer at the time of conclusion of the contract by submitting false information, and working for one's own benefit to the detriment of the employer.[3] Certain of these actions or circumstances would appear to involve, by their very nature, serious misconduct. Others, such as disobedience to lawful orders, drunkenness, negligence or absence without leave, may or may not constitute serious misconduct depending upon the circumstances, and are frequently stated to constitute grounds for summary

[1] Cameroon, Labour Code, section 39(2); Central African Republic; Labour Code, section 45(2); Dahomey, Labour Code, section 36; France, Labour Code, section 24*(f)* (inserted by Act No. 73–680 of 13 July 1973); Gabon, Labour Code, section 38; Khmer Republic, Labour Code, section 78; Ivory Coast, Labour Code, section 39; Luxembourg, Act respecting Workmen's Contracts of Employment, section 12 and Consolidated Text of Laws relating to Contracts of Employment of Salaried Employees, 1971, section 16; Mali, Labour Code, section 39; Mauritania, Labour Code, Book I, section 22; Morocco, Order of 23 October 1948 fixing Model Works Rules, section 6 of the Model Works Rules; Niger, Labour Code, section 39; Rwanda, Labour Code, section 41; Tunisia, Labour Code, section 14; Upper Volta, Labour Code, section 37; Republic of Viet-Nam, Labour Code, section 37.

[2] Japan, Labour Standards Law, section 20.

[3] See Argentina, Commercial Code, section 160; Bangladesh, Industrial and Commercial Employment (Standing Orders) Ordinance, section 17; Bulgaria, Labour Code, section 33; Chile, Act No. 16455 of 6 August 1966, section 2(2)–(7) and (11), read together with section 4; Cyprus, Termination of Employment Law, section 5*(e)–(f)*; Czechoslovakia, Labour Code, section 53; Finland, Contracts of Employment Act; section 43; India, Model Standing Orders adopted under the Industrial Employment (Standing Orders) Act; Jamaica, Master and Servants Law, section 6; Khmer Republic, Labour Code, section 79 (defining "serious fault"); Liberia, Labour Practices Law, section 1508(5)–(6); Libyan Arab Republic, Labour Code, section 51; Malaysia, Employment Ordinance, sections 13*(b)*, 14(1), 15; Malawi, Employment Ordinance, section 11; Morocco, Order of 23 October 1948 fixing Model Works Rules, section 6 of the Model Works Rules (defining "serious fault"); Netherlands, Civil Code, section 1639P (enumerating reasons deemed, inter alia, to be "imperative reasons" justifying termination of employment without a period of notice or compensation in lieu thereof); Nicaragua, Labour Code, sections 118–119; Pakistan, Industrial and Commercial Employment (Standing Orders) Ordinance, Schedule, Standing Order No. 15; Peru, Legislative Decree No. 18471 of 10 November 1970, sections 1–5 (section 2 defines "serious fault"); Qatar, Labour Law

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dismissal only if of a serious nature or if habitual or repeated[1]; if they are not so limited by the terms of the applicable provisions, their conformity with this provision of the Recommendation would depend upon how they are interpreted in practice, or by the bodies responsible for their interpretation. In several countries summary dismissal on certain particular grounds, such as failure to observe safety rules or habitual absence, is permissible only if prior warning has been given to the worker concerned.[2]

59. In some countries the employment relationship may be terminated without prior notice or compensation in lieu thereof if it would be unreasonable to expect the relationship to be maintained for the duration of the notice period.[3] These provisions would be in conformity with Paragraph 11(1) of the Recommendation if they are interpreted in practice as authorising summary dismissal only in case of serious misconduct; however, it would seem that in certain of these countries, while serious misconduct constitutes the most frequent grounds for summary dismissal under the relevant provisions, other circumstances may also be invoked for this purpose.[4]

No. 3 of 1962, section 20; Romania, Labour Code, section 131(1); Singapore, Employment Act, sections 11(2), 13(2), 14(1); Sudan, Employers and Employed Persons Ordinance, section 10(2); Sweden, Job Security Act, section 18 (summary dismissal is permissible in case of serious neglect of duties towards the employer); Republic of Viet-Nam, Labour Code, section 39 (enumerating grounds which, inter alia, may be considered serious fault); Netherlands (Surinam), Civil Code, section 1615P (enumerating reasons deemed, inter alia, to be imperative reasons justifying termination of employment without a period of notice or compensation in lieu thereof).

[1] For example, Bangladesh, India and Pakistan ("habitual absence without leave or lateness, habitual breach of applicable law, habitual negligence, frequent repetition of disobedience, improper behaviour, inefficiency, malingering"); Czechoslovakia (infringement of labour discipline so serious that the worker's presence in the workplace would be incompatible with maintenance of discipline); Khmer Republic (serious violation of rules relating to discipline, safety or hygiene); Malawi (habitual or substantial neglect of duty); Nicaragua (serious failure to fulfil contractual obligations, or to show respect due to employer, superiors or other workers); Peru (repeated refusal to carry out orders or observe safety rules; repeated attendance at work in a state of drunkenness or under the influence of narcotic drugs); Romania (serious fault or systematic violation of obligations).

[2] For example, Iraq, Labour Code, section 34*(d),(e),(g)*; Libyan Arab Republic, Labour Code, section 51(4)–(5); Qatar, Labour Law No. 3 of 1962, section 20(4), (8).

[3] Finland Contracts of Employment Act, section 43 (serious grounds justifying immediate termination of contract deemed to exist in case of any omission or behaviour of one of the parties, or a change in conditions which is of such a nature that the other party cannot reasonably be expected to continue the employment relationship; certain cases of serious misconduct and permanent disablement are enumerated as constituting, inter alia, such grounds); Federal Republic of Germany, Civil Code, section 626 (serious reasons justifying immediate termination deemed to exist when maintenance of employment relationship until the end of the notice period cannot be accepted, having regard to the circumstances and the interests of each party); Italy, Civil Code, section 2119 ("just cause", permitting immediate termination deemed to be any reason which forbids even provisional continuation of the employment relationship, but not bankruptcy or liquidation); Netherlands, Civil Code, sections 1639O and 1639P and Netherlands (Surinam), Civil Code, sections 1615O and 1615P (termination of employment without a period of notice or compensation in lieu thereof for "imperative reasons" defined as such acts, traits of character or attitudes of a worker as make it unreasonable to expect the employer to continue the relationship; a non-exhaustive enumeration of such reasons is given); Switzerland, Code of Obligations, section 337 (termination of employment without a period of notice for "just reasons", which are in particular deemed to comprise any circumstances in which the employer cannot in good faith be expected to continue the employment relationship other than the fact that a worker has been prevented from performing his work without his fault).

[4] In Finland permanent disablement is included among the enumerated reasons which make it unreasonable to expect the employment relationship to be continued (Contracts of Employment Act, section 43). In the case of the Federal Republic of Germany, the German Confederation of Trade Unions, in commenting on the Government's report on the Recommendation, has stated that the law permits summary dismissal in cases other than serious misconduct, for example if the worker is strongly suspected of a punishable act, even if this suspicion is shown later to be without foundation, in case of prolonged illness not imputable to the worker, or in any other case in which the worker is

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60. In other countries the legislation provides that a worker's employment may be terminated without prior notice if there is "good and sufficient cause" [1] or "lawful cause"[2], terms whose meaning would seem to be left for definition by common law or court decisions. The government of one country indicates that employers have a right at common law to summarily dismiss an employee for misconduct, malingering, inefficiency or neglect of duty.[3] In several other countries the legislation concerning termination of contracts of employment appears to reserve the right of the employer to summarily dismiss a worker for reasons defined by common law.[4] Whether the reasons held to justify termination of employment of a worker without a period of notice in these countries fall within the concept of serious misconduct, would depend upon the definition by common law or the courts of the conduct justifying such summary dismissal and the way this definition is applied in practice. The Government of another country indicates that many arbitration awards and industrial agreements provide for summary dismissal in case of "wilful" misconduct.[5] Whether "wilful" misconduct is equivalent to serious misconduct would depend upon how these provisions are interpreted in practice.[6]

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prevented from working. In reply to these comments, the Government states that, while the most frequently invoked serious reason for summary dismissal is serious misconduct, this would also be admissible where there is a strong presumption of serious misconduct, if the misconduct once proven justifies the summary dismissal, the suspicion is sufficiently serious to induce a prudent employer to dismiss an employee, and the employer has neglected nothing in seeking to elucidate the facts and has given the worker concerned a chance to be heard and the possibility to prove himself innocent; that according to the decisions of the Federal Labour Tribunal, the limit of two weeks from the date on which the misconduct is noted in which a worker may be dismissed without notice is prolonged as long as the employer seeks for understandable reasons and with diligence to establish the facts; that the decisions of the Tribunal have also permitted summary dismissal based solely on suspicion if the worker has not made every effort to elucidate the facts. The Government also states that the first law amending the labour legislation, which entered into force in 1969, repealed sections 123, para. 8(1), and 124 of the Industrial Code and section 72, para. 1(3), of the Commercial Code, which provided for summary dismissal in case of prolonged illness; such dismissal for prolonged illness remains possible, however, when the illness makes the continuation of the employment relationship improbable, since this constitutes a serious reason under section 626, para. 1, of the Civil Code. The Government adds that no decision is known which, since the repeal of the above-mentioned provisions, validates a summary dismissal for prolonged illness. The Government also states that the Federal Labour Tribunal recently decided that a reduction of the activities of an undertaking following a fire did not justify termination of the employment relationship without a period of notice (Bundesarbeitgericht, 28 Sep. 1972, *Arbeitsrechtliche Praxis*, No. 28), and that this decision reflects a tendency to permit, in principle, termination with a period of notice only in case of misconduct of the worker concerned.

[1] Malta, Conditions of Employment (Regulation) Act, section 25(10).

[2] Zambia, Employment Act, section 19*(c)*.

[3] Australia.

[4] Cyprus, Termination of Employment Law, section 5*(e)* (referring to "conduct by the employee such as to render him liable to dismissal without notice", with a non-exhaustive enumeration of such conduct); United Kingdom, Contracts of Employment Act, section 1(6) (the section not to affect any right of either party to treat the contract as terminable without notice by reason of such conduct by the other party as would have enabled him so to treat it before the passing of the Act). (The Government states that, while neither this Act nor the Industrial Relations Act restrict an employer's right to dismiss summarily in the event of misconduct by an employee, the employer must be prepared to show if there is a complaint of unfair dismissal to an industrial tribunal, or an action for damages for wrongful dismissal in the civil courts, that the misconduct relied upon was serious enough to merit dismissal without notice.)

[5] New Zealand.

[6] In an opinion given by the International Labour Office on the meaning of the term "wilful misconduct" under the Sickness Insurance (Industry) Convention, 1927 (No. 24), and the Sickness Insurance (Agriculture) Convention, 1927 (No. 25), it was recalled that an amendment to provide that benefit might be withheld in the event of "serious as well as wilful misconduct" was rejected by the Conference. The author of the amendment pointed out that under the term "wilful misconduct",

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61. In certain countries the legislation provides for termination of the employment relationship without a period of notice for reasons other than those previously mentioned, such as illness or accident resulting from the worker's wilful or blameable action, contracting a communicable disease or prolonged illness[1], entitlement to an old-age or invalidity pension[2], incompetence or incapacity[3], impossibility of performance or *force majeure*[4], activities, such as to constitute a breach of the socialist social order[5], activities prejudicial to national security which have been duly proved by administrative inquiry[6], or making political propaganda or conducting political activities or manifestations in the undertaking or the workplace.[7] Illness, whether temporary or prolonged and of whatever nature, entitlement to an old-age or invalidity pension, incompetence or incapacity, do not constitute serious misconduct and are thus not grounds for termination without due notice under the Recommendation. As regards incompetence, it should be noted that in certain countries, where an employer finds a worker to be unfit for the work for which he was engaged, during a period of probation at the beginning of the employment relationship, the employer

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illness caused by such misconduct as drunkenness, wrongfully taking part in a riot, or even criminal conduct, might entitle the person concerned to benefit. The Workers' delegates, opposing the amendment, maintained that drunkenness, brawling and similar acts, which were said to constitute serious misconduct, were nothing more than accidents (ILO: *Official Bulletin*, 1962, Vol. LXV, No. 3, p. 229). In its comments on the application of the relevant provisions of the two above Conventions and of corresponding provisions of the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Committee has always distinguished between the deliberate element, constitutive of wilful misconduct, and the separate notion of seriousness of the misconduct itself.

[1] Turkey, Labour Act, 1971, section 17(I).

[2] Chile, Act No. 16455 of 6 April 1966, section 2(13), read together with section 4 (entitlement to invalidity pension); Romania, Labour Code, section 131*(g)–(h)* (entitlement to old-age or invalidity pension).

[3] Argentina, Commercial Code, section 160; Chile, Act No. 16455 of 6 April 1966, section 2(9), read together with section 4 (lack or loss of professional capacity by a skilled worker); Liberia, Labour Practices Law, section 1508(6)*(b)* (lack of skill or manifested inefficiency making it impossible to fulfil the worker's duties under the contract); Morocco, Order of 23 October 1948, fixing Model Works Rules, section 6 of the Model Works Rules (inaptitude to do work for which engaged). See also para. 59, second footnote.

[4] Chile, Act No. 16455 of 6 April 1966, section 2(8), read together with section 4 (in case of unforeseen events or *force majeure*); France, Labour Code, section 241 (inserted by Act No. 73–680 of 13 July 1973) (closure of undertaking in case of *force majeure*); Greece, Royal Decree of 16 July 1920 extending Act No. 2112 of 11 March 1920, section 6 (notice not required if it is absolutely impossible to carry on the undertaking on account of *force majeure*, provided that within 2 days the employer supplies a substantiated report to the local police authorities); Haiti, Labour Code, sections 30(4) and 31 (permanent closure as a result of bankruptcy or *force majeure*); Japan, Labour Standards Law, section 20 (notice not required when continuance of the undertaking is made impossible by reason of natural calamity or other inevitable cause); Khmer Republic, Labour Code, section 78 (*force majeure* in case of impossibility of performance of obligations); Morocco, Dahir promulgating Act No. 1–72–219 of 24 April 1973 determining the conditions of employment and remuneration of agricultural workers, section 8 *(force majeure)*; Tunisia, Labour Code, section 14 (the contract terminates as a result of impossibility of performance due to accidental cause or to *force majeure*); Turkey, Labour Act, section 13(III) (*force majeure* preventing workers from performing tasks); Republic of Viet-Nam, Labour Code, section 37 (impossibility of performance). In Norway, under section 42 of the Protection of Workers Act, the notice period is reduced to 7 days from the occurrence (14 days in case of fire), unless the normal notice period is less, where an accident, act of God or other unforeseeable occurrence causes a total or partial stoppage of operations, in respect of workers dismissed for that reason; this reduction does not apply in case of death or bankruptcy of the employer or stoppage of work due to unfitness of machinery or other equipment, where this is not due to the worker's fault.

[5] Czechoslovakia (see above, para. 54).

[6] Brazil (see above, para. 54).

[7] Khmer Republic; Republic of Viet-Nam (see above, para. 54).

is free to terminate that relationship without giving a reason and without notice.[1] Periods of probation, if determined in advance and of reasonable duration, are excluded from the scope of the Recommendation by Paragraph 18*(b)* thereof. In some countries, however, a short period of notice may be required to terminate a contract of employment even during the probation period.[2] The question of terminating a worker's employment for activities prejudicial to the security of the State or for political propaganda, activities or manifestations in the undertaking or workplace has been discussed earlier.[3] It should further be noted that summary dismissal for one of the aforementioned reasons would be admissible under Paragraph 11 of the Recommendation only if the activities in question constitute serious misconduct; it would seem that if these activities do not seriously affect the carrying out of the work in the undertaking so as to render the continuation of the employment relationship difficult, they would not, under the Recommendation, constitute grounds for termination without advance notice.

62. The Termination of Employment Recommendation, in Paragraph 11(2)-(5), establishes certain further safeguards applicable to cases of termination of employment on grounds of serious misconduct. Paragraph 11(2) provides that dismissal for serious misconduct should take place only in cases where the employer cannot in good faith be expected to take any other course. This would seem to be a basic principle underlying the general protection the Recommendation seeks to ensure against unjustified termination of employment generally; it is included here expressly in connection with dismissal for serious misconduct because such dismissal may entail loss of the right to a period of notice (and also to separation benefits, to be discussed in the following chapter) and may, by affecting the worker's future prospects, thus be particularly onerous for him. The principle as such would seem to be expressed in the legislation of only a few countries.[4] Generally, to the extent that it is applied, it would be applied through a strict definition of the misconduct deemed to justify summary dismissal.

63. Paragraph 11(3) provides that an employer should be deemed to have waived his right to dismiss a worker for serious misconduct if such action has not been taken within a reasonable time after he has become aware of the serious misconduct. In a number of countries the right to dismiss a worker summarily for serious misconduct is waived if it is not exercised within a specified period of time [5] or within a reasonable

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[1] For example, Egypt, Labour Code, section 76(2); Finland, Contracts of Employment Act, section 3; France, Labour Code, section 24*(b)* (inserted by Act No. 73-680 of 13 July 1973); Hungary Labour Code, section 23; Khmer Republic, Labour Code, section 78; Turkey, Labour Act, section 12.

[2] For example, Czechoslovakia, Labour Code, section 58(2) (at least 3 days); Luxembourg, Act respecting workmen's contracts of employment, section 5 (notice of as many days as there are weeks in the contract of probation), and consolidated text of Laws respecting contracts of service of salaried employees, section 5 (2 weeks' notice before the expiration of the contract of probation).

[3] See above para. 54.

[4] See para. 59 above and Mauritius, Termination of Contracts of Service Ordinance, section 6(2). In the Republic of Viet-Nam (Labour Code, section 38) "serious fault" justifying termination without a period of notice is defined as any act which may materially or morally damage the injured party so that the interest of the parties requires the immediate termination of the contract.

[5] The right to summarily dismiss a worker must be exercised immediately in Peru (Legislative Decree No. 18471 of 1970, section 4); within 3 days in Belgium (Act respecting workmen's contracts of service, section 20; Consolidated text of Laws respecting contracts of salaried employment, section 18) and Luxembourg (Act respecting workmen's contracts of service, section 12; Consolidated text of Laws respecting contracts of employment of salaried employees, section 16); within 6 days in Turkey (Labour Act, 1971, section 18) (and not later than 1 year from the date the act was committed); within 7 days in Khmer Republic (Labour Code, section 78) and Mauritius (Termination of Contracts of Service Ordinance, section 6(2)); within 15 days in Czechoslovakia (Labour Code, section 53) and Federal Republic of Germany (Civil Code, section 626, para. 2); within 1 month in Romania (Labour

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period of time[1], after the employer has become aware of the grounds for summary dismissal. The Government of one country states that in cases where a significant interval has elapsed between the misconduct and dismissal, the tribunals have often found that the misconduct was not the main reason for dismissal.[2] In some countries in which a period of notice is not provided for at all, although there must be a valid reason for termination of employment, termination as a disciplinary measure may be effected only within a limited period of time.[3]

64. The principle set forth in Paragraph 11(5)—according to which, before a decision to dismiss a worker for serious misconduct becomes finally effective, the worker should be given an opportunity to state his case promptly, with the assistance, where appropriate, of a person representing him—does not seem to be widely established in legislation or collective agreements, although it may be the normal practice of many employers. Countries in which this principle has been embodied in such provisions are mentioned in connection with procedural safeguards within the undertaking[4], dealt with in Chapter IV, where the question of appeal[5] against dismissal for serious misconduct (Paragraph 11(4)) will also be examined.

Code, section 130(2)) and Sweden (Job Security Act, section 18); within 3 months in Bulgaria (Labour Code, section 131).

[1] Cyprus (Termination of Employment Law, section 5*(e)*).

[2] United Kingdom.

[3] Byelorussian SSR, Labour Code, section 35 and USSR (Russian SFSR, Labour Code, section 35 (1 month from receiving the consent of the works, factory or local committee and 1 month from the date on which the offence is reported)); Mexico, Federal Labour Act, section 517 (1 month from becoming aware of the grounds or the evidence available).

[4] See para. 68, second footnote.

[5] See para. 85.

CHAPTER IV

PROCEDURAL SAFEGUARDS, RIGHT OF APPEAL AND REMEDIES

65. In order to make effective the requirement in Paragraphs 2 and 3 of the Recommendation of a valid reason for termination of the employment relationship by the employer, appropriate procedures to ensure that it is respected and remedies in case it is infringed are necessary. Paragraphs 4-6 of the Recommendation provide in this regard that, unless the matter has been satisfactorily determined through procedures consistent with the Recommendation, within the undertaking, establishment or service, a worker who feels that his employment has been unjustifiably terminated should be entitled to appeal against that termination, with the assistance of a person representing him, to a body established under a collective agreement or to a neutral body such as a court or arbitrator; this body should be empowered to render a decision on the justification of the termination and, if it finds that the termination was unjustified, to order that the worker concerned, unless reinstated, where appropriate with payment of unpaid wages, should be paid adequate compensation. In the case of termination of employment for serious misconduct—which has been examined earlier—Paragraph 11 of the Recommendation indicates certain rules which should be followed and particularly (subparagraph (5)) that the worker should be given an opportunity to state his case promptly with the assistance, where appropriate, of a person representing him.

Procedural Safeguards against Unjustified Termination

Procedures within the Undertaking

66. Safeguards against unjustified termination of employment through appropriate procedures in the undertaking can be afforded not only by rules to be followed before a decision is made to terminate a worker's employment, but also by grievance procedures [1] within the undertaking permitting a worker aggrieved of a decision to terminate his employment to appeal within the undertaking against that decision.

67. In most countries the manner in which employers decide on termination of employment is left to their discretion, although in practice employers may follow appropriate procedures in the matter as part of a sound conception of personnel management. However, there are some countries where legislation requires employers to establish (sometimes through negotiations with the workers or trade union concerned) and follow appropriate rules and procedures, essentially in connection with termination of employment as a disciplinary measure.[2]

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[1] The Examination of Grievances Recommendation, 1967 (No. 130), contains relevant indications regarding such procedures.

[2] For example, India, Industrial Employment (Standing Orders) Act; Italy, Act No. 300 of 1970, section 7; Norway, Protection of Workers' Act, sections 47–52; United Kingdom, Industrial Relations

(footnote continued opposite)

68. The legislation of a number of countries specifies the rules and procedures which should be followed by the employer in connection with termination of employment. In some countries the employer is obliged to notify the worker of the termination of his employment and to communicate to him the reasons for this decision[1]; in others, in addition, the employer must afford the worker an opportunity to answer any charges against him at a hearing, usually with the right to be accompanied by a representative.[2] In some countries the legislation provides that a worker's employment may be terminated for breach of discipline or inadequate performance, other than in case of gross misconduct, only if the worker has first been warned and thus given the opportunity to improve [3] or if he has already suffered a first and lesser disciplinary penalty.[4] Sometimes, in deciding on the imposition of disciplinary penalties, the employer is enjoined by law to take into account the gravity of the misconduct, the previous record of the worker and any other extenuating or aggravating circumstances.[5] In certain cases a right of appeal within the undertaking is provided for.[6] While, on occasion, the legislation stipulates that if the employer fails to

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Code of Practice, sections 130–131 (the Code, although not itself legally binding, is to be taken into account by the Industrial Court and industrial tribunals in proceedings under the Industrial Relations Act, according to section 4 of that Act). The legislation of certain countries requires employers to draw up works rules containing provisions on discipline, without expressly stipulating that these rules must lay down procedures to be followed in case of termination of employment. The works rules in question may in practice provide for such procedures.

[1] Czechoslovakia, Labour Code, section 44(2) (the reason given in the notice may not be changed thereafter); Dahomey, Labour Code, section 32; Ethiopia, Civil Code, section 2572 (the employer must, on request of the worker, inform him of the reasons for termination); Hungary, Labour Code, section 26(2); Mauritania, Labour Code, Book 1, section 20; Morocco, Order of 23 October 1948, fixing Model Works Rules, section 6 of the Model Works Rules (the notice must state the reasons for termination and refer to the provisions of Model Works Rules, but only in case of termination of employment for serious fault); Niger, Labour Code, section 37; Romania, Labour Code, section 143; Spain, Decree of 26 October 1956 amending the Act respecting contracts of employment, section 3; Sweden, Job Security Act, sections 8, 19 (the employer must, on request by the worker, inform him of the reasons for termination).

[2] Bangladesh, Employment of Labour (Standing Orders) Ordinance, section 18; Byelorussian SSR, Labour Code, section 136; Egypt, Order No. 96 of 1962 to prescribe disciplinary penalties and rules, sections 5–7; France, Labour Code, sections 24*l*–24*m* (inserted by Act No. 73-680 of 13 July 1973) (the reasons must be given only on the written request of the worker); India, Model Standing Orders adopted under the Industrial Employment (Standing Orders) Act (employers are obliged to adopt Standing Orders, subject to administrative approval of their contents, conforming, if practicable, with those laid down in the Model Standing Orders); Italy, Act No. 604 of 1966, section 2, and and Act No. 300 of 1970, section 7; Mauritius, Termination of Contracts of Service Ordinance, section 7; Pakistan, Industrial and Commercial Employment (Standing Orders) Ordinance, Standing Order No. 15; United Kingdom, Industrial Relations Code of Practice, sections 132–133 (as to the legal nature of this Code, see footnote to para. 67); Ukrainian SSR, Labour Code, section 149; USSR (Russian SFSR, Labour Code, section 136).

[3] Czechoslovakia, Labour Code, section 46*(1)*(I); Guatemala, Labour Code, section 77*(h)*; Italy, Act No. 300 of 1970, section 7; United Kingdom, Industrial Relations Code of Practice, section 133 (for the legal nature of this Code see footnote to para. 67). In certain countries a warning is required only in connection with disciplinary termination for certain particular reasons, such as failure to observe work and safety rules, habitual lateness and drunkenness. See Iraq, Labour Code, section 34*(d)*, *(e)*, *(g)*; Libyan Arab Republic, Labour Code, section 51(4)–(5).

[4] Byelorussian SSR, Labour Code, section 33, para. 1(3); Czechoslavakia, Labour Code, section 46(1)*(f)*; Ukrainian SSR, Labour Code, section 40, para. 1(3); USSR, Fundamental Principles of Labour Legislation, section 17, para. 1(3) (Russian SFSR Labour Code, section 33, para. 1(3).

[5] Bangladesh, Employment of Labour (Standing Orders) Ordinance, section 18(6); USSR (Russian SFSR, Labour Code, section 135, para. 44).

[6] For example, Chile, Decree No. 464 of 3 June 1966 laying down regulations to apply Act No. 16455 of 1966, section 6 (containing the rules to be specified by the labour inspectorate in the absence of agreement by the parties on a claims procedure within the undertaking); New Zealand,

(footnote continued overleaf)

follow the rules or procedures in question, termination of the worker's employment is null and void[1], in most cases the legal effect of such failure is left to be decided by the courts or other competent bodies in the course of deciding on a worker's appeal against termination of his employment.

69. In some countries collective agreements lay down rules and procedures to be followed by the employer in connection with termination of employment. These rules may simply require the employer to notify the worker of the reasons for termination[2], or they may provide in addition that the worker must be given a warning and an opportunity to improve, as well as be entitled to a hearing, before being dismissed.[3] Such agreements may also provide for grievance procedures through which a worker may appeal the termination of his employment within the undertaking.[4]

Prior Notification of, Consultation with, or Approval by Trade Union or Works Committees, Administrative or Judicial Authorities

70. In a number of countries, whatever may be the requirements concerning procedures to be followed within the undertaking, the employer must, before terminating the employment of a worker, notify, consult with or obtain the approval or authorisation of certain bodies or authorities. Such requirements may be applicable to all cases of termination, to termination of workers' representatives, or to cases in which there is reduction of the work force (which will be considered in Chapter VII). Reference is made to one of these contingencies in Paragraph 10 of the Recommendation, which states that the question whether employers should consult with workers' representatives before taking a final decision on individual cases of termination of employment should be left to national methods of implementation of the Recommendation.

71. In several countries the employer is obliged to notify or consult with a works council, trade union committee or tripartite committee in cases in which the termination of a worker's employment is envisaged[5], or to notify an administrative authority of such termination.[6] The employer remains free in these cases not to follow any

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Industrial Relations Act, section 117(4) (containing the standard grievance procedure deemed to be included in every award or agreement unless another procedure has been agreed upon by the parties and approved by the Commissioner); United Kingdom, Industrial Relations Code of Practice, section 131(iii) (the disciplinary procedure should provide, where practicable, for a right to appeal to a level of management not previously involved).

[1] For example, Egypt, Order No. 96 of 1962, section 8.

[2] For example, Cyprus, Basic Agreement, 1962, Part II.

[3] Procedures generally included in collective agreements in the United States. See Bureau of National Affairs, *Collective Bargaining: Negotiations and Contracts* (Washington DC, loose-leaf), Ch. 40:61.

[4] Such grievance procedures are typical, for example in collective agreements in the United States. See ibid, Ch. 40:121. The Government of Australia refers to some industrial awards containing provisions for dealing with grievances; the Government of Canada refers to similar provisions in collective agreements. As regards New Zealand, see sixth footnote to para. 68.

[5] Algeria, Act No. 71–74 of 1971, section 54 (bipartite disciplinary committee within the undertaking); Austria, Works Councils Act, section 25 (works council); Egypt, Order No. 96 of 1962 to prescribe disciplinary penalties and rules, section 6 (tripartite committee); Federal Republic of Germany, Works Constitution Act, section 102 (works council); Romania, Labour Code, section 132 (trade union committee); Sweden, Job Security Act, sections 29–32 (trade unions).

[6] Chile, Decree No. 464 of 3 June 1966 issuing regulations to apply Act No. 16455 of 1966, sections 8–11; Luxembourg, Grand-Ducal Order of 30 June 1945 creating a National Employment Office, section 12, para. 1 (notice of termination of the employment of a member of the staff to be given to the National Employment Office immediately after notice is given to the worker, indi-

(footnote continued opposite)

opinion expressed by the council, committee or authority consulted.[1] The situation is the same under certain collective agreements which provide for the notification of a trade union representative of all cases of termination of employment.[2]

72. In a number of other countries the employer must, before terminating a worker's contract of employment, obtain the approval of a trade union committee [3], a tripartite body[4], a labour tribunal [5] or an employment or manpower service or labour inspectorate.[6] In certain cases in which the approval by the latter authorities is required, approval is deemed to be granted in the absence of a reply by the authorities concerned within a given period.[7]

73. In some countries special provisions to protect workers' representatives, whose responsibilities place them in a particularly sensitive position vis-à-vis the employer, prohibit termination of their employment without the consent or approval of a works committee, labour inspector, labour administration or court.[8]

74. Where the bodies or authorities concerned are equipped to carry out the functions assigned to them in this regard, the requirement of prior approval by these bodies or authorities may be an effective means of ensuring that the employment of a worker is not terminated without a valid reason. Nevertheless, in all such cases, workers should, in accordance with the principle stated in Paragraph 4 of the Recommendation, and usually do, retain the right, irrespective of the prior decision of the body or authority concerned, to appeal such termination in accordance with a procedure laid down by collective agreement or by law.

Right of Appeal against Termination of Employment

75. As indicated above, the Recommendation provides that where the matter has not been satisfactorily settled within the undertaking, a worker who feels that his

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cating the reasons for termination and the date employment is to cease); Peru, Legislative Decree No. 18471 of 10 November 1970, section 4 (notice to be given simultaneously to worker and labour authorities, indicating reasons for termination and date on which it is to take effect, notice to be given immediately when grounds for termination come to the knowledge of the employer).

[1] However, in the Federal Republic of Germany, while the employer is not bound to accept the position of the works council, if the latter opposes the termination and the worker concerned has appealed under the Protection against Dismissal Act for a declaration that the employment has not been dissolved, the employer is obliged, at the request of the worker, to retain the worker in his employment until a final decision on the matter has been taken.

[2] For example, Sweden, Basic Agreement, Ch. III, section 2; and some collective agreements in the United States (Bureau of National Affairs, *Collective Bargaining, Negotiations and Contracts* (Washington DC, loose-leaf, Ch. 40:61).

[3] Byelorussian SSR, Labour Code, section 35; Czechoslovakia, Labour Code, section 59; Ukrainian SSR, Labour Code, section 43; USSR, Fundamental Principles of Labour Legislation, section 18 (Russian SFSR, Labour Code, section 35).

[4] Iraq, Labour Code, sections 26*(d)*, 36–43.

[5] Cuba, Act relating to Settlement of Labour Disputes, sections 14, 27, 48 and 49 (termination due to serious disciplinary offences requires decisions of the competent labour tribunal composed of members elected by the workers of the work centre; where termination is not based on such a decision the worker may apply for reinstatement through judicial proceedings).

[6] For example, France, Labour Code, section L.321–1 and Decree of 23 August 1945; Mali, Labour Code, section 38; Netherlands, Extraordinary Employment Relations Decree, section 6 (authorisation not required in case of termination for an imperative reason (i.e. a reason justifying summary dismissal)); Sri Lanka, Termination of Employment of Workmen (Special Provisions) Act, section 2 (authorisation not required for termination as a disciplinary measure).

[7] For example, France, Mali.

[8] See para. 46, third footnote, and para. 50, first and fourth footnotes.

employment has been unjustifiably terminated should be entitled to appeal against such termination—with the assistance of a person representing him if he so requests—to bodies empowered to render a decision on the justification of the termination and award an appropriate remedy. This right of appeal is an essential element in the protection of the worker against unjustifiable termination of his employment.

Who Has Right of Appeal?

76. In most cases in which legislation or collective agreements provide that a worker's employment may be terminated only for a valid reason or that such employment may not be terminated abusively or unreasonably or where powers are provided under which such standards may be developed, the worker may himself appeal against termination of employment, through the ordinary means of judicial recourse or through special procedures relating to labour matters, sometimes in accordance with provisions governing individual labour disputes or under procedures provided for in collective agreements. In addition, in certain countries it would seem that the worker's trade union may bring a worker's appeal on his behalf under the applicable disputes procedures. In some cases, however, protection against unjustified termination of employment is afforded in connection with disputes settlement procedures which may be invoked only by a trade union or employer, and not by the individual worker.[1] Where the right to appeal against termination of a worker's employment on the grounds that it was unjustified is granted only to trade unions, the situation might arise where the individual worker is unable to have the justification of his termination reviewed. It should be recalled in this connection that, under Paragraph 4 of the Recommendation, a worker who feels that his employment has been unjustifiably terminated should himself be entitled to appeal against that termination to a body empowered to render a decision on the justification of the termination.

Negotiation and Conciliation

77. Under certain procedures, before an appeal against termination of employment may be heard and decided, the parties are required to seek to settle their differences by negotiation.[2] In some cases, a worker may file an objection with the works council which must endeavour to bring about an understanding between the parties, if it considers the worker's objection justified.[3] In some countries the dispute must first be subject to an attempt at conciliation by the labour inspectorate or another administrative authority[4]; in certain other countries these authorities may be re-

[1] For example, Malaysia, Industrial Relations Act, section 16 (trade disputes may be reported by a trade union or an employer to the Minister, for conciliation), section 23 (a trade dispute, if not otherwise resolved, may be referred to the Industrial Court by the Minister on joint request of the trade union and employer, or on his own motion in certain cases); Singapore, Industrial Relations Act, sections 30 and 34(2) (claims of unjustified dismissal may be made by a worker, through his trade union, to the Minister for decision); Trinidad and Tobago, Industrial Relations Act, section 51 (trade disputes may be reported by a trade union or an employer to the Minister, for conciliation), section 59(2) (unresolved disputes concerning dismissal may be referred to the Industrial Court for determination by either party or the Minister).

[2] Bulgaria, Labour Code, section 137; Finland, General Agreement on Protection against Dismissal, 1966, section 6; Iran, Labour Act, section 37.

[3] See Federal Republic of Germany, Protection against Dismissal Act, section 3. In Austria, under the Works Councils Act, section 25, the employer must notify the works council of the termination of a worker's employment; the works council must express its opinion within three days.

[4] Cameroon, Labour Code, section 149; Dahomey, Labour Code, section 168; Egypt, Labour Code, section 75; Khmer Republic, Labour Code, sections 318–319; Malaysia, Industrial Relations Act, section 16; Mauritius, Termination of Contracts of Service Ordinance, section 7(2); Trinidad and Tobago, Industrial Relations Act, section 51; Upper Volta, Labour Code, section 196.

quested to conciliate the dispute, although this is not an obligatory first step in the disputes procedure.[1] Special conciliation procedures are also provided for under race relations legislation in several countries prohibiting termination of employment on racial or other grounds.[2]

78. It appears that, in countries in which the conciliation machinery is competent in this regard, a significant portion of cases of allegedly unjustifiable termination of employment—which in many countries account for an important proportion of labour disputes—tend to be settled at the conciliation stage where conciliation is attempted before such cases are presented for decision to the competent bodies. Thus, a well-developed conciliation service can help considerably in reducing the burden on the bodies responsible for rendering decisions on these matters.

79. Even if conciliation is not successful at this stage, in certain countries the court or other body before which the appeal is brought may itself attempt to settle the dispute by conciliation before proceeding to render a judgement on the matter.[3]

Bodies Competent to Decide on Complaints of Unjustified Termination of Employment

80. In most of the countries in which the legislation entitles workers or their trade unions to appeal against the termination of a worker's employment on the grounds that the termination was unjustified, the appeal may be made to a labour or industrial tribunal or arbitration board,[4] composed of a judicial officer and repre-

[1] Central African Republic, Labour Code, section 190; Gabon, Labour Code, section 184 (the Government states that a proposed revision of the Code will render conciliation by the labour inspectorate obligatory); Guinea, Labour Code, section 237; Italy, Act No. 604 of 1966, section 7 (where procedures under a collective agreement are not available); Interconfederal Agreement on Individual Dismissals, 1965, sections 3 and 4 (the worker may, as a first step in the appeal procedure under this agreement, request through the local trade union that conciliation proceedings be instituted by the workers' and employers' organisations; if conciliation at this stage fails, or if it has not yet been attempted, the worker may appeal to a Conciliation and Arbitration Board (composed of representatives of the parties appointed by their respective organisations and a chairman) which makes a further attempt at conciliation and then renders a decision on the merits (sections 5–11); Ivory Coast, Labour Code, section 159; Madagascar, Labour Code, section 120; Mauritania, Labour Code, Book IV, section 15; Niger, Labour Code, section 186.

[2] For example, New Zealand, Race Relations Act, sections 10–20; United Kingdom, Race Relations Act, sections 14–18, read together with the Industrial Relations Act, section 149 (the procedure before the Race Relations Board is now applicable only with respect to persons excluded from the protection afforded by the latter Act against unfair dismissal); United States, Civil Rights Act, Title VII, sections 705, 706.

[3] For example, Belgium, Judicial Code, sections 678 and 734; Central African Republic, Labour Code, sections 197–198; France, Labour Code, section L.511–1; Gabon, Labour Code, section 191; Federal Republic of Germany, Labour Courts Act, section 54; Italy, Interconfederal Agreement on Individual Dismissal, section 9; Mauritania, Labour Code, Book IV, section 20; Morocco, Dahir of 27 July 1972 creating social tribunals, section 36; Trinidad and Tobago, Industrial Relations Act, section 12; Tunisia, Labour Code, section 207; Upper Volta, Labour Code, section 196.

[4] Belgium, Judicial Code, sections 81 and 578; Cameroon, Labour Code, section 143; Central African Republic, Labour Code, section 199; Chile, Act No. 16455 to Issue Rules for the Termination of Contracts of Employment, 1966, section 6 (in communes in which no special labour judge is sitting, the competent judge is the local police court judge if he is a qualified attorney or barrister; otherwise the special labour judge or, if none, the local police court judge of the principal town of the department in which the commune is situated is the competent judge); Cyprus, Termination of Employment Law, section 30; Dahomey, Labour Code, sections 161–163; Egypt, Labour Code, section 75 (in towns where a labour court has been established; in other towns, the ordinary courts are competent in the matter); France, Labour Code, section L.511–1; Gabon, Labour Code, section 178; Federal Republic of Germany, Protection against Dismissal Act, section 3; Guatemala, Labour Code, sections 78, 283, 289; India, Industrial Disputes Act, sections 7, 7A; Ivory Coast, Labour Code, sections 150–153; Kenya, Trade Disputes Act, sections 9 and 9A; Khmer Republic, Labour Code,

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sentatives of workers and employers, of representatives of workers and employers alone or of judges specialised in labour matters. In a number of other countries appeals alleging unjustified termination of employment generally must be brought before the ordinary courts.[1] In several of these countries administrative authorities hear appeals against the termination of employment brought by workers with management responsibilities.[2] In one country appeals against termination of employment may be made, at the election of the worker, either to the courts or to a conciliation board set up under the trade union within the undertaking and composed of representatives of management and workers (with right of appeal to a district committee of the trade union)[3], while in another country the worker must submit such appeal through the local labour office to a tripartite board composed of representatives of the labour department, employers and workers.[4]

81. In countries with legislative provisions specifically prohibiting termination of employment by employers for one or the other of the reasons enumerated in Paragraph 3 of the Recommendation (trade union membership or activity, acting as workers' representative, filing of complaints against the employer, race, colour, sex, marital status, religion, political opinion, national extraction or social origin), the procedure of appeal available to the worker who considers that he has been the victim of termination of employment on such grounds is usually the ordinary procedure applicable to disputes regarding termination of employment. However, in some cases, special procedures have been set up to deal with this type of case.[5] The criminal law enforce-

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sections 321–325; Luxembourg, Act respecting workmen's contracts of service, section 22; Consolidated text of Laws to regulate salaried employees' contracts of service, section 26; Malaysia, Industrial Relations Act, sections 18, 23–29; Mauritania, Labour Code, Book IV; Ch. I–II; Mauritius, Termination of Contracts of Service Ordinance, section 7; Mexico, Federal Labour Act, sections 523, 604–620, 621–623; Morocco, Dahir 1–72–110 of 27 July 1972 instituting Social Tribunals, sections 1, 39; New Zealand, Industrial Relations Act, section 117(4); Panama, Labour Code, section 218; Singapore, Industrial Relations Act, sections 3 and 6; Spain, Decree of 13 May 1938 creating Labour Courts and Act of 17 October 1940 Governing the Organisation of Labour Courts; Trinidad and Tobago, Industrial Relations Act, sections 4 and 10; Tunisia, Labour Code, sections 183–186 (in the absence of a labour tribunal the ordinary courts are competent); United Kingdom, Industrial Relations Act, sections 100 and 106; Upper Volta, Labour Code, section 191.

[1] For example, Byelorussian SSR, Labour Code, section 214 (except for workers enumerated in a special list); Netherlands, Civil Code, sections 1639S, 1639T; Romania, Labour Code, section 174 (except for workers with management responsibilities); Ukrainian SSR, Labour Code, section 231 (except for workers holding posts enumerated in a special list); USSR, Fundamental Principles of Labour Legislation, section 89); (Russian SFSR, Labour Code, section 210) (except for workers holding posts enumerated in a special list).

[2] Byelorussian SSR, Romania, Ukrainian SSR, USSR (appeal lies to the next higher administrative body).

[3] Bulgaria, Labour Code, sections 136 and 140.

[4] Iran, Labour Act, sections 38 and 40 (where a tripartite body has not been set up, the local labour office renders a decision on the matter in its place, subject to appeal to a higher tripartite disputes settlement board; in all cases a right of appeal to this board exists).

[5] For example, among countries in which there would seem not to be a general legislative prohibition of unjustified termination of employment: Bangladesh, Industrial Relations Ordinance, section 35; Canada (according to the Government's report complaints alleging unfair labour practices are usually made to labour relations boards, which may order reinstatement or compensation); Japan, Trade Union Law, sections 7, 19, 24 and 25; New Zealand, Industrial Conciliation and Arbitration Act, section 167; Pakistan, Industrial Relations Ordinance, section 35; United States, Labor-Management Relations Act, sections 4 and 10. Where conciliation machinery is established to deal with complaints of racial or other discrimination, complaints against termination based on discriminatory grounds may be presented in civil proceedings before the ordinary courts, where the conciliation authorities are unable to bring about a voluntary settlement. See New Zealand, Race

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ment procedure may also be applicable in case of acts which have been specifically made offences.[1]

82. In cases in which termination of employment is governed by collective agreements, provision is sometimes made for the submission of disputes arising out of such termination to the decision of arbitrators or arbitration committees.[2]

83. Paragraph 5 of the Recommendation deals with powers to be conferred to the bodies to which appeal may be made against termination of employment. The question shall be examined subsequently in this chapter [3] and, also in Chapter VII, in relation to reduction of the work force.

Time-Limits for Appeal

84. According to Paragraph 4 of the Recommendation, a reasonable time should be allowed a worker to appeal against termination of his employment to the body competent to render a decision on the justification of such termination. Under the rules governing such appeals in the various countries, appeals to the appropriate body must be made within time-limits ranging from one week to one year from the date on which the worker received notice of termination or from the date on which the employment relationship was actually terminated.[4] Often the court or other body competent to hear the complaint may accept the appeal after expiration of the time-limit if it considers that the delay was due to reasons justifying an extension.

85. According to Paragraph 11(4) of the Recommendation, a worker should be deemed to have waived his right to appeal [5] against dismissal for serious misconduct if he has not appealed within a reasonable time after he has been notified of the dis-

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Relations Act, section 21 (if the conciliator recommends that proceedings be brought, such proceedings may be brought by the Attorney-General, or if he fails to do so, by the aggrieved person, to the Supreme Court); United States, Civil Rights Act, section 706*(e)* and *(f)* (proceedings may be brought in federal district courts by the aggrieved person).

[1] See, generally, regarding enforcement machinery in respect of discriminatory acts in employment, *General Survey on the Reports Relating to the Discrimination (Employment and Occupation) Convention and Recommendation, 1958*, Report III (Part 4B), International Labour Conference, 56th Session, Geneva, 1971, paras. 45–50.

[2] For example, Italy, Interconfederal Agreement on Individual Dismissals, 1965, sections 6–11; Sweden, Basic Agreement, Ch. I, section 2. With regard to collective agreements in the United States, see Bureau of National Affairs, *Collective Bargaining: Negotiations and Contracts* (Washington DC, loose-leaf), Ch. 40: 121.

[3] See paras. 87–88.

[4] The time-limit for filing an appeal against termination of employment is one week in Egypt (Labour Code, section 75); two weeks in Iran (Labour Act, section 33) and Spain (Decree of 21 April 1966, section 98); three weeks in the Federal Republic of Germany (Protection against Dismissal Act, section 1(4)); four weeks in the United Kingdom (Industrial Relations Act, Schedule 6, para. 5); one month in Byelorussian SSR (Labour Code, section 215), Chile (Act No. 16455 of 1966, section 5), Romania (Labour Code, section 176), Ukrainian SSR (Labour Code, section 232) and USSR (Fundamental Principles of Labour Legislation, section 90, Russian SFSR (Labour Code, section 211)); six weeks in Norway (Protection of Workers Act, section 43(3)); two months in Italy (Act No. 604 of 1966, section 6) and Mexico (Federal Labour Act, section 518); three months in Luxembourg (Act respecting Workmen's Contracts of Service, section 17; Consolidated text of laws respecting salaried employees' contracts of service, section 22) and Panama (Labour Code, section 221, regarding requests for reinstatement); six months in Cyprus (Arbitration Tribunal Regulations, 1968, Schedule, para 2); one year in Tunisia (Labour Code, section 23).

[5] It may be recalled in this connection that according to Paragraph 11(3) of the Recommendation, the employer should be deemed to have waived his right to dismiss for serious misconduct if such action has not been taken within a reasonable time after he has become aware of the serious misconduct (see para. 63 above).

missal, the determination of "reasonable time" being left to national methods of implementation. It would seem that in most countries the same time-limits apply with respect to appeal against dismissal for serious misconduct as apply to appeals against termination of employment generally.

Right to Assistance by a Representative

86. Paragraph 4 of the Recommendation also provides that the worker, where he so requests, should be entitled to the assistance of a person representing him, in connection with appeal against termination of employment. In a number of countries in which appeal lies to a labour court or similar body, legislative provisions expressly stipulate that a worker may be assisted or represented by another worker, a trade union representative or a lawyer.[1] This would seem to be the case in other countries as well, where the ordinary courts hear appeals against termination, as the ordinary rules respecting representation would generally apply.

Powers of Investigation and Burden of Proof

87. In accordance with Paragraph 5(1) of the Recommendation, the bodies to which appeal may be made should be empowered to examine the reasons given for the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination.

88. In many countries the bodies competent to hear appeals against termination of employment are empowered or enjoined to make inquiries or investigations to determine the facts necessary to reach a decision.[2] In this connection, it would in many cases be difficult for the worker to produce evidence concerning the motives of the employer, and whether they are well founded. Thus, if the general rule, applicable in many countries, that the complainant bears the burden of proving the facts he alleges, were strictly applied in cases of alleged unjustified termination, the effectiveness of protection of the worker against such termination might be considerably reduced.

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[1] For example, Cameroon, Labour Code, section 152; Central African Republic, Labour Code, section 192; Congo, Labour Code, section 220; Cyprus, Arbitration Tribunal Regulations, Schedule, para. 8; Czechoslovakia, Code of Civil Procedure, sections 24, 26, 101; France, Decree of 22 December 1958, section 69; Mauritius, Termination of Contracts of Service Ordinance, section 7; Niger, Labour Code, section 188; Romania, Labour Code, section 169; Spain, Decree of 21 April 1966, section 10; Trinidad and Tobago, Industrial Relations Act, section 9; Tunisia, Labour Code, section 204; Upper Volta, Labour Code, section 119; United Kingdom, Industrial Relations Act, Schedule 6, para. 9.

[2] For example, Belgium, Judicial Code, section 871 (the judge may order any party to produce evidence in his possession); Cameroon, Labour Code, section 41 (the competent tribunal determines whether the termination was abusive by an inquiry into the causes and circumstances thereof); Congo, Labour Code, section 41 (same provision as in Cameroon); Dahomey, Labour Code, section 38 (same provision as in Cameroon); Egypt, Labour Code, section 74) (the judge must investigate the circumstances of the termination); France, Labour Code, section 24*o* (inserted by Act No. 73–680 of 13 July 1973) (the judge evaluates the regularity of the procedure and the real and serious character of the reasons given by the employer, having regard to the elements furnished by the parties and, if necessary, after any investigation deemed useful); Gabon, Labour Code, section 40 (the judge determines whether the termination was abusive by an inquiry into the causes and circumstances thereof); Ivory Coast, Labour Code, section 41 (same provision as in Cameroon); Luxembourg, Act respecting Workmen's Contracts of Service, section 16 and Consolidated text of Laws respecting contracts of service of salaried employees, section 22 (the judge may order any investigation deemed useful); Madagascar, Labour Code, section 31 (same provision as in Cameroon); Mauritania, Labour Code, Book I, section 24 (same provision as in Cameroon); Niger, Labour Code, section 41 (same provision as in Cameroon); Trinidad and Tobago, Industrial Relations Act, section 9 (the court not to be bound by rules of evidence, but may inform itself on any matter in such manner as it thinks just); Upper Volta, Labour Code, section 39 (same provision as in Cameroon).

89. A number of countries have met this problem by reversing the burden of proof and placing the burden upon the employer to prove that he had valid reasons to terminate the worker's employment.[1] In other countries resort by the courts, tribunals or other competent bodies to the powers of investigation mentioned above is likely to have the same result. It thus appears necessary to the effectiveness of the protection afforded against unjustified termination of employment, particularly where the burden of proof is not expressly placed upon the employer, that the body hearing the matter be empowered to make investigations and consequently to require the employer to supply all evidence considered necessary for a proper determination of the facts.

Remedies for Unjustified Termination of Employment: Reinstatement and Compensation

90. Under Paragraph 6 of the Termination of Employment Recommendation, the bodies which are competent to decide whether termination of employment was justified should be empowered, if they find that such termination was unjustified, to order that the worker concerned, unless reinstated, where appropriate with payment of unpaid wages, should be paid adequate compensation, or afforded such other relief as may be determined by the methods of implementation set out in Paragraph 1 of the Recommendation or granted compensation and other relief. The Recommendation thus envisages two principal types of remedies in case of unjustified termination of employment—reinstatement and compensation—while leaving open the possibility that some other type of relief may be appropriate.

91. Of the reporting countries covered in which the justification requirement is applied in one form or another, reinstatement is provided for either as the principal remedy or together with compensation as one of the available remedies, in somewhat more than half of these countries, while compensation is the sole remedy available in the others. It would appear, in this connection, that, along with the growth in the number of countries limiting the discretionary power of employers in respect of termination of employment, there has been a growing acceptance of the possibility of reinstatement as a remedy for unjustified termination of employment.

92. Among those countries in which provision is made for reinstatement, this remedy may be the only one provided for or may be replaced by compensation at the discretion of the competent body or under certain conditions. Where reinstatement is awarded it is generally supplemented by entitlement to the remuneration the worker would have received between the date of termination and the date of the judgement or of effective reinstatement, sometimes reduced by the amount earned at other employment in the interval.

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[1] Brazil, Consolidated Labour Laws, section 492 (established workers may be dismissed only for serious fault or in case of *force majeure*, "duly proven"); Cyprus, Termination of Employment Law, section 6(1) (it is a rebuttable presumption that the reasons for termination were not valid reasons); Federal Republic of Germany, Protection against Dismissal Act, section 1(2); Guatemala, Labour Code, section 88; Mauritania, Labour Code, Book I, section 24, para. 3; Mexico, Federal Labour Act, section 48; Panama, Labour Code, section 218; Peru, Legislative Decree 18471 of 1970, section 3; Romania, Labour Code, section 178 (the undertaking must bear the burden of proving that measures taken by it were legal and well founded; Spain, Decree of 26 October 1956, amending the Act respecting Contracts of Employment, section 5(3)*(a)* and Decree No. 909 of 21 April 1966, section 102; United Kingdom, Industrial Relations Act, section 24 (burden on the employer to show what was the reason for dismissal and that the reason was a valid reason, as there defined). In Egypt the employer bears the burden of proving that the reason for termination was not trade union membership or activities (Labour Code, section 7(7)).

93. In certain countries if the court or other body competent to decide on the matter finds that the termination of employment was unjustified, it is required to order reinstatement, with the payment of lost wages, or to annul the termination.[1] In a number of other countries the competent bodies are granted discretion to award either reinstatement, or in some cases both reinstatement and compensation, as they consider appropriate.[2] In several countries the competent body may award compensation instead of reinstatement if it considers that the continuation of the employment relationship is inadvisable[3], impossible or difficult [4] or against the interests of either of the parties[5], or if the worker is a casual, domestic or confidential worker.[6] In certain cases either the employer [7] or the worker [8] is given the choice of reinstatement or compensation. In a number of countries, where reinstatement is awarded or recommended by the competent body, one or both parties may refuse reinstatement,

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[1] Austria, Works Councils Act, section 25 (termination declared null and of no effect); Bulgaria, Labour Code, section 93; Byelorussian SSR, Labour Code, sections 217–218; Czechoslovakia, Labour Code, section 61; Hungary, Labour Code, sections 29 and 31; Decree No. 34 of 8 October 1967, section 33; Italy, Act No. 300 of 1970, section 18; Romania, Labour Code, section 136; Ukrainian SSR, Labour Code, sections 234 and 235; USSR, Fundamental Principles of Labour Legislation, sections 91 and 92 (Russian SFSR, Labour Code, sections 213 and 214). In Austria the right to lost wages, although not expressly stipulated, would seem to result from the annulment of the termination of the employment relationship. The Government of Poland states that the competent bodies can order reinstatement with payment of lost wages.

[2] India, Industrial Disputes Act, section 11A (the court or tribunal may order reinstatement on such terms and conditions as it thinks fit or give such other relief to the workman including the award of any less punishment in lieu of discharge or dismissal as the circumstances of the case may require); Kenya, Trade Disputes Act, section 9A (providing for reinstatement with compensation for any actual pecuniary loss or for compensation instead of reinstatement); Libyan Arab Republic, Labour Code, section 49 and section 50, para. 6 (reinstatement may be ordered where requested by worker or provided for by law); Morocco, Order of 23 October 1948, section 6 of the Model Works Rules (applicable apparently only to cases of unjustified summary dismissal); Netherlands, Civil Code, sections 1639S and 1639T; New Zealand, Industrial Relations Act, section 117(7); Norway, Protection of Workers Act, section 43 (reinstatement may be ordered where it appears reasonable and is requested by the worker); Singapore, Industrial Relations Ordinance, section 34(5) (the Minister may order reinstatement with payment of back pay or compensation); Trinidad and Tobago, Industrial Relations Act, section 10(4) (court may order re-employment or reinstatement subject to such conditions at it thinks fit to impose, or payment of compensation or damages whether or not in lieu of re-employment or reinstatement, or payment of exemplary damages). The Government of Ghana states that the court may award reinstatement or compensation.

[3] Brazil, Consolidated Labour Laws, sections 495–496 (applicable to workers with more than ten years' service).

[4] Mexico, Federal Labour Act, section 49; Panama, Labour Code, section 219 (both instances concern cases where the nature of the work demands direct and permanent contact between employer and worker).

[5] Federal Republic of Germany, Protection against Dismissal Act, section 9 (the employment relation, which is deemed to continue in case of socially unwarranted termination of employment, may be dissolved by the court if it finds, on application by the worker, that he cannot reasonably be expected to continue the relationship, or on application by the employer, that any further co-operation between the parties is unlikely to serve the purposes of the establishment).

[6] Mexico and Panama.

[7] Liberia, Act to amend the Labour Practices Law, 1972, section 9; Spain, Decree of 26 October 1956, section 5(3)*(b)* (the employer has the choice in undertakings employing fewer than 50 permanent workers.

[8] Mexico, Federal Labour Act, section 48; Panama, Labour Code, section 218; Peru, Legislative Decree No. 18471 of 10 November 1970, section 3; Spain (the worker has the choice in undertakings employing more than 50 permanent workers).

in which case compensation is awarded in its place[1], or the employer is obliged to pay compensation if he fails to reinstate the worker within a given time.[2]

94. Where reinstatement is provided for in case of a finding of unjustified termination of employment, and the employer is not granted the option of paying compensation instead of reinstating the worker concerned, enforcement of an order of reinstatement against the employer would appear in most cases to be subject to the ordinary rules governing the enforcement of court orders, including the rules concerning contempt of court, with liability to imprisonment or fine, or both. This is sometimes explicitly stated in the legislation governing unjustifiable termination of employment.[3] In a number of countries an order of reinstatement is enforced by the obligation to pay to the worker concerned his salary while he waits to be effectively reinstated in his employment.[4]

95. Where reinstatement is ordered, it would seem that in many cases the bodies concerned may also stipulate that the employment relationship is to be deemed not to have been interrupted, so as to permit the worker concerned to retain his acquired rights, such as those regarding pensions and qualifying periods for various purposes. For example, in countries in which a qualifying period is stipulated by law for protection against unjustified termination of employment, if a new period of qualification were deemed to commence on reinstatement, the worker would not be protected against unjustified termination immediately after reinstatement, making protection against unjustifiable termination of employment illusory. Continuity of employment on reinstatement is assured automatically in countries in which a finding that termination of employment was unjustified nullifies that termination.[5]

96. Compensation is the sole remedy which may be granted for unjustifiable termination of employment in a number of other countries, including many of those in which the legislation does not explicitly require a valid reason for termination of employment by the employer, but provides for damages in case of "abusive" termination.[6]

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[1] France, Labour Code, section 24*p* (inserted by Act No. 73-680 of 13 July 1973) (payment of lost remuneration is not expressly provided for); Netherlands, Civil Code, sections 1639S and 1639T; United Kingdom, Industrial Relations Act, section 106 ("re-engagement" must be recommended under such terms as the competent body considers reasonable, if it considers that re-engagement would be practicable and in accordance with equity).

[2] Chile, Act No. 16455 of 5 April 1966, section 8; Spain, Decree of 26 October 1956, sections 5-8. In Sweden (Job Security Act, sections 34-36, 39), if the employer disregards a declaration by the court of invalidity of the termination, the employer must pay damages.

[3] India, Industrial Disputes Act, section 29; Kenya, Trade Disputes Act, section 9A(3); Singapore, Industrial Relations Act, section 34(8).

[4] Bulgaria, Byelorussian SSR, Czechoslovakia, Italy, Mexico, Panama, Romania, Ukrainian SSR, USSR. In Bulgaria, Byelorussian SSR, Romania, Ukrainian SSR and USSR, this obligation is supplemented by an obligation imposed on the person responsible for the delay in reinstating the worker to reimburse the understaking for the amount it had to pay the worker concerned because of the delay.

[5] Such as Austria, Federal Republic of Germany, Hungary and Italy.

[6] For example, Belgium, Act respecting workmen's contracts of service, section 24*ter* (applicable only to "workmen"); Cameroon, Labour Code, section 41; Central African Republic, Labour Code, section 47; Congo, Labour Code, section 42; Cyprus, Termination of Employment Law, sections 3, 5; Denmark, Act respecting Legal Relations between Employers and Salaried Employees, section 2b (applicable only to salaried employees as defined in section 1); Egypt, Labour Code, section 74; Gabon, Labour Code, section 40; Guatemala, Labour Code, section 78; Guinea, Labour Code, sections 71, 73; Haiti, Labour Code, section 41; Iran, Labour Act, section 33 (the employer has the option instead of paying the compensation awarded to reinstate the worker); Ivory Coast, Labour Code, section 40; Khmer Republic, Labour Code, section 87; Luxembourg, Act respecting workmen's con-

(footnote continued overleaf)

97. Where compensation is awarded, either in lieu of reinstatement or as the principal remedy, the legislation in some cases leaves the calculation of the amount of compensation to the entire discretion of the competent body[1]; in other cases, while it leaves this calculation to the discretion of the competent body, it indicates certain factors which must be taken into account in the compensation[2], specifies a minimum amount of compensation[3] or lays down a maximum amount of compensation.[4] In a number of countries it is stipulated that unjustified termination shall give rise to damages for loss suffered[5], sometimes with specification of certain of the factors to be taken into account by the competent body in evaluating this loss, such as custom, nature and length of service, age and acquired rights, or loss of any benefits which the worker may reasonably be expected to have received[6], sometimes with an indication

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tracts of service, section 16 and consolidated text of laws respecting contracts of service of salaried employees, section 22; Madagascar, Labour Code, section 31; Mali, Labour Code, section 42; Mauritania, Labour Code, Book I, section 24; Mauritius, Termination of Contracts of Service Ordinance, section 7(4); Niger, Labour Code, section 41; Rwanda, Labour Code, section 43; Tunisia, Labour Code, section 23; Upper Volta, Labour Code, section 39.

[1] India, Industrial Disputes Act, section 11A; Kenya, Trade Disputes Act, section 9A; Morocco, Order of 23 October 1948, as amended, section 6 of the Model Works Rules (the prejudice caused to the worker is the principal, but apparently not the only circumstance to be considered; protection is apparently afforded only in case of unjustified summary dismissal); Netherlands, Civil Code, sections 1639S, 1639T; Trinidad and Tobago, Industrial Relations Act, section 10(4)–(5) (the court may award compensation or damages, or exemplary damages).

[2] Cyprus, Termination of Employment Ordinance, section 3 and Schedule 1 (account is to be taken, inter alia, of wages, length of service, loss of career prospects, circumstances of dismissal, age); Denmark, Act respecting relationship between employers and salaried employees, section 2*b* (account to be taken of length of service and circumstances of the case); Egypt, Labour Code, section 74 (account is to be taken of the nature of the work, loss suffered, length of service, custom and the circumstances of the termination).

[3] Cyprus (minimum of 2 weeks' wages or salary for each 52 weeks' service up to a maximum of 6 years; 1 week's wages or salary for each 52 weeks' service in excess of 6 years, up to a maximum of 20 years' service in all); France, Labour Code, section 24*p* (inserted by section 3 of Act No. 73–680 of 13 July 1973) (minimum of 6 months' salary).

[4] Cyprus, Termination of Employment Ordinance (maximum of 1 year's wages); Denmark, Act respecting legal relationship between employers and salaried employees, section 2*b* (maximum of one-half salary for notice period, which is 1 month for first 6 months' service, 3 months after 6 months' service and which increases by 1 month for every 3 years' service to a maximum of 6 months; a worker with 10 years' service or more is entitled to up to 4 months' salary, and with 15 years' service up to 6 months' salary as compensation); Federal Republic of Germany, Protection against Dismissal Act (maximum of 12 months' salary); Iran, Labour Act, section 33 (maximum of 3 years' salary; the employer may choose to reinstate with payment of salary in arrears); Liberia, Act to Amend the Labour Practices Law, 1972, section 9 (maximum of 2 years' salary or, if the worker was dismissed to avoid payment of pension, of 5 years' salary); Norway, Protection of Workers Act, section 43(2) (maximum of one-half last annual earnings; in case of worker with 10 or more years' service in undertaking, maximum of last annual earnings; in case of worker with 20 years' service, maximum of last 3 years' earnings); Spain, Decree of 26 October 1956, amending the Act respecting contracts of employment, section 5*(b)* (maximum of 1 year's salary, when compensation is chosen by the party having the right to choose between reinstatement and compensation), sections 7–8 (between 6 months' and 4 years' salary when reinstatement has been chosen and the employer fails to reinstate the worker).

[5] Guinea, Labour Code, section 71; Haiti, Labour Code, section 42; Khmer Republic, Labour Code, section 87.

[6] Cameroon, Labour Code, section 41; Central African Republic, Labour Code, section 47; Dahomey, Labour Code, section 38; Gabon, Labour Code, section 40, Ivory Coast, Labour Code, section 41; Luxembourg, Act of 24 June 1970, section 16, Consolidated text of 21 November 1971, section 22 (account is to be taken of usages, nature and length of service and generally legitimate interests of the parties); Madagascar, Labour Code, section 31; Mali, Labour Code, section 42; Mauritania, Labour Code, Book I, section 24; Tunisia, Labour Code, section 23; United Kingdom, Industrial Relations Act, sections 106, 116; Upper Volta, Labour Code, section 39.

of a minimum amount.[1] Elsewhere the principles governing the evaluation of the prejudice suffered by the worker whose employment has been unjustifiably terminated must be developed by the competent bodies. Major elements of loss may, for example, include loss of acquired rights under legislation protecting workers against unjustified termination of employment or entitling them to special compensation in case of reduction of personnel, only after a given period of continuous employment, where the worker concerned had been employed for the qualifying period.[2]

98. In some countries the legislation specifies the method by which the compensation to be awarded to a worker whose employment has been unjustifiably terminated should be calculated. In these countries the compensation awarded usually is based on length of service, and consists of a given amount of the worker's remuneration for every year of service, together with, in some cases, a fixed sum as a penalty[3], and in some cases wages or salary from the date of termination to the date of payment. In several countries a fixed sum is awarded to a worker who chooses compensation in preference to reinstatement in addition to the wages or salary from the date of termination to the date of judgement.[4]

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[1] Belgium, Act on Workmen's Contracts of Service, section 24*ter* (providing for payment of compensation for loss suffered of not less than twice the notice period remuneration); Chile, Act No. 16455 of 5 April 1966, section 8 (damages of not less than 1 month's salary for each year of service); Italy, Act No. 300 of 1970, section 18 (damages of not less than 5 months' salary in addition to reinstatement, and full remuneration from the date of the order of reinstatement until reinstatement).

[2] See, for example, in the United Kingdom, the judgement of the National Industrial Relations Court, in the case of Norton Tool Co. Ltd. *v.* Mr. N. J. Tewson [1972] *Industrial Court Reports* 501; [1972] 1 *All E.R.* 183.

[3] Brazil, Consolidated Labour Laws, sections 496–497, read together with section 478; Act No. 5107 to establish a Length-of-Service Guarantee Fund, of 13 September 1966, section 6 (providing that in case of unjustified termination of employment the employer is obliged to deposit to the employee's credit on his termination allowance escrow account 10 per cent of the amount in the account, which increases with length of service); Ethiopia, Civil Code, sections 2573–2576, as amended by Minimum Labour Conditions Regulations, section 9 (30 days' wages plus 25 per cent of this amount for each year of continuous service, up to a maximum of 180 days' wages); Guatemala, Labour Code, sections 78, 82 (severance allowance of 1 month's wages for every year of service and 1 month's wages—or 2 months' wages in case of appeal—as damages); Mauritius, Termination of Contracts of Service Ordinance, sections 7(4), 11 (6 times the severance allowance of 2 weeks' wages for each year of service); Mexico, Federal Labour Act, section 50 (when the employer chooses to pay compensation instead of to reinstate the worker, if the contract of employment is for an indefinite duration, the employer must pay 20 days' wages for each year of service—in case of a fixed-term contract, this amount is higher—together with 3 months' wages and the remuneration from the date of dismissal to the date on which the compensation is paid); Panama, Labour Code, sections 218, 219, 225 (if the worker chooses to receive compensation instead of reinstatement, he is entitled to 1 week's wages for every 3 months' employment if employed for less than 1 year, 1 week's wages for every 2 months' employment if employed for more than 1 and less than 2 years, 3 weeks' additional wages for every year of service, for more than 2 and less than 10 years' service, and 1 additional week's wages for every year of employment over 10 years; if the employer chooses to pay compensation instead reinstating the worker, he must pay 25 per cent more than the above amount; in both cases the worker is entitled to receive his wages from the date of dismissal to the date of payment of compensation); Sweden, Job Security Act, section 39 (if the employer disregards the declaration by the court of invalidity of the termination, he is liable to pay damages of 16 months' salary if the worker was employed for less than 5 years, 24 months' salary if employed for from 5–10 years, 32 months' salary if employed for at least 10 years; if the worker is 60 years old or more, the amount of damages is respectively 24, 36 and 48 months' salary).

[4] Mexico, Federal Labour Act, section 48 (3 months' wages); Peru, Legislative Decree No. 18471 of 10 November 1970, section 3 (3 months' remuneration if the worker wishes the employment relationship to remain terminated).

99. Where collective agreements lay down procedures of appeal against termination of employment, provision is made variously for reinstatement with back pay[1], reinstatement which may be replaced by compensation if the employer refuses to reinstate the worker concerned[2], compensation or damages[3], if the body or person competent under the agreement to decide on the matter finds that the termination was not justified.

100. It should be noted that, according to the scheme of protection provided for in the Recommendation, compensation as a remedy, in the absence of reinstatement, for unjustified termination of employment by the employer (Paragraph 6 of the Recommendation) is distinct from compensation in lieu of a period of notice before termination (Paragraph 7) and from any severance allowance or unemployment benefits to which the worker may be entitled (Paragraph 9). Even if the worker is paid compensation in lieu of the notice period, severance allowance or unemployment benefit he should in addition be entitled, if he is not reinstated in employment, to compensation for unjustified termination of his employment.

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[1] Provisions to be found in many collective agreements in the United States. See Bureau of National Affairs, *Collective Bargaining: Negotiations and Contracts* (Washington, DC, loose-leaf), Ch. 40:181.

[2] For example, Italy, Interconfederal Agreement on Individual Dismissals, 1965, sections 11, 12, 14 (compensation from 5–12 months' wages, but for workers with less than 30 months' service, from 5 to 8 months' wages, and for workers with more than 20 years' service, up to 14 months' wages; in undertakings employing up to 50 workers, compensation may not be less than 2½ nor more than 6 months' wages.

[3] For example, Denmark, General Agreement of 31 October 1973, section 4(3)*(e)* (compensation to depend upon the circumstances of the case and length of service, but is not to exceed 26 weeks' wages); Finland, General Agreement on Protection against Dismissal, 1966, sections 3–4 (compensation to take into account loss of wages, length of service, age, chances of obtaining other suitable employment and other relevant factors, but not to exceed 6 preceding months' wages); Sweden, Basic Agreement, section 4 (damages are to be awarded).

CHAPTER V

PERIOD OF NOTICE AND CERTIFICATE OF EMPLOYMENT

Period of Notice

101. Paragraph 7(1) of the Termination of Employment Recommendation provides that a worker whose employment is to be terminated should be entitled to a reasonable period of notice or compensation in lieu thereof. The purpose of the notice period is to help mitigate the impact of termination of the worker's employment by guaranteeing that his employment and income do not come abruptly to an end, but that he is afforded a reasonable time, with his wages or salary assured, to adjust to the situation and seek other employment. To facilitate the search for new employment, Paragraph 7(2) of the Recommendation stipulates that during the notice period the worker should, as far as practicable, be entitled to a reasonable amount of time off without loss in pay for this purpose. These matters will be discussed in the present chapter. Termination of employment without a notice period or compensation in lieu thereof in case of serious misconduct (Paragraph 11(1) of the Recommendation) has been examined in Chapter III. Special notice requirements in connection with reduction of the work force will be considered in Chapter VII.

102. The requirement of a period of notice before termination of employment is distinct from the requirement in certain countries that the worker be formally notified that his employment is to be terminated and of the reasons for such termination, although generally the notice period where such a period is required will run from the date on which the latter notification is made. Likewise, the requirement of a period of notice, referred to in Paragraph 7(1) of the Recommendation, is quite independent of the requirement of a valid reason for termination of a worker's employment, provided for in Paragraph 2 of the Recommendation. Proper advance notice of termination of employment should not, under the Recommendation, validate that termination if no valid reason exists therefor, nor should a valid reason for termination (unless it consists of serious misconduct) be deemed to obviate the need for giving a period of notice before termination. The payment of compensation in lieu of a notice period, under Paragraph 7(1) of the Recommendation, does not replace the compensation for unjustifiable termination of employment provided for (in the absence of reinstatement) in Paragraph 6 of the Recommendation, and vice versa.

103. In the great majority of countries reporting on the Recommendation—including countries in which the principle that a worker's employment may be terminated only for a valid reason is followed, countries in which limitations are placed on termination which involves abuse of power or which is harsh or unreasonable, and countries in which the employer is not subject to any such general limitation on the right to terminate a worker's employment—a period of notice before termination of employment is required to be given to the worker, in accordance with legislation, collective agreements, arbitration awards, or custom.[1] The right to such a period of

[1] Algeria, Argentina, Australia (stipulated in arbitration awards and industrial agreements), Austria, Bangladesh, Belgium, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Congo,

(footnote continued overleaf)

notice is thus the most widespread right enjoyed by workers in respect of termination of their employment and, in countries in which there is no general limitation in respect of the reasons for termination, this right, together in some cases with entitlement to a severance allowance, is the principal protection afforded to the worker in connection with termination of his employment. However, in some countries (all of which have legislation prohibiting termination of employment by the employer for other than defined valid reasons), the legislation does not require the employer to give a period of notice prior to termination.[1] In several other countries (in which no general limitation concerning the reasons for which a worker's employment may be terminated appears to exist) no information or only limited information is available concerning notice period requirements.[2]

104. In most countries in which a period of notice is required before a contract of employment may be terminated, this requirement is applicable only to contracts of indeterminate duration, while contracts of specified duration or for the performance of a specified task are generally deemed to terminate without notice being required upon expiration of the specified period or upon performance of the given task. However, in some countries a period of notice is required for termination of contracts of specified duration [3]; in others a notice period is applicable in the case of certain contracts of specified duration which have been tacitly renewed or extended beyond their original term.[4] In some cases, fixed-term contracts are deemed to be automatically renewed if notice is not given a specified period of time before the expiration date[5],

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Cyprus, Czechoslovakia, Dahomey, Democratic Yemen, Denmark, Egypt, Ethiopia, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Guinea, Guyana, Haiti, Hungary, Iceland, India, Iran, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kenya (the Government states that the standards in this provision of the Recommendation are observed through voluntary agreements); Khmer Republic, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Morocco, Netherlands, New Zealand (stipulated in arbitration awards and industrial agreements), Nicaragua, Niger, Norway, Pakistan, Peru, Poland, Qatar, Romania, Singapore, Sri Lanka, Sudan, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, Upper Volta, Republic of Viet-Nam, Yugoslavia (the Government states that the notice period is fixed by the works rules), Zambia, Netherlands (Surinam).

[1] Byelorussian SSR, Guatemala, Mexico, Panama (under section 212 of the Labour Code, an employer may terminate the employment of certain categories of workers who are stated to be excepted from the provisions prohibiting unjustified termination, without a valid reason, by giving 30 days' notice and paying the compensation laid down for cases of unjustified termination; no provision is made for a period of notice to be given in case of termination for just cause), Spain (the Government, while recognising that a notice period is not formally required, states that the substance of this requirement is met by the availability under certain conditions of unemployment benefits, by the possibility of seeking new employment during proceedings against the employer for unjustified termination and by the guarantees afforded in case of termination for technological or economic reasons under the procedure of prior authorisation laid down by Order of 18 December 1972), Ukrainian SSR, USSR.

[2] Burma, Thailand, United States, Australia (Norfolk Island). In the United States advance notice is provided for in a certain number of agreements in connection with lay-off, plant shutdown or relocation or technological change (Department of Labor, Bureau of Labor Statistics: *Characteristics of Agreements Covering 1,000 Workers or More, 1 July 1972*, Bulletin 1784, table 65).

[3] Australia, Canada, Mauritius. See below, first footnote to para. 107.

[4] Nigeria, Labour Code Ordinance, section 32 (see below, first footnote to para. 107; United Kingdom, Contracts of Employment Act, section 1 (4) (contracts of employment of persons continuously employed for 13 weeks or more which are contracts for a term certain of 4 weeks or less shall have effect as if they were for an indefinite period).

[5] Mauritius, Employment and Labour Ordinance, section 6 (agreements may be entered into for any period not exceeding one month, and shall be conclusively presumed to be renewed if notice has not been previously given by either party of intention to terminate); Zambia, Employment Act, section 19 (parties to an oral contract for a period not exceeding one month shall, on termination, be conclusively presumed to have entered into a new oral contract on the same terms if notice has not been given).

or may be terminated at any time by the giving of a specified period of notice.[1]

Length of Notice Period

105. In most countries in which the legislation provides for a period of notice before contracts of employment may be terminated, the notice periods stipulated by law are minimum periods which may be increased by collective agreement, individual contract of employment, or usage. In certain countries the specified periods of notice are stated to apply only in the absence of contrary provisions in collective agreements or individual contracts[2] and it would thus seem possible for shorter as well as longer periods to be agreed upon. Occasionally, the legislation states only that a reasonable period of notice shall be given[3], leaving the determination of this period to collective agreements, individual contracts of employment, usages or the courts.

106. The manner in which the length of the notice period is determined varies widely among different countries. It may differ according to the type of contract, the pay period or the category of worker; in these cases, as well as where no such distinctions are made, the notice period may or may not increase with length of service.

107. In certain countries the length of the period of notice differs for workers employed under contracts of employment of different duration[4], or having different pay periods [5]; usually the period is fixed, but occasionally it increases with length of

[1] Singapore, Employment Act, sections 9–10.

[2] Finland, Contracts of Employment Law, sections 37–38 (individual contracts may stipulate that they may be terminated without notice or with any period of notice up to 6 months);Malaysia, Employment Ordinance, section 12 (notice period applicable in the absence of provisions in the contract of service or where the period specified in the contract exceeds 1 month); Mali, Labour Code, section 39 (notice periods applicable in the absence of collective agreements or decrees); Mauritius, Employment and Labour Ordinance, section 7 (notice period applicable in the absence of stipulation in the individual contract); Norway, Protection of Workers' Act, section 41 (notice period applicable in absence of any contrary provisions in individual contract, collective agreement or employment rules, with a minimum of 1 month's notice in case of workers employed for 4 years or more since the age of 21); Singapore, Employment Act, section 10 (notice period applicable in the absence of provision in the contract of service); Switzerland, Code of Obligations, sections 336*a*–336*b* (notice period applicable unless otherwise provided by written agreement, standard labour contract or collective agreement, with a minimum of 1 month's notice in case of contracts which have lasted for more than 1 but less than 10 years).

[3] Canada (Manitoba and Newfoundland where, according to the Government's report, reasonable notice must be given if the pay period is less than 1 month).

[4] Australia (the Government states that the general standard in arbitration awards and agreements is a notice period equal to the hiring period, which is generally one week); Canada (the Government indicates that in Quebec the legislation requires 1 week's notice in case of a weekly hiring period, 2 weeks' notice in case of a monthly hiring period, 1 month's notice in case of a yearly hiring period); Mauritius, Employment and Labour Ordinance, section 7 (in absence of express agreement, notice period is equal to period of agreement, but not more than 14 days, unless the worker has served for 3 years in which case it shall be 3 months); Nigeria, Labour Code Ordinance, section 32 (in case of oral contracts of employment, 14 days' notice if the contract is for 1 month and employment has continued for more than 1 month; 7 days' notice if the contract is for less than 1 month and employment has been continuous for more than 1 month; 1 day's notice if the contract is for less than 1 month and employment has continued for from 15 days to 1 month).

[5] Frequently in these countries a worker paid by the month is entitled to 2 weeks' or 1 month's notice and a worker paid by the day, week or fortnightly to 1 or 2 weeks' notice. However, longer notice periods are sometimes provided for. See Bangladesh, Industrial and Commercial Employment (Standing Orders) Ordinance, section 19 (permanent workers are entitled to 90 days' notice if monthly rated, 45 days' notice if paid on another basis, and in case of retrenchment to 1 month's notice; temporary workers are entitled 1 month's notice if monthly-rated and 14 days' notice in other cases, unless termination is due to cessation of temporary work); Brazil, Consolidated Labour Laws,

(footnote continued overleaf)

service for workers having the same pay period.[1] In a number of countries longer notice periods are specified for non-manual or highly trained workers than for manual workers; in certain countries a fixed notice period is prescribed for each such category of worker,[2] while in other countries the notice period applicable within a category increases with length of service.[3] In other countries the notice period is uniform for all

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section 487 (1 month's notice if paid on 2-weekly or monthly basis or if employed for more than 12 months; 8 days' notice if paid weekly or daily); Canada (Manibota, Employment Standards Act, section 35, and Newfoundland, Employment (Notice of Termination) Act, 1969, section 7) (where period of employment is not fixed, notice equal to the pay period if once a month or more often; if less frequently, reasonable notice to be given); Central African Republic (1 month's notice if paid monthly, 8 days' notice if paid hourly, daily or weekly) according to the Government's report; Democratic Yemen, Labour Ordinance, section 9 (1 month's notice for monthly-paid workers, 1 week for weekly-paid workers and 2 weeks for fortnightly-paid workers); Egypt, Labour Code, section 72 (1 month's notice if paid monthly, 15 days' notice otherwise); Finland, Contracts of Employment Act, section 38 (in absence of stipulation in contract, notice period is equal to pay period, but not less than 14 days); Ghana, Labour Decree, 1967, section 33 (an oral agreement of unspecified duration to pay remuneration at a monthly rate deemed to be a contract from month to month terminable at any time by 14 days' notice; if to pay remuneration at a weekly rate, deemed to be a contract from week to week terminable at any time by 7 day's notice; otherwise deemed to be a contract terminable at the close of any day without notice); Ivory Coast, Decree No. 66–388 of 13 September 1966, sections ID 25-ID 32 (8 days' notice for hourly, daily and weekly-paid workers; 1 month's notice for monthly-paid workers); Kuwait, Employment Law, 1964, section 53 (15 days' notice for monthly-paid, seven days' notice for daily, weekly or other paid workers); Libyan Arab Republic, Labour Code, section 46 (30 days' notice for monthly-paid, 15 days' notice for workers paid on another basis); Malawi, Employment act, section 10 (contracts of unspecified duration to pay wages at monthly rate, terminable on 1 month's notice; at a fortnightly rate, terminable on a fortnight's notice; at a weekly rate, terminable on 1 week's notice; on a daily or hourly rate, terminable on 1 day's notice; the notice period increases in the latter 3 cases with length of service to a minimum of 1 month's notice after 5 years' service); Mali, Labour Code, section 59 (1 month's notice for monthly-paid workers, from 1 to 8 days' notice for others depending on length of service); Niger, Inter-occupational Collective Agreement of 15 December 1972, Annex 1 (1 month's notice for monthly-paid workers, 8 days' notice for others; with higher periods for certain specialised workers and cadres); Norway, Protection of Workers Act, section 41 (1 month's notice if monthly or yearly-paid workers, 14 days' notice if paid on another basis, with a minimum of 1 month if employed for 4 years or more after the age of 21); Qatar, Labour Law No. 3 of 1962, section 18 (if paid on an annual or monthly basis, 1 month's notice if period of service is up to 5 years, 2 months' notice if more than 5 years; if paid on another basis, from 1 week to 1 month's notice, depending upon length of service); Sudan, Employers and Employed Persons Ordinance, section 10 (1 month's notice if paid monthly; if paid weekly, fortnightly or daily, notice increases with length of service, up to 1 month); Tunisia, Labour Code, section 14 (one month's notice for monthly-paid workers, 8 days' notice for others); Republic of Viet-Nam, Labour Code, section 33 (if paid monthly, 8 days' notice during first year's service, 15 days' notice thereafter; if paid weekly or fortnightly, 3 days' notice during first year's service, 5 days' notice thereafter; if paid daily wage or by task and pay period is more than 1 day, 2 days' notice during first year's service, 3 days' notice thereafter; if daily-paid workers, 1 day's notice);Netherlands (Surinam), Civil Code, section 1615L (equal to length between payment of wages, with a minimum of 1 week).

[1] Malawi, Mali, Qatar, Sudan, Republic of Viet-Nam.

[2] Bulgaria, Labour Code, section 30 (30 days' notice for highly trained workers, 15 days for others); Liberia, Labour Practices Law, section 1508 (3) (4 weeks for salaried employees, 2 weeks for non-salaried employees); Niger, Inter-occupational Collective Agreement of 15 December 1972, Annex 1 (3 months for higher cadres and engineer cadres, 1 month for foremen and technicians). In Algeria the Government indicates that a draft Labour Code (section 34), provides for 1 month's notice for manual, specialised or qualified workers, 2 months' notice for foremen, 3 months' notice for middle and higher cadres.

[3] Belgium, Act respecting Workmen's Contracts of Service, section 19 (14 days for workmen employed up to 10 years, 28 days when employed for at least 10 years, 56 days when employed for at least 20 years); Consolidated text of laws respecting Contracts of Service Salaried Employees, sections 15 and 15*bis* (where annual remuneration does not exceed a certain amount, at least 3 months' notice for an employee who has served less than 5 years, increased by 3 months for each additional period of 5 years' service; where annual remuneration exceeds that amount, the length of notice is to be fixed by agreement, but shall not be less than the above; where the employee has reached normal retirement age, and is entitled to full statutory pension, the period of notice is 6 months, or 3 months if employ-

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categories of workers and is either of a fixed length of one week[1], two weeks[2], or one month[3], or of a length which increases with length of service [4] or

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ment has lasted less than 5 years); Denmark, Act respecting legal relations between employers and salaried employees, section 2 (minimum of 1 month's notice during first 6 months' employment, 3 months' notice after 6 months' employment, with an additional 1 month's notice for every 3 years' employment, up to a maximum of 6 months' notice); Federal Republic of Germany, Civil Code, section 622 (6 weeks' to 6 months' notice for salaried employees, 2 weeks' to 3 months' notice for wage earners); Greece, Act No. 2112 of 1920, section 1 (1 month's notice for private employees with under 2 years' service, 2 months for employees with 2 to 5 years' service, 3 months for employees with 5 years' service or more; for employees with more than 10 years' service, an additional month's notice for each year of service over 10, up to a maximum of 1½ years' notice); Royal Decree of 16 July 1920, extending Act No. 2112 to workers, craftsmen and other servants, section 3 (5 days' during first year's service to 60 days' notice after 10 years' service); Italy, Legislative Decree No. 1825 respecting Contracts of Employment of Salaried Employees, section 10 (from 15 days' to 4 months' notice depending upon the category of employee and the length of service); Luxembourg, Act respecting Workmen's Contracts of Employment, section 9 (4 weeks' notice, if employed for up to 5 years, 8 eight weeks' notice if employed between 5 and 10 years, 12 weeks' notice if employed for more than 10 years); Consolidated text of Laws respecting Contracts of Service of Salaried Employees, section 21 (2 months' notice, if employed for up to 5 years, 4 months' notice, if employed for from 5 to 10 years, 6 months' notice, if employed for more than 10 years).

[1] Canada (Prince Edward Island, Labour Act, 1971, section 67 (after 3 months' employment); Saskatchewan, Labour Standards Act, 1969, section 24 (after 3 months' employment)). In New Zealand, according to the Government's report, arbitration awards or industrial agreements usually provide for 1 week's notice.

[2] Canada, Labour Code, 1970, section 60.4 (after 3 months' continuous employment); Guyana, Labour Ordinance, section 7; Iran, Labour Act, section 33; Jamaica, Master and Servants Law, section 4 (in absence of express agreement to the contrary, every contract of service deemed to be a contract for 1 month certain — which may be terminated by 15 days' notice given at any time); Romania, Labour Code, section 131; Trinidad and Tobago, Master and Servants Ordinance, section 5 (notice period for termination of contracts of more than 1 month or continuing from month to month).

[3] Iraq, Labour Code, section 42*(c)* (employment may be terminated 1 month after date of application for termination to employment termination board, if board assents); Japan, Labour Standards Law, section 20; Malaysia, Employment Ordinance, section 12 (if length not specified in contract or specified period is more than 1 month; collective agreements may require up to 6 months' notice, if authorised by Industrial Court); Nicaragua, Labour Code, section 116; Pakistan, Industrial and Commercial Employment (Standing Orders) Ordinance, Standing Order No. 12.

[4] Argentina, Commercial Code, section 157 (1 month's notice if employed for up to 5 years, 2 months' notice if employed for more than 5 years); Canada (Nova Scotia and Ontario, from 1 to 8 weeks' notice depending upon length of service); Cyprus, Termination of Employment Law, section 9 (1 weeks' notice if employed from 26 to under 52 weeks; 2 weeks' notice if employed from 52 to 103 weeks, 4 weeks' notice if employed for 104 weeks or more); Ethiopia, Civil Code, section 2571 (1 week's notice if employed for up to 1 year; 2 months' notice if employed for more than 1 year); France, Labour Code, section 24*d* (inserted by Act No. 73–680 of 13 July 1973, section 3) (1 month's notice if employed from 6 months to under 2 years, 2 months' notice if employed for at least 2 years); Haiti, Labour Code, section 36 (15 days' notice if employed from 3 months to 1 year, one month's notice if employed from 1 to 3 years, 2 months' notice if employed from 3 to 10 years, 3 months' notice if employed for more than 10 years); Hungary, Labour Code, section 27 (15 days' notice before 10 years' service; 4 weeks' notice after 10 years' service, 5 weeks' notice after 20 years' service, 6 weeks' notice after 30 years' service); Ireland, Minimum Notice and Termination of Employment Act, section 4 (1 week's notice if employed from 13 weeks to 2 years, 2, 4, 6, 8 weeks' notice respectively if employed from 2–5, 5–10, 10–15 or more than 15 years); Khmer Republic, Labour Code, section 71 (2 days' notice if up to 3 months' service, 4 days if from 3 to 6 months' service, 8 days if from 6 months to one year, 15 days if from 1 to 2 years, 1 month if from 2 to 5 years, 2 months if from 5 to 10 years, 3 months if over 10 years); Lebanon, Labour Code, sections 13 and 50 (1 month's notice if up to 3 years' service, 2 months' notice if 3 years' or more service); Malta, Conditions of Employment (Regulation) Act, section 25(3) (3 days' notice if from 1 to 6 months' service, 1 week's notice if 6 months' to 1 year's service, 2 weeks' notice if from 1 to 2 years' service, 4 weeks' notice if more than 2 years' service); Netherlands, Civil Code, sections 1639I and 1639J (number of weeks' notice equal to the number of years' service, up to 13 weeks (but not less than the pay period which may not be more than 6 weeks)); Singapore, Employment Act, section 10 (1 day's notice for up to 26 weeks' service, 1 week's notice for 26 weeks' to 2 years' service, 2 weeks' notice for 2 to 5 years'

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age[1] Since these notice periods are generally minimum periods, which may be increased by collective agreement, in practice the actual notice periods to which workers are entitled may differ for different categories of workers covered by different collective agreements. In certain other countries the legislation requires the giving of a period of notice, the length of which is to be specified by regulations or collective agreements, but no information is available regarding such regulations or agreements.[2]

Compensation in Lieu of Notice Period

108. In most countries in which a period of notice is required before termination of employment, it is provided that the employer may, instead of giving such notice, or must where he has failed to give such notice, pay to the worker compensation equivalent to the amount of remuneration he would have received if he had been employed during the notice period. Where express provision to this effect is not made, the position would seem to be the same, inasmuch as an employer who terminates the employment of a worker without giving the required notice would be obliged to compensate the worker for remuneration lost during the notice period.

Time Off to Seek Other Employment

109. According to Paragraph 7(2) of the Recommendation, the worker should be entitled to a reasonable amount of time off without loss of pay during the period of notice, as far as practicable, in order to seek other employment. A number of countries make provision in their legislation for such time off, sometimes granting the worker "reasonable" time off to seek new employment or an amount of time "appropriate" or "necessary" for this purpose[3], but usually specifying that one or two hours per day or one or two days per week during the notice period, or on occasion a longer amount of time off, should be afforded to the worker.[4] In most cases the

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service, 4 weeks' notice for over 5 years' service); Switzerland, Code of Obligations, section 336*a* and 336*b* (1 month's notice if less than 1 year's service, 2 months' notice if from 1 to 9 years' service, 3 months' notice if more than 9 years' service); Turkey, Labour Act, section 13 (2 weeks' notice during first 6 months' employment, 4 weeks if 6 to 18 months' employment, 6 weeks if 18 months' to 3 years' employment, 8 weeks if more than 3 years' employment); United Kingdom, Contracts of Employment Act, section 1 (1 week's notice for 13 weeks' to 2 years' service, 2, 4, 6, 8 weeks' notice for service from 2–5, 5–10, 10–15 and over 15 years respectively).

[1] Czechoslovakia, Labour Code, section 45 (1 month's notice for workers under 30 years of age, 2 months' notice for workers between 30 and 40 years of age, 3 months' notice for workers over 40 years of age); Sweden, Job Security Act, section 11 (after 6 months' continuous service or 12 months' service during the last 2 years, a worker is entitled to a notice period increasing from 2 months at 25 years of age to 6 months at 45 years of age; workers not so entitled have the right to 1 month's notice).

[2] Congo, Labour Code, section 39; Dahomey, Labour Code, section 32 (the Government states that the text remains to be enacted); Gabon, Labour Code, section 36; Guinea, Labour Code, section 71; Madagascar, Labour Code, section 27; Mauritania, Labour Code, section 20; Morocco, Order of 23 October 1948 fixing Model Works Rules, section 5 of Model Works Rules; Upper Volta, Labour Code, section 35.

[3] Federal Republic of Germany, Civil Code, section 629 (the Government states that this requirement is contained in a series of collective agreements); Greece, Civil Code, section 677; Mauritius, Termination of Contracts of Service Ordinance, section 5; Qatar, Labour Law No. 3 of 1962; Sweden, Job Security Act, sections 14 and 17.

[4] Argentina, Commercial Code, section 157 (2 hours per day); Bulgaria, Labour Code, section 66*(b)* (1 hour per day); Cameroon, Labour Code, section 38(2) (1 day per week); Central African Republic, Labour Code, section 44 (1 day per week); Congo, Labour Code, section 40 (1 day per week); Cyprus, Termination of Employment Law, section 12 (5 hours per week); Dahomey, Labour Code, section 35 (1 day per week); Gabon, Labour Code, section 37 (1 day per week); Ivory Coast, Labour Code, section 38 (1 day per week); Khmer Republic, Labour Code, section 75 (2 days per week); Libyan Arab Republic, Labour Code, section 46 (2 hours per day); Luxembourg, Act

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worker retains entitlement of his full pay for the period of time off. In many countries no provision is made in the legislation for time off during the notice period; little information has been supplied by governments regarding implementation in these countries of this provision of the Recommendation by collective agreements or other methods of implementation.[1]

Certificate of Employment

110. Paragraph 8 of the Recommendation stipulates that a worker whose employment has been terminated should be entitled to receive, on request, at the time of the termination, a certificate from the employer specifying the dates of his engagement and termination and the type or types of work on which he was employed; nothing unfavourable to the worker should be inserted in such a certificate. Such a certificate of employment may be of use to the worker in seeking new employment, as well as for other purposes for which a record of his previous employment may be required.

111. Legislative provisions in many countries require the employer to provide to a worker, on termination of his employment, a certificate indicating the dates of entry into and termination of the employment, and the nature of the work undertaken, and occasionally also the rate of remuneration paid.[2] In several countries indications

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respecting workmen's contracts of employment, section 19 (up to 8 hours during notice period); Consolidated Text of 12 November 1971 regulating private employees' contracts of employment, section 22 (up to 6 days during the notice period); Madagascar, Labour Code, section 28 (1 day per week); Mali, Labour Code, section 40 (1 day per week); Mauritania, Labour Code, Book I, section 21 (1 day per week); Morocco, Order of 23 October 1948 on Model Works Rules, section 5 (2 hours per day up to 8 hours per week or 30 hours per month); Nicaragua, Labour Code, section 116 (1 hour per day); Niger, Labour Code, section 38 (1 day per week); Upper Volta, Labour Code, section 36 (1 day per week); Republic of Viet-Nam, Labour Code, section 36 (2 hours per day, unless worker is employed by hour or by task). The Government of Algeria indicates that a new draft Labour Code (section 34) provides for 2 hours per day time off to seek other employment.

[1] The Government of France indicates that workers in most occupations and regions are entitled to 2 hours' leave per day to seek other employment in accordance with usages and collective agreements; the Government of Tunisia states that it is usual practice for time off to seek other employment to be afforded; the Government of New Zealand states that such time off is only provided for in some recent redundancy agreements.

[2] Algeria, Labour Code, section 24; Bangladesh, Commercial Employment (Standing Orders) Ordinance, section 21 (no indication is given of the contents of the certificate); Cameroon, Labour Code, section 49; Central African Republic, Labour Code, section 56; Congo, Labour Code, section 46; Cyprus, Termination of Employment Law, section 8; Czechoslovakia, Labour Code, section 60; Dahomey, Labour Code, section 43; Egypt, Labour Code, section 86 (indications of wages, and other benefits may be given if requested by the worker); Ethiopia, Civil Code, section 2588; France, Labour Code, section L.122-16; Gabon, Labour Code, section 49; Federal Republic of Germany, Civil Code, section 630; Industrial Code, section 113, Commercial Code, section 73 (indications concerning the conduct and performance, of the worker must be included if requested by the worker); Greece, Act No. 2112 of 11 March 1920, section 2 (statement of worker's qualifications and conduct if requested by the worker); Royal Decree of 16 July 1920 extending Act No. 2112 to manual workers, section 4; Guatemala, Labour Code, section 87 (includes statement of wages and, if worker requests, manner of performance and reasons for termination); Haiti, Labour Code, section 44 (includes statement of wages); India, Model Standing Orders issued under the Industrial Employment (Standing Orders) Act (contents of certificate do not appear to be specified; the Government's report states that the law does not prohibit inclusion of anything unfavourable to the worker); Iraq, Labour Code, section 21 *(e)* (amount of wages and other benefits to be included); Italy, Civil Code, section 2124 (certificate must be provided if workbook is not obligatory); Ivory Coast, Labour Code section 50; Khmer Republic, Labour Code, section 89; Libyan Arab Republic, Labour Code, section 58 (salary and other benefits to be included, as well as any other information requested by and in the interest of the worker); Luxembourg, Act of 24 June 1970 regulating Workmen's Contracts of Employment, section 21; Consolidated Text of 12 November 1971 containing laws on contracts of employment of salaried employees, section 23; Madagascar, Labour Code, section 39; Mali, Labour

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concerning the conduct of the worker or the reasons for termination must be included in the certificate if requested by the worker.[1] In a number of countries in which provision is made for work books, the legislation requires employers to give the worker his work book on termination of employment in due and proper form.[2] In certain of these countries, while sanctions may not be mentioned in the work book, the reasons for termination of employment are to be entered therein with mention of the applicable provisions of the law[3]; in addition, a certificate of employment stating the work performed, skills, duration of employment and the rate of remuneration must be given to the worker if requested by him.[4] In one country a certificate of employment stating only the nature and duration of employment must be delivered in the absence of a work book.[5]

Code, section 50 (certificate to be delivered in absence of work book specifying nature and duration of employment); Malta, Contracts of Employment (Regulation) Act, section 27 (statement of reason for termination and rate of wages, if the worker so desires); Mauritania, Labour Code, Book I, section 28; Mauritius, Employment and Labour (Termination of Employment Certificate) Regulations, 1972; Mexico, Federal Labour Act, section 132 (VIII); Morocco, Dahir of 12 August 1913, containing the Code of Obligations and Contracts, section 745*bis* (inserted by Dahir of 8 April 1938); Netherlands, Civil Code, section 1638aa (indications regarding the worker's performance and the reasons for termination of his employment are to be given at his request); New Zealand, Factories Act, section 35 (applicable to workers leaving a factory) (the Government states that some arbitration awards and industrial agreements covering employers other than factories contain similar clauses); Niger, Labour Code, section 50; Inter-occupational Agreement of 15 December 1972, section 35; Norway, Basic Agreement, section 17 (containing also wage rate, date of last holiday, whether discharged, but without giving reason for discharge); Panama, Labour Code, section 128(14) (remuneration paid included in certificate); Qatar, Labour Law No. 3 of 1962, section 22 (last remuneration paid indicated); Tunisia, Labour Code, section 27; Turkey, Labour Act, 1971, section 20; Upper Volta, Labour Code, section 47; Republic of Viet-Nam, Labour Code, section 47; Zambia, Employment Act, section 79; Netherlands (Surinam), Civil Code, section 1614Z (the reason for discharge may be included at the request of the worker).

[1] Greece, Guatemala, Malta, Federal Republic of Germany, Netherlands, Netherlands (Surinam).

[2] Bulgaria, Ordinance concerning work books of 31 March 1953; Byelorussian SSR, Labour Code, section 39; Mali, Labour Code, section 50; Romania, Labour Code, section 137(3); Ukrainian SSR, Labour Code, section 48; USSR (Russian SFSR, Labour Code, section 39).

[3] Bulgaria, Byelorussian USSR, Ukrainian SSR, USSR (Russian SFSR).

[4] Byelorussian SSR, Labour Code, section 40; Ukrainian SSR, Labour Code, section 49; USSR (Russian SFSR, Labour Code, section 40).

[5] Mali.

CHAPTER VI

INCOME PROTECTION ON TERMINATION OF EMPLOYMENT

112. According to Paragraph 9 of the Recommendation, some form of income protection should be provided for workers whose employment has been terminated; such protection may include unemployment insurance or other forms of social security, or severance allowance or other types of separation benefits paid for by the employer, or a combination of benefits, depending upon national laws or regulations, collective agreements and the personnel policy of the employer. As previously indicated, the benefits provided for in this Paragraph of the Recommendation in connection with protection of the worker's income on termination of employment are distinct from compensation for unjustified termination of employment (provided for in Paragraph 6 of the Recommendation), and from compensation in lieu of a period of notice (provided for in Paragraph 7), even though all these types of compensation will have the effect of supplying income to the worker who has lost his employment.

113. The programmes or schemes through which income protection may be afforded to workers whose employment has been terminated vary widely in their nature, methods of financing, conditions for entitlement to benefits or allowances, and the amount and method of payment. While the Recommendation is concerned only with termination of employment at the initiative of the employer, certain benefits or allowances may be payable also where the employment relationship comes to an end otherwise, or even where it has not been terminated but payment of salary has been suspended (as may happen in case of prolonged sickness or suspension of the relationship). The two types of income protection referred to in the Recommendation —social security benefits and severance allowances—will be considered in the following paragraphs.

Social Security Benefits on Termination of Employment

114. A worker whose employment has been terminated may, depending upon the circumstances of the termination, be entitled to benefits providing him with some income protection under different types of social security schemes. Thus, he may receive unemployment benefits under unemployment insurance or assistance programmes while seeking new employment; if his employment was terminated due to incapacity for work or retirement, he may be entitled to an appropriate social security benefit, such as sickness, employment injury, invalidity or old-age benefits. These different branches of social security are dealt with in other international labour Conventions and Recommendations.[1] A general survey in this field was last undertaken by the Com-

[1] Social Security (Minimum Standards) Convention, 1952 (No. 102); Unemployment Provision Convention (No. 44) and Recommendation (No. 44), 1934; Employment Injury Benefits Convention (No. 121) and Recommendation (No. 121), 1964; Invalidity, Old-Age and Survivors' Benefits Convention (No. 128) and Recommendation (No. 131), 1967; Medical Care and Sickness Benefits Convention (No. 130) and Recommendation (No. 134), 1969. The instruments relating to employment injury benefits, invalidity, old-age and survivors' benefits and medical care and sickness benefits revise

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mittee in 1961 in connection with the application of the Social Security (Minimum Standards) Convention, 1952 (No. 102) [1], which contains minimum standards relating to these and other branches of social security. Without attempting to review national law and practice in these fields, the following paragraphs will briefly describe certain of the main features of the principal programmes which may provide some income protection to workers on termination of their employment.[2]

115. The branch of social security most obviously related to loss of income due to termination of employment is that providing unemployment benefits. Due to the difficulties of organising, financing and administering unemployment benefit programmes, such programmes have been introduced mainly in industrialised countries.[3] Most programmes providing unemployment benefits are compulsory unemployment insurance schemes, usually financed by contributions from employers and insured persons (the workers covered by the scheme), sometimes with government subsidies, but occasionally financed by contributions from employers only; some programmes are voluntary unemployment insurance schemes, based on funds established by trade unions which are financed principally by contributions of insured persons and subsidies by governments. Some countries have established unemployment assistance schemes, financed out of public funds, either to supplement the insurance programmes or as the sole programme providing unemployment benefits; allowances under these schemes are subject to a means or income test. Entitlement to unemployment benefits or allowances under these various programmes is generally subject to a number of conditions: unemployment must be involuntary (termination by the worker without good cause, or by the employer for misconduct, generally disqualifies the worker for benefits); a specified minimum qualifying period of insured employment (in the case of insurance programmes) or residence (in the case of assistance programmes) must have been completed; the person concerned must be capable of and available for work and willing to accept suitable employment, and must register at an employment office and report regularly to that office as long as payments continue. Persons fulfilling the prescribed conditions are usually entitled, after a waiting period of several days, to cash benefits generally of a given percentage of a basic wage with additional allowances for dependants. Most such schemes pay unemployment benefits only for a limited period of time, but in some cases are supplemented by assistance schemes which may pay benefits, subject to a means test, after those payable from the insurance scheme have been exhausted. Private schemes set up under collective agreements or through private insurance sometimes provide supplementary unemployment benefits, or may in certain cases constitute the sole source of unemployment benefits.

Conventions adopted in the 1920s and 1930s which are still in force for certain countries. Reviews of national law and practice concerning these branches of social security have been undertaken by the International Labour Office in connection with the revision of the pre-war Conventions (*Benefits in the case of industrial accidents and occupational diseases*, Report V(1), International Labour Conference, 48th Session, 1964; *Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions*, Report IV(1), International Labour Conference, 51st Session, 1967; *Revision of Conventions Nos. 24 and 25 concerning sickness insurance*, Report VI(1), International Labour Conference, 52nd Session, 1968); the revision of the Unemployment Provision Convention, 1934 (No. 44), is being envisaged (In-Depth Review of the Social Security Programme, Governing Body, 185th Session, Geneva, February–March 1972, document GB.185/FA/12/9, paras. 98 and 112).

[1] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 45th Session, Geneva, 1961, Part Three: Minimum Standards of Social Security.

[2] See, generally, *Introduction to Social Security*, Geneva, ILO, 1970).

[3] Unemployment benefit programmes have been established, for example, in Australia, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, Cyprus, Czechoslovakia, Denmark, Egypt, Finland,

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116. Where a worker's employment is terminated because of prolonged sickness, invalidity or old age, he may be entitled to temporary benefits or to pensions which partially replace lost earnings under programmes supplying benefits in case of sickness, employment injury, invalidity or old age.[1] Such programmes have qualifying conditions of a somewhat different nature than those providing unemployment benefits due to the different nature of the contingencies covered. Programmes providing cash benefits as a means of income protection in case of employment injury or sickness generally provide for payment of a percentage of the worker's previous earnings, ordinarily limited to a maximum number of weeks' benefit, after which they are converted into invalidity pensions. Invalidity and old-age pensions are payable in case of invalidity or on attainment of a prescribed age, provided that a specified period of insured employment has been completed (usually considerably shorter for entitlement to invalidity than to old-age pension). Pensions generally consist of periodic payments varying with the amount of an average of a given period of previous earnings, but are sometimes paid at a flat amount.

117. Another approach to the provision of benefits as income protection in certain cases of termination of employment, which has been mentioned by certain countries in this connection, is through the establishment of provident funds either on a statutory basis[2] or on a voluntary basis by the employer or under collective agreements. Such funds are essentially savings funds to which the employer and worker generally make equal contributions and which pay benefits corresponding to the contributions made on behalf of a given worker, together with accumulated interest, in case of retirement at a given age, invalidity or survivorship, as well as in case of emigration at whatever age or withdrawal from covered employment under certain conditions. Statutory funds do not provide benefits in case of termination of employment otherwise than under the above conditions. A worker who is covered by a provident fund set up by the employer would, however, on termination of employment, generally be entitled to recover at least his own contributions to the fund and, under certain conditions, also the employer's contributions.

Severance Allowance and Other Separation Benefits Payable by the Employer

118. Severance or termination allowances, length-of-service bonuses or other separation benefits described in other terms, payable by the employer on termination of a worker's employment, are provided for in the legislation of many countries.[3]

France, Federal Republic of Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Malta, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom, United States, Yugoslavia.

[1] While a large number of countries appear to have set up programmes providing some benefits of one or more of these kinds, only a few have referred in their reports to such programmes in connection with Paragraph 9 of the Recommendation.

[2] For example, national provident funds exist in Ghana, India, Kenya, Malaysia, Nigeria, Singapore, Sri Lanka and Zambia.

[3] Argentina, Commercial Code, sections 157 and 160A; Bangladesh, Employment of Labour (Standing Orders) Act, 1965, sections 17–20; Brazil, Consolidated Labour Laws, sections 477–478, 497–498 and Act to establish a length-of-service guarantee fund, No. 5107 of 13 September 1966; Bulgaria, Decree No. 455 of the Council of Ministers to Approve an Ordinance respecting Indemnities and Benefits in Case of Dismissal, section 4; Byelorussian SSR, Labour Code, section 36; Canada, Labour Code, section 61; Denmark, Act concerning legal relations between employers and salaried employees, section 2*a*; Egypt, Labour Code, sections 73, 76–81 and 83; France, Decree No. 73–808 of 10 August 1973; Guatemala, Labour Code, section 82; India, Payment of Gratuities Act, 1972; Iran, Labour Act, section 33; Ivory Coast, Decree No. 66–388 of 13 September 1966, sec-

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In certain countries the legislation also expressly states that the amount of severance allowance provided for are minimum amounts which may be increased by collective agreement or individual contract of employment[1], or that they are applicable in the absence of provision for other amounts in collective agreements.[2] Some countries indicate that severance allowances are more or less frequently provided for in collective agreements.[3]

119. In distinction to social security programmes which are generally financed by periodic contributions of the insured persons and employers or by public funds, and benefits from which are payable in the contingency covered in an amount varying with the length of the contingency (although sometimes limited to a maximum period of time), severance allowance is an obligation incumbent upon the employer himself payable usually in a lump sum the amount of which does not depend upon the duration of the contingency (for example, unemployment or retirement) but generally upon length of service.

120. The payment of a severance allowance, similarly to unemployment or other social security benefits, provides some income protection to the persons concerned. However, as severance allowances are generally proportionate to the length of service of the worker concerned, they often appear to have also the character of a bonus for the worker's loyalty during his employment, or of an additional wage the payment of which has been postponed, or a kind of compulsory saving, or a share in the value of the undertaking which has increased partly as a result of his efforts.[4]

121. In some cases in which severance allowances are provided for, other sources of income protection such as unemployment benefits, invalidity or old-age pensions, or benefits during incapacity due to sickness or injury, payable under social security programmes, provident funds or private insurance, may also be available. In general, entitlement to various social security benefits does not reduce or eliminate the em-

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tions ID33–ID36, as amended by Decree No. 68–394 of 29 August 1968; Khmer Republic, Labour Code, section 85; Kuwait, Labour Law, No. 38 of 1964, section 54; Lebanon, Labour Code, 1946, sections 54-55; Libyan Arab Republic, Labour Code, sections 47–48; Luxembourg, Act respecting workmen's contracts of service, section 10 (where the undertaking employs fewer than 20 workers, the employer may choose between payment of the severance allowance and granting of a longer notice period), and Consolidated text of laws respecting contracts of service of salaried employees, section 22; Mali, Labour Code, sections 43–45; Mauritius, Termination of Contracts of Service Ordinance, sections 9, 11, 11A, 11B; Mexico, Federal Labour Act, section 621; Morocco, Royal Legislative Decree No. 316–66 of 14 August 1967 to provide for the payment of compensation on the dismissal of certain classes of employees; Royal Decree No. 317–66 of 14 August 1967 to lay down rates and conditions for the payment of dismissal compensation; Pakistan, Industrial and Commercial (Standing Orders) Ordinance, section 12; Panama, Labour Code, sections 224; 226; Qatar, Labour Law No. 3 of 1962, sections 24–25, 27; Sudan, Employers and Employed Persons Ordinance, sections 24–27; Switzerland, Code of Obligations, 1971, sections 339b–339d; Tunisia, Labour Code, section 22; Turkey, Labour Act, section 14; Ukrainian SSR, Labour Code, section 44; USSR, Fundamental Principles of Labour legislation, section 19 (Russian SFSR, Labour Code, section 36); Republic of Viet-Nam, Labour Code, sections 48*bis*–48*quat*. The Government of Algeria refers to provision in a draft labour code for severance allowance payable in case of individual or collective termination of employment by the employer after one year's employment. The Government of Guyana indicates that the adoption of severance pay legislation is envisaged.

[1] For example, France, Tunisia.

[2] Ivory Coast.

[3] Canada, Dahomey, Guyana, New Zealand, Trinidad and Tobago, United States (severance allowances and supplementary unemployment benefits are provided for in many collective agreements). See also, Niger, Inter-occupational Collective Agreement of 15 December 1972, section 34. The Government of Japan states that many collective agreements provide for retirement allowances.

[4] See Report VII(1), op. cit., International Labour Conference, 46th Session, 1962, p. 30.

ployer's obligation to pay a severance allowance.[1] On the other hand, in some countries, where a worker is entitled to benefits from a provident fund, or from private insurance financed at least in part by the employer, entitlement to severance allowance may be diminished or lost.[2]

122. Generally, entitlement to a severance allowance is dependent upon the worker being employed under a contract of indefinite duration, although in some cases workers with fixed-term contracts have the same right.[3] In all countries in which provision for severance allowance is made, such allowance must be paid on termination by the employer, in many cases only if the worker has been continuously employed for a given period (varying from 6 months to 20 years) and in certain of these cases only if the worker has attained a given age.[4] Typically, an exception to entitlement to a severance allowance is made in case of termination by the employer for misconduct of the worker, usually defined in the same manner as the misconduct permitting termination without a period of notice; however, in some countries severance allowance appears to be payable even in case of termination for misconduct.[5] In this respect, the Recommendation (Paragraph 11(1)) provides that in case of dismissal for serious misconduct [6] separation benefits may be withheld. With the exception of termination for misconduct, the allowance is payable in most countries irrespective of the reason for termination; however, in some cases, it is payable only where termination was due to certain enumerated reasons, such as redundancy[7], illness or retirement with a pension[8], or closure or reduction of the work force, unfitness for the post, reinstatement of another worker in the post, call-up for military service or refusal of the worker to transfer to a new locality to which the undertaking is moving.[9] In a number of countries severance allowance is also payable by the employer if the worker terminates the employment relationship under certain circumstances. In some cases, severance allowance is payable if the worker leaves his employment because of given types of misconduct by the employer[10], for "just cause[11],

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[1] There would seem, however, to be some exceptions. See, for example, with regard to reduction of entitlement to severance allowance in case of receipt of old-age or invalidity pension, Guatemala, Labour Code, section 82*(e)*; and Luxembourg, Consolidated text of laws respecting contracts of service of salaried employees, section 22.

[2] For example, Egypt, Labour Code, section 83; Mauritius, Termination of Contract of Service Ordinance, section 11A–11B; Pakistan, Industrial and Commercial (Standing Orders) Ordinance, section 12(6); Qatar, Labour Law No. 3, 1962, section 27; Sudan, Employers and Employed Persons Ordinance, section 27; Switzerland, Code of Obligations, section 339d.

[3] For example, Egypt, Libyan Arab Republic.

[4] The following qualifying periods are provided for: 6 months (Tunisia) 1 year (Bangladesh, Iran (the period need not be continuous), Khmer Republic, Mali, Mauritius, Morocco, Niger, Qatar), 2 years (France, Republic of Viet-Nam), 3 years (Turkey), 5 years (Bulgaria, India, Luxembourg, Sudan, where the worker must also be at least 23 years of age), 10 years (Panama, where the worker must be at least 40 years old if a man, or 35 if a woman), 12 years (Denmark), 20 years (Switzerland, where the worker must be at least 50 years old). In certain other countries in which no qualifying period is expressly provided for, but in which the severance allowance is calculated at a given rate per year of service or part of a year's service, employment for the first year or part thereof may in practice be required, unless a pro rata amount is paid; this will depend upon the interpretation of the provisions concerned.

[5] Denmark, Mexico and Panama.

[6] See Ch. III, para. 56, et seq.

[7] These cases will be considered in the following chapter. See para. 147 below.

[8] Bulgaria.

[9] Byelorussian SSR, Ukrainian SSR, USSR.

[10] Egypt, Guatemala, Khmer Republic, Mexico, Turkey.

[11] Switzerland.

or due to reasons of health.[1] In some countries a worker terminating the employment relationship after a given period of employment (which varies from 6 months to 25 years) is entitled to severance allowance irrespective of the reason for termination[2], although the amount of the allowance is occasionally reduced in case of termination before a given period of service.[3] In several cases, severance allowance must be paid to a worker terminating his employment at a given age [4] or retiring with entitlement to an old-age pension or grant.[5]

123. The amount of severance allowance due is occasionally a fixed sum, such as two weeks' [6] or one month's [7] salary, but in most cases increases with the length of service of the worker. Where it increases with length of service, it is usually calculated at a uniform rate of a given amount or percentage of salary per year of service, which may be from several days' salary to one month's salary per year of service[8], while in several countries the rate itself increases with length of service.[9] In several other cases

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[1] Khmer Republic, Turkey.

[2] The qualifying period is 6 months in Pakistan, 1 year in Qatar, 2 years in Egypt, 10 years in Mali and Panama (in the latter, the worker must be 40 years of age if a man, or 35 if a woman), 15 years in Mexico and Sudan, and 25 years in Lebanon.

[3] In Egypt one-third of the allowance is payable in case of resignation with notice after 2 years' but before 5 years' employment, two-thirds of the allowance is payable in case of resignation from 5 to 10 years' employment and the full allowance is payable in case of resignation after 10 years' employment. Such allowance is payable if the worker has terminated his employment with the required notice; in case of termination without notice due to defined cases of misconduct by the employer, the worker is entitled to the full allowance. In the Sudan a worker who leaves his employment after 15 years' service is entitled to half the allowance, and after 30 years' service to the whole allowance; here too proper notice must be given.

[4] Lebanon and Mauritius (60 years of age in both countries).

[5] Ivory Coast, Mali, Niger, Turkey. In Mali and Niger the severance allowance is replaced by a retirement grant calculated on the same basis and according to the same rules as the former allowance. In the Ivory Coast it is replaced by a special grant of a percentage of that allowance varying with the age at retirement and length of service in the undertaking.

[6] Byelorussian SSR, Ukrainian SSR, USSR.

[7] Bulgaria.

[8] Severance allowance is calculated at approximately 2½ days per year of employment in France (the rate is 20 hours of salary per year of service for hourly paid workers and 1/10th of a month's salary per year of service for monthly paid workers; these are stated to be minimum amounts which may be increased by agreement); 1 week per year of employment in Panama; 12 days' salary per year of employment in Mexico and Tunisia (in the latter, the rate is 1 day's salary per month's service, with a maximum allowance of 3 months' salary); 14 days' salary per year of employment in Bangladesh; 15 days' salary per year of employment in India (with a maximum allowance of 20 months' salary), Iran, Mauritius (15 days', 2 weeks' or half a month's salary, depending upon the method of payment); 20 days' salary per year of employment in Pakistan; and 1 month's salary per year of employment in Argentina (this amount is reduced to half a month's salary per year of employment where termination is due to reduction of work), Brazil (the rate of 1 month's salary per year of service, specified in the Consolidated Labour Laws, sections 477-478, may be doubled in case of closure or reduction of activity not due to *force majeure* for permanent employees; it is replaced in respect of workers opting for the scheme provided for in Act No. 5107 of 13 September 1966 by payments into a length-of-service guarantee fund of 8 per cent of the salary, which is equivalent to just under 1 month's salary per year, but which accumulates interest), Guatemala (payment of an additional month's salary as a penalty in case of unjustified termination distinguishes compensation for such termination from severance allowance), Lebanon (half a month's salary is paid if the worker was employed for less than a year; the total allowance payable may not exceed 10 months' salary).

[9] In Mali the rate increases from 20 per cent of 1 month's salary for each year's employment for the first 5 years, 25 per cent from the 6th to the 10th year, and 30 per cent after the 10th year; in Niger it is 20 per cent of 1 month's salary for each year's employment during the first 5 years, 30 per cent from the 6th to the 10th year, and 35 per cent after the 10th year; in the Ivory Coast 25 per cent of 1 month's salary per year's employment during the first 5 years, 30 per cent from the 6th to the 10th year, and 35 per cent after 10 years. In Morocco severance allowance consists of 48 hours' wages per year of service during the first 5 years, 72 hours per year's service from the 6th to the 10th year,

(footnote continued opposite)

severance allowance is payable not at a given rate per year of employment but at fixed amounts increasing after given periods of employment.[1] In one country a worker is entitled, after 20 years' service (if he is 50 years of age), to a minimum of 2 months' salary as a severance allowance, which may be increased by agreement; if not laid down by agreement, the amount is fixed by the courts at their discretion, but may not in such cases be more than 8 months' salary.[2]

124. In countries in which severance allowance is calculated per year of service, provision is frequently made for payment of the allowance for a full year in case of employment for over 6 months or for the payment of a pro rata amount for parts of a year during which the worker was employed. The wage or salary on which the calculations of severance allowance are based are typically the basic wage or salary increased by other cash benefits, such as a cost-of-living allowance. Often the wage or salary used for calculating the allowance payable is an average wage or salary for a given period of employment, such as the last year or 3 years before termination, but sometimes the last wage or salary paid to the worker is used for this purpose.

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96 hours per year's service from the 11th to the 15th year, and 120 hours per year's service after 15 years' employment. In the Sudan it is calculated at a rate of half a month's salary for each of the first 12 years' employment and 1 month's salary per year of employment thereafter, up to a maximum of 9 months' salary, or if the worker was employed for not less than 20 years to a maximim of 1 year's salary. In Egypt and Libyan Arab Republic severance pay consists of half a month's salary per year's service for each of the first 5 years, and 1 month's salary per year's service thereafter; in Qatar it consists of 3 weeks' salary for each of the first 5 years' employment, 4 weeks' salary per year from the 6th to the 10th year, 5 weeks' salary per year from the 11th to the 20th year and 6 weeks' salary for each year over 20.

[1] In Denmark the severance allowance payable to salaried employees is 1 month's salary after 12 years' service, 2 months' salary after 15 years' service and 3 months' salary after 18 years' service. In Luxembourg workmen are entitled to 1 month's salary after 5 years' employment, 2 months' salary after 10 years' employment, 3 months' salary after 15 years' employment, while salaried employees are entitled to the same allowances and to 6 months' salary after 20 years' employment, 9 months' salary after 25 years' employment and 12 months' salary after 30 years' employment (severance allowance to workmen may be replaced by extended notice periods in undertakings employing fewer than 20 workmen). In the Khmer Republic workers are entitled to 15 days' salary if employed from 1 to 3 years, 1 month's salary from 3 to 5 years, 2 months' salary from 6 to 9 years, 3 months' salary from 10 to 14 years, 5 months' salary from 15 to 19 years, and 6 months' salary from the 20th year of employment. In the Republic of Viet-Nam 1 month's salary must be paid for 2 years' service, 2 months' salary for 3 years' service and an additional 1 month's salary for each additional 3 years of service (or 5 days' salary for each additional quarter of a year).

[2] Switzerland.

CHAPTER VII

REDUCTION OF THE WORK FORCE

125. Paragraphs 2–10 of the Recommendation, discussed in the preceding chapters (Paragraph 11 deals with the special case of dismissal for serious misconduct), are applicable generally to all cases of termination of employment. Paragraphs 12-17 of the Recommendation set forth a number of supplementary provisions concerning specifically reduction of the work force.

126. An undertaking may envisage reduction of the work force for various reasons. Reduction may be due to financial difficulties, a fall in demand for the products or services offered, a decision to alter work methods or introduce new technology with a view to raising productivity and improving competitiveness. The reasons may be entirely internal to the undertaking or have their causes in external factors, such as seasonal change in demand, movements of the business cycle, structural changes [1] resulting from economic or technological factors, including changes in international trade.[2] In countries with planned economies movements of the work force in individual undertakings, industries or regions are normally decided pursuant to a system of planning of manpower distribution based on estimates of labour requirements.

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[1] In its report the Committee on Income Security of the ILO Second European Regional Conference (Geneva, January 1974) (*Provisional Record*, No. 9, paras. 18–22), stressed the importance of measures in favour of workers threatened by structural changes, including, for instance: income protection through social security and other benefits, compensation for the loss of their jobs, possibility of redeployment by training and retraining and financial aid, if necessary, to facilitate geographic mobility.

[2] Pursuant to a decision by the Governing Body at its 184th Session (November 1971), on the question of trade, aid, employment and labour, the International Labour Office is currently preparing several studies on the relationship between international trade and employment, one attempting to assess the order of magnitude of the employment effects, both in developing and industrialised countries, of liberalisation of some ten product groups, the second seeking to analyse the appropriate measures for coping with the possible adverse employment effects, in developed market economies, of trade liberalisation. In the discussion of a preliminary Office report on the matter, stress was placed on the importance of questions relating to reduction of the work force (Governing Body, 190th Session (May–June 1973), document GB.190/PV/II, p. 6).

In this connection, also, it should be noted that the Commission of the European Communities has proposed, on 8 November 1972, to the Council of the Communities, the adoption of a directive concerning the harmonisation of the legislation of member States of the Communities relating to collective dismissals, having regard to the important differences in these countries in the protection of workers in this respect and to the direct influence on the working of the Common Market of these differences. See Commission of the European Communities, Doc. COM(72) 1400, 8 November 1972; and the opinion of the Economic and Social Committee of the European Communities, requested by the Council on 9 November 1972, in *Official Journal of the European Communities*, 22.11.1973 (No. C 100/11–17). The revised proposals, which are currently being discussed by the Working Party on Social Questions of the Council of the Communities (Doc. 460/74 (Soc 46)), include: notification to the appropriate public authority of cases of intended dismissal involving more than a specified number or percentage of workers of an undertaking; prior consultation with workers' representatives and notification of the results of such consultation to the competent authority; right of either party to request mediation by the competent authority; right of the competent authority to oppose the notified dismissal if the reasons invoked are non-existent.

127. Having regard to the number of persons who may be affected and the economic and social impact reductions of the work force may have in a given locality or area, or in a given occupation or industry, special measures for dealing with reductions of the work force envisaged by an employer may be of particular importance. Paragraphs 12–17 of the Recommendation contain in this connection four types of rules: firstly, rules applicable before the reduction is effected: the parties should seek to avert or minimise the reduction, all appropriate questions should be the subject of consultation with workers' representatives as early as possible, the public authorities should be notified in advance where the reduction may have a significant bearing on the manpower situation of a given area or branch of activity; secondly, rules concerning the manner in which the reduction is carried out, specifying that the selection of the workers to be affected should be made according to precise criteria established wherever possible in advance; thirdly, provision for priority of re-engagement, to the extent possible, when the employer again engages workers; and lastly, provision for the full utilisation of national employment agencies to find alternative employment for the workers affected.

128. At the national level two main types of circumstances may be observed. In many countries no special provision is made in national legislation for rules applicable or procedures to be followed in case of reduction of the work force, and termination of employment resulting from such a reduction is subject to the rules relating to termination of employment generally, including those, where they exist, entitling a worker to appeal to a court or tribunal to determine whether the termination was based on a valid reason [1] (for example, whether termination was truly related to the operational requirements of the undertaking and not to other illegitimate reasons, such as trade union activities); in such cases termination is also subject to the general rules concerning notice periods and severance pay. In these countries it will depend upon practice whether the provisions of the Recommendation concerning, for example, consultation of workers' representatives, selection of workers to be affected, and priority of re-engagement, are followed. In some other countries special provisions are applicable to reduction of the work force, either under national legislation or under collective agreements, which sometimes concern the matters dealt with in the Recommendation, and sometimes lay down further rules regarding prior authorisation by various bodies or special notice periods or compensation to be given workers whose employment is terminated in connection with a reduction of the work force.

129. The following paragraphs will deal successively with the principle that reductions of the work force should be averted or minimised; consultation with workers' representatives, trade unions or works councils; notification to, and role of, public authorities; criteria for selection of the workers whose employment is to be terminated; special notice periods and compensation to which workers affected by reductions of the work force may be entitled; rights of re-engagement; and the role of national employment agencies in finding alternative employment.

Avoidance or Minimisation of Reduction of the Work Force

130. Paragraph 12 of the Recommendation provides that positive steps should be taken by all parties concerned to avert or minimise, as far as possible, reductions of

[1] Paragraph 5(2) of the Recommendation provides that the powers conferred on bodies to which appeal against termination of employment may be made should not be construed as implying that they should be empowered to intervene in the determination of the size of the work force of the undertaking, establishment or service.

the work force by the adoption of appropriate measures, without prejudice to the efficient operation of the undertaking, establishment or service. The principle contained in this Paragraph is sometimes reflected in measures envisaged at the national level, of the types mentioned by Paragraph 13(2) of the Recommendation among questions which might be covered by consultations with workers' representatives,[1] including: restriction of overtime or of normal hours, training and retraining, transfers between departments, spreading termination of employment over a certain period, limitations on recruitment, etc. Such measures may be prescribed in collective agreements[2], recommendations of certain joint advisory bodies [3] or, in some cases, in legislation.[4] They may also be envisaged in connection with procedures existing in certain countries under which administrative authorisation for such reductions is required.

Notification and Consultation of Trade Unions, Workers' Representatives or Works Councils

131. According to Paragraph 13(1) of the Recommendation, when a reduction of the work force is contemplated, consultation with workers' representatives should take place as early as possible on all appropriate questions.

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[1] See para. 135 below.

[2] France, National Interoccupational Agreement on Security of Employment, 10 February 1969, section 15 (undertakings contemplating collective dismissals must endeavour to reduce as much as possible the number of dismissals, having recourse in this regard to internal transfers, and must study the suggestions made by the works council to this end; industry-wide joint committees may be called upon to assist in retraining workers for alternative employment); Italy, Inter-confederal Agreement on Dismissals Due to Reduction of Personnel, 5 May 1965, section 2 (reasons for dismissals and practicable means of avoiding them in whole or part without placing an unproductive burden on the employer, are to be discussed if a meeting on the matter is requested by the provincial trade union or the workers' representative). In the United States a certain number of collective agreements provide for certain measures to promote job security, such as division of work, reduction in hours of work, regulation of overtime, regulation of shift work, attrition arrangements, limitations on subcontracting, interplant transfers and relocation allowances (see United States Department of Labor, Bureau of Labor Statistics, *Characteristics of Agreements Covering 1,000 Workers or More, 1 July 1972* (Bulletin 1784, pp. 58–59). The Governments of Malaysia and Trinidad and Tobago indicate that measures to avert or minimise termination of employment due to reductions of the work force are subject to consultation under collective agreements.

[3] The Government of Australia refers to recommended guidelines for adjustment to technological changes issued by the National Labour Advisory Council in February 1969, according to which employers should minimise retrenchment by curtailment of recruitment prior to the introduction of technological changes and through normal labour wastage (the booklet issued by the Council on this subject refers to such measures as introduction of the changes over a period of time (so that national labour turnover can absorb those whose jobs are becoming redundant and that those who are affected can be trained or retrained), transfers to other jobs within the undertaking, or limitations on overtime and recruitment). The Government of India refers to recommendations made by the Indian Labour Conference in July 1957 that rationalisation should be effected without retrenchment.

[4] Byelorussian SSR, Labour Code, section 33, para. 2; Ukrainian SSR, Labour Code, section 40, para. 2; USSR, Fundamental Principles of Labour Legislation, section 17, para. 2 (Russian SFSR, Labour Code, section 33, para. 2). According to these provisions, dismissal due to closure of the undertaking or reduction of its staff is permissible only if it is impossible to transfer the worker to another post, with his consent. In Sweden (Job Security Act, section 7), where an objective cause is required for termination, termination is deemed not to be for an objective cause if the employer can reasonably be required to provide another job for the worker in the undertaking. In Yugoslavia appropriate alternative employment must be obtained for the worker concerned by the work organisation, and it is not authorised to terminate his status in the organisation for reasons of redundancy (Act respecting mutual relationships between workers engaged in collective work, section 57).

132. In several countries provisions in legislation[1] or collective agreements[2] require that trade unions or workers' representatives be notified of planned measures to reduce the work force; whether such notification is merely for information purposes, or serves as a starting-point for consultation of or negotiations with the trade unions or workers' representatives concerned and, if so, what questions are subject to such consultation or negotiations will depend upon the practice of the parties concerned. In a number of other countries provision is made in legislation[3] or collective agreements[4] for consultation

[1] For example, Canada (the Government states that in the federal jurisdiction, Manitoba, Nova Scotia, Ontario and Quebec, when a minimum number of employees are to be dismissed within a period of 4 weeks—or in Quebec 2 months—notice must be given to the trade union concerned or to the employees where there is no union; the minimum number of persons affected is 10 in Nova Scotia and Quebec and 50 in the federal jurisdiction, Manibota and Ontario; the notice required increases from 8 to 16 weeks as the number of persons affected increases); Luxembourg (the Government indicates that the law obliges the employer to notify the competent workers' delegation of any collective dismissals that are envisaged beforehand and in due time).

[2] For example, Ghana (the Government indicates that a good number of collective agreements provide for the giving of advance notice of at least 1 month to the trade union in case any number of employees are declared redundant). In the United States a certain number of collective agreements contain provisions requiring advance notice in case of lay-off, plant shutdown or relocation or technological change (see United States Department of Labor, Bureau of Labor Statistics, *Characteristics of Agreements Covering 1,000 Workers or More, 1 July 1972* (Bulletin 1784), p. 62.

[3] For example, Congo, Labour Code, section 39 (the workers' representatives have 7 days in which to make suggestions); Democratic Yemen, Act No. 1 of 1969 on the Settlement of Labour Reduction Disputes, section *5(a)*, before taking any measures to reduce the work force, the employer and the workers' representatives must hold a meeting, on the request of either party, with a view to reaching a settlement on the measures envisaged; where no agreement is reached, the employers' and workers' organisations may be called upon to intervene; Gabon, Labour Code, section 165 (workers' representatives to give their opinion on the conditions of termination envisaged by the employer following measures of reduction of the work force due to diminution in activity or reorganisation of the undertaking); Mauritania, Labour Code, Book I, section 20 (employer must inform workers' representatives in writing of reductions of the work force due to any diminution of activity or internal reorganisation which is envisaged, with a view to obtaining their suggestions); Sweden, Job Security Act, sections 29–32 (1 month's notice of planned termination due to shortage of work and of extended lay-off must be given to the trade union, which is entitled to require discussions with the employer)

[4] For example, Finland, General Agreement on Protection against Dismissal, 1966, section 5 (planned reductions of the staff for reasons of economy or production are to be notified to the local section on the employees' trade union as soon as the necessity for such action comes to the knowledge of the employer and, if possible, 1 month before the commencement of the reduction; negotiations are to be held on the measures concerned if requested by the employer or the workers' representatives); Italy, Inter-confederal Agreement on Dismissals Due to Reduction of Personnel, 5 May 1965, sections 1–3 (in case of a need to reduce the work force due to a diminution or transformation of activities or production prior notice must be given through the local employers' association, to the provincial workers' organisation, indicating the reasons for the measures envisaged, the number of workers to be affected and the date on which the measures are to take effect; the provincial workers' organisation may request, within 7 days of receiving this notice, a meeting to discuss the reasons for the reduction envisaged and the means of avoiding them either wholly or in part; the measures of termination are to be suspended until the expiration of a given time-limit or until joint recognition within such time-limit that an agreement is impossible; this procedure applies to undertakings normally employing more than 10 workers; where there is a workers' delegate, the procedure is confined to an attempt at conciliation between the management and the workers' delegate); Malaysia (the Government states that either in accordance with collective agreements, general practice or joint voluntary arrangements, workers' representatives are consulted when a reduction of the work force is contemplated and that such consultation generally covers measures to minimise the reduction, placement in alternative employment, selection of workers to be retrenched according to established criteria, priority of re-engagement and payment of retrenchment benefits if not provided for in collective agreements); Malawi (the Government states that provision has been made in collective agreements for consultation with workers' representatives when a reduction of the work force is contemplated); Morocco (the Government states that most collective agreements institute a procedure of consultation in respect of reductions of the work force); Niger, Interoccupational Collective Agreement of 15 December 1972, section 33 (the employer must consult the workers' representa-

(footnote continued overleaf)

of or negotiation with trade unions or workers' representatives in respect of reduction of the work force. In certain countries such consultation or negotiation has been recommended by general collective agreements or by joint advisory bodies.[1] The Government of one country states that labour-management consultation machinery is established in many undertakings and that consultation usually takes place through this machinery on such issues as reduction of the work force.[2] In yet other countries termination of employment in connection with reduction of the work force, as termination for other reasons, requires consent of the factory, works or local trade union committee[3], and the trade union also participates in manpower planning.[4]

133. In certain countries in which provision is made for the establishment of works councils in the undertaking employers are obliged to notify the works council,

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tives); Norway, Basic Agreement of 1969, section 9(2) (management shall confer with the shop stewards (negotiating committee) regarding intended reduction of output or changes in operation of primary importance to the employees; when employment is involved, the employees must be given an opportunity to express their viewpoint through their shop stewards before the decisions of management are put into effect; if the management must disregard the comments of the shop stewards, it shall state its reasons); Trinidad and Tobago (the Government states that collective agreements require prior consultation with workers' representatives in case of closure or reduction of the work force, with a view to finding methods of relief of the impending hardship for workers, including the possibility of continued employment). The Government of the Sudan states that such consultations are held in practice in some undertakings. The Government of Nigeria indicates that proposed legislation would require employers to inform trade unions or workers' representatives of the reasons for and the extent of an anticipated redundancy and to negotiate redundancy payments.

[1] Australia (the National Labour Advisory Council, in the guidelines issued in 1969 on adjusting to technological change, recommends that employers consult with employees through their union officials and/or other recognised employees' representatives about the contemplated changes, and give as much notice thereof as possible); France, National Interoccupational Agreement on Security of Employment, 10 February 1969, preambular paragraph V (recommending conversations between employers' and workers' organisations in an occupation when important changes of structure likely to entail collective dismissals are envisaged in the occupation, with a view to determining the measures liable to limit the social consequences of the decisions and particularly the conditions in which agreements could be concluded with the national employment fund regarding, inter alia, vocational training and retraining, the granting of indemnities and the situation of workers more than 60 years of age); India (the Government refers to the recommendation by the Indian Labour Conference in July 1957, that the employer should furnish information regarding the changes due to rationalisation regarding reduction in the number of jobs, that the employer and employees should meet and discuss the proposal as soon as possible after such notice, that the union should present its views or proposals to the employer within a week after the discussions, that the union should be given an adequate opportunity to study the change and that any differences between the parties should be referred for adjudication or arbitration); Kenya, Industrial Relations Charter (in the event of redundancy, the union concerned should be informed of the reasons for and the extent of intended redundancy; means should be available whereby any questions which may arise affecting all employees or any category of employees covered by the Agreement can be fully and promptly considered with a view to satisfactory settlement).

[2] Japan.

[3] Byelorussian SSR, Czechoslovakia, Ukrainian SSR, USSR. See above, para. 72. The Government of Hungary refers, in this connection, to section 13(2)-(3) of the Labour Code under which the agreement of the works trade union committee is required for the settlement of general questions respecting the employment relationship which are not covered by collective agreement, if they affect the entire undertaking or a large section thereof, and that, where the decisions thus agreed to affect large categories of workers, the works trade union committee shall be consulted as regards their application.

[4] The Governments of the Byelorussian SSR and USSR indicate that the trade unions participate in the preparation of five-year and one-year manpower plans for the various branches of industry, the various regions and undertakings and that on the level of the undertaking, management usually draws up jointly with the works, factory or local trade union committee, five-year staff social development plans, which provide for anticipated changes in manpower requirements, and, having regard to the volume of activities and technological change, for changes in the skills and qualifications of the staff and for measures to ensure the training and retraining of workers.

usually as soon as possible or in good time, of measures contemplated which involve reductions of the work force[1], substantial reductions of the work force[2], or closure of the undertaking or a division thereof.[3] Generally, the employer is required to furnish the works council with information concerning the reasons for the projected measures, as well as to give the works council an opportunity to express its views. He may also be required to have an exchange of views or to discuss the proposed measures with the works council [4] or to seek to reach agreement with it concerning such measures, subject to a procedure of mediation and conciliation where the parties fail to reach agreement which may result in the establishment by a conciliation body of a social compensation plan having the force of an agreement.[5] Provision may also be made for minimum periods between the meeting of the council and the taking of a final decision regarding reduction of the work force.[6] In another country the assembly of workers established in each undertaking and each unit of an undertaking must be

[1] Austria, Works Councils Act, section 14; Belgium, Collective Labour Agreement co-ordinating the National Agreements and Collective Labour Agreements relating to Works Councils, concluded by the National Labour Council on 9 March 1972, section 7 (requiring notification before final decision of planned measures of collective dismissals for economic or technical reasons, where such information is in derogation from information given in annual or quarterly reports to the works council); Collective Labour Agreement relating to Collective Dismissals, adopted by the National Labour Council on 8 May 1973, section 14 (referring to the notification obligation under the aforementioned Agreement and indicating that this notification should permit an exchange of views during which the workers' representatives make known their observations or suggestions; in the absence of a works council, notice should be given to the trade union delegation or, where none exists, the staff or its representatives); France, Ordinance of 22 February 1945, as amended by Act No. 66-427 of 18 June 1966, section 3 *(c)* (obligation to inform works council of planned reduction of personnel; the council is to give its opinion on the measures planned and the methods of application; this opinion is to be transmitted to the competent labour inspector); National Interoccupational Agreement on Security of Employment, of 10 February 1969, sections 10-14 (specifying the conditions for informing and consulting the works council).

[2] Federal Republic of Germany, Works Constitution Act, sections 111-113 (requiring notification of any proposed alterations which may entail substantial prejudice to the staff or a large sector thereof, including reductions of operations or closure of all or important parts of the undertaking, transfer of all or important parts of the undertaking, merger, important changes in the organisation of the undertaking, its purpose or the plant, introduction of entirely new work methods or production processes); Italy, Inter-confederal Agreement concerning the Establishment and Operation of Works Committees, section 3 (obligation to inform the works council of dismissals due to reduction of personnel in undertakings employing more than 100 workers where a work stoppage of more than 30 days affecting more than 20 per cent of the work force, or in any case more than 500 workers, is envisaged, giving the reasons, probable duration of such measures and number of workers affected); Netherlands, Works Councils Act, section 25 (employer must give the works council an opportunity to state its views on any decision concerning closure of the undertaking, a substantial reduction in activities, major changes in organisation, transfer to another location).

[3] Belgium, Royal Order of 20 September 1967 to implement the Act of 28 June 1966 concerning Compensation for Workers Dismissed in case of Closure of the Undertaking, section 4 (obligation to notify the works council in case of planned closure of undertaking or division thereof—closure defined as the definitive cessation of the principal activity of the undertaking or of a division thereof involving a reduction of the work force to less than a quarter of those employed on the average during the preceding year); for Federal Republic of Germany and the Netherlands, see preceding footnote.

[4] Austria, Works Councils Act, section 14; Belgium, Collective Labour Agreement relating to Collective Dismissals, 8 May 1973, section 14.

[5] Federal Republic of Germany, Works Constitution Act, section 112.

[6] France, National Interoccupational Agreement on Security of Employment, 10 February 1969, sections 13-14 (8 days, if the number of persons to be dismissed is from 10 to 49; 15 days if from 50 to 99; 1 month if 100 or above (exception is made for cases of *force majeure* or exceptional economic circumstances); in case the collective dismissals are envisaged within 6 months as a result of a merger, concentration of means of production, or reorganisation, the minimum periods are 1 month if the number of persons to be dismissed is from 10 to 199, 2 months if from 200 to 299, and 3 months if 300 or more; the latter period may be prolonged by agreement where the local employment situation and the available means of vocational training require special measures to be worked out).

consulted on all basic reforms concerning the situation of workers and on all important structural changes of the unit or undertaking.[1]

134. Provision may also be made for industry-wide joint committees of employers' and workers' representatives to play a role in respect of reduction of the work force[2], or for national joint committees to promote negotiations between the parties in respect of staff reductions.[3]

135. According to Paragraph 13(2) of the Recommendation, questions on which consultation should take place might include measures to avoid the reduction of the work force, restriction of overtime, training and retraining, transfers between departments, spreading termination of employment over a certain period, measures for minimising the effects of the reduction on the workers concerned, and the selection of workers to be affected by the reduction. In several countries such measures are expressly referred to in national legislation, collective agreements, or other appropriate texts.[4]

Notification to and Role of Public Authorities

136. According to Paragraph 13(3) of the Recommendation, the parties concerned should bear in mind the possibility of assistance by public authorities in consultations relating to reduction of the work force. Paragraph 14 of the Recommendation further provides that if a proposed reduction of the work force is on such a scale as to have a significant bearing on the manpower situation of a given area or branch of economic activity, the employer should notify the competent public authorities in advance of any such reduction.

137. In a number of countries employers are required to notify public authorities (whether employment offices, labour inspectorates or labour ministries, or other authorities) of planned or intended limitations in production, employment or operations[5], of intention to reduce the work force[6], sometimes by a specified number[7],

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[1] Algeria, Ordinance No. 71-74 of 16 November 1971 concerning socialist administration of undertakings.

[2] For example, France, National Interoccupational Agreement on Security of Employment, 10 February 1969, section 15; see para. 130 above, second footnote.

[3] Sweden, Job Security Agreement, 1973, section 4.

[4] See para. 130 above.

[5] Sweden, Act on Obligations to Report on Certain Planning Matters, 1973, section 1 (obliging employers to submit reports to the County Administrative Board with information concerning expected economic developments, planned or expected extensions or limitations in production, employment or operations).

[6] India, Industrial Disputes (Central) Rules, 1957, as amended, rule 76 (retrenchment of any worker having been employed continuously for 1 year must be notified to the Central Government, the Regional Labour Commissioner, the Assistant Labour Commissioner and the Employment Exchange); Mauritius, Termination of Contracts of Service Ordinance, section 8(1) and (6) (employer intending to reduce work force by any number if he employs from 10 to 99 persons, or by 10 persons if he employs 100 or more, must notify the Minister of Labour with a statement of the reasons for such reduction); Sweden, Act concerning Certain Employment Promotion Measures (to enter into force on 1 July 1974) (requiring advance notification to the County Employment Board of curtailment of production which involves termination of workers' employment or lay-off).

[7] Canada (notice to public authorities is required in the federal jurisdiction, Manitoba, Nova Scotia, Ontario and Quebec, in case of group termination of a minimum number of persons varying from 10 to 50, see para. 132, footnote 1 above); Chile, Labour Code, section 86 and Decree No. 98 of 20 January 1945 (notice must be given to the Labour Inspectorate in case of paralysation of the undertaking or reduction of the work force by more than 10 workers); Federal Republic of Germany, Act respecting Protection against Dismissal, section 17 (employer must notify the national

(footnote continued opposite)

or to close the undertaking or a division of the undertaking[1], or intention to terminate the employment of workers because of redundancy[2], or for economic or technological reasons.[3] In certain cases, similar requirements are to be found in generally applicable collective agreements.[4] In other cases, the requirement to notify the authorities

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employment office, indicating the position taken by the works council, before terminating in any 4-week period the employment of more than 5 persons in undertakings normally employing from 2 to 49 persons), 10 per cent of the work force or more than 25 persons (in undertakings of from 50 to 499 persons) or 50 or more persons (in undertakings employing 500 or more persons)); Madagascar, Decree No. 64-495 of 18 November 1964 to establish an Employment Service, section 13 (employer intending to reduce the work force by at least 10 workers must notify the provincial employment office or, if none, the competent subprefect); Mauritius (10 or more persons in undertakings employing 100 or more – see previous footnote); Norway, Act respecting Measures to Promote Employment, section 14 (previous section 30) (notification to employment service required where the employer decides to reorganise or curtail his activity with the result that he will have to terminate the employment of at least 10 workers in the course of 1 month); Turkey, Labour Act, section 24 (notification to regional employment office is required in case of intention to terminate the employment of one-twentieth or more of the work force—subject to a minimum of 10 persons—at one time or at intervals, so as to reduce the volume of work done or the number of persons employed by him).

[1] Belgium, Act respecting Compensation for Workers Dismissed in case of Closure of the Undertaking, sections 2-3; Royal Order of 20 September 1967 to apply this Act, sections 4-5 (employers who decide to close an undertaking, or division thereof, i.e. definitive cessation of the principal activity of the undertaking or division thereof involving a reduction of the work force to below one-quarter of those employed on the average during the preceding year, are required to notify the Ministries of Employment and Labour and of Economic Affairs, the National Employment Office, the Compensation Fund, and the Chairman of the joint committee concerned; undertakings employing less than an average of 20 workers are excluded from coverage); India (the Government refers to the Industrial Disputes Act as requiring 60 days' notice to the appropriate government, in case of intended closure of an undertaking employing 50 or more persons, with a statement of reasons for the intended closure); Libyan Arab Republic, Labour Code, section 52 (notice of intention to close an undertaking or part of an undertaking definitively or for 2 consecutive months must be made to the Director-General of Labour).

[2] Cyprus, Termination of Employment Law, sections 18 and 21 (notice of any proposed redundancy must be given to the Minister, including the reasons for the redundancy; redundancy is defined as termination of an employee in case of closure or intended closure, transfer or intended transfer to another place where it is unreasonable to expect the employee to continue his employment, or because of modernisation, mechanisation or other changes in methods of production or of organisation which reduces the number of employees necessary, changes in products or production methods or in skills needed, closing of department, marketing or credit difficulties, lack of orders or raw materials, scarcity of means of production and contraction of the volume of work or business); Ireland, Redundancy Payments Act, sections 7 and 17 (copy of notice given to workers dismissed by reason of redundancy to be sent to the Minister; the worker must have been employed for not less than 2 years; dismissal is deemed to be due to redundancy if it is attributable mainly or wholly to the fact that the requirements of the business for employees to carry out work of a particular kind in the place where the worker was employed have ceased or diminished, that the employer has decided to carry on the business with fewer or no employees, that the employer has decided that the work which the employee performed should be done in a different manner for which the employee is not sufficiently qualified or trained or should be done by another person who is also capable of doing other work for which the employee is not sufficiently trained); United Kingdom, Redundancy Payment Act, sections 1, 8 and 30, and Regulations issued under the Act (dismissal is deemed to be due to redundancy if it is wholly or mainly due to the fact that the employer's needs for employees to do work of a particular kind in the place where the employee was employed have ceased or diminished or are expected to cease or diminish; employees are covered by the Act after 2 years' continuous employment; prior notice is required in connection with claims by the employer for rebates under the Act).

[3] Gabon, Ordinance No. 51/PR of 23 September 1964, section 4; Tunisia, Labour Code, section 21 (notification of labour inspectorate required in case of intended termination of employment, for economic or technical reasons, of all or part of the permanent staff).

[4] Finland, General Agreement on Protection against Dismissal, 22 February 1966, section 5 (employer to notify public labour authorities at the same time as the trade union, if 10 or more workers are to be affected, in case reduction of the work force for reasons of economy or production is envisaged); Niger, Inter-occupational Collective Agreement, 15 December 1972, section 33 (em-

(footnote continued overleaf)

concerned in case of reduction of the work force is simply an aspect of a more general requirement to notify these authorities[1], or to seek their authorisation [2] in all instances of termination of employment.

138. National provisions variously require the employer to notify a proposed reduction of the work force to public authorities "forthwith"[3], "without delay"[4], a certain time before notice is given to the worker or termination of his employment[5], at the time such notice is given[6], at least a given period before the reduction is to take place[7], or as soon as practicable in advance of such reduction.[8] In some countries the length of notice to be given to the public authorities varies with the number of persons to be affected by the reduction.[9]

139. The intervention of public authorities, whether at the request of the parties (Paragraph 13(3) of the Recommendation) or where they are to be notified in advance of significant reduction of the work force (Paragraph 14), may be useful in assisting the parties concerned to find means of averting or minimising the reduction contemplated, or in bringing to bear at an early stage in negotiations between the parties over the measures envisaged, the various methods of disputes settlement available.

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ployer to notify the employment service if any collective dismissals due to reduction of activity of the undertaking or to internal reorganisation are envisaged).

[1] See para. 71 above.

[2] See para. 72 above.

[3] Mauritius, Termination of Contracts of Service Ordinance, section 8.

[4] Belgium, Royal Order of 20 September 1967, section 3.

[5] Niger, Inter-occupational Collective Agreement, 15 December 1972, section 3 (notice to be given to the employment service 8 days before notice is given to the workers affected).

[6] Ireland, Redundancy Payments Act, section 17 (provides for sending a copy of the notice given to the worker to the Minister; the period of 2 weeks' minimum notice required to be given to the worker under this provision in cases of redundancy must be read subject to the longer notice period required for termination of the employment of workers employed for 5 years or more in the Minimum Notice and Terms of Employment Act, 1972, section 4); Luxembourg, Grand-Ducal Order creating a National Employment Office, section 12, para. 1 (notice to the Office immediately after notice has been given to the worker).

[7] One month's notice: Chile, Labour Code, section 86; Finland, General Agreement on Protection against Dismissal, section 5 (1 month's notice if possible); Federal Republic of Germany, Protection against Dismissal Act, sections 17-18 (a waiting period of 1 month from the notification to the National Employment Office is imposed, which may be decreased or increased under certain conditions); Turkey, Labour Act, section 24. Two months' notice: Libyan Arab Republic, Labour Code, section 32; Madagascar, Decree No. 64-495 of 18 November 1964 to establish an employment service, section 13; Norway, Act respecting Measures to Promote Employment, section 14 (previously section 30).

[8] Cyprus, Termination of Employment Law, section 21.

[9] Canada (the Government states that notice is to be given to unions and public authorities in case of group termination of employment as follows: in the federal jurisdiction and Manitoba, termination of 50-100 workers—8 weeks' notice; 101-300 workers: 12 weeks' notice; over 300 workers: 16 weeks' notice; in Nova Scotia and Quebec, termination of 10-99 workers: 8 weeks' or 2 months' notice, respectively; 100-300 workers: 12 weeks or 3 months, respectively; over 300 workers: 16 weeks or 4 months, respectively; in Ontario, termination of 50-199 workers: 8 weeks' notice; 200-499 workers: 12 weeks' notice; 500 or more workers: 16 weeks' notice); Sweden, Act concerning Certain Employment Promotion Measures, section 2 (at least 2 months if up to 25 workers are affected, at least 4 months if more than 25 but up to 100 workers are affected, at least 6 months if more than 100 workers are affected; as soon as possible if the employer was not able to foresee the circumstances causing the curtailment in production as far in advance as otherwise required); United Kingdom, Redundancy Payments Act, section 30 and Regulations adopted under the Act (14 days' notice of redundancy if up to 10 workers affected, and 21 days' notice of redundancy if more than 10 workers are affected, if possible; otherwise, the employer may lose rights to rebates on payments made; notice must include expected date of termination of employment and reasons for redundancy).

It will also permit the competent authorities, if it is not found possible to avert or minimise the reduction, to plan for and organise various measures to assist the workers affected to find alternative employment.

140. In some cases, other types of powers are accorded to certain bodies after notification of an anticipated reduction of the work force. In several countries the labour administration [1] or a tripartite committee constituted by that authority [2] may either postpone or advance the date on which the reduction is to take effect. In other countries the powers of the competent bodies may be more far-reaching. In certain cases, public authorities [3] or a tripartite body [4] are called upon to verify the validity of the reasons for the reduction; if they decide that reduction of the work force is not justified, and the employer nevertheless terminates the employment of the workers concerned, these workers are entitled to special compensation. In other countries prior authorisation by public authorities must be obtained in case of reduction of activities[5], termination of employment or reduction of the work force due to economic or technical reasons[6], termination of all or part of the work force[7], or of a given

[1] Luxembourg, Grand-Ducal Order of 30 June 1945 to create a National Employment Office, section 12, paras. 2 and 3 (as amended by Act of 24 June 1970 respecting workmen's contracts of employment, section 20) (notice period may be reduced at request of employer or increased to 8 weeks).

[2] Federal Republic of Germany, Protection Against Dismissal Act, sections 17-18 (termination may not be effected before 1 month from notification without authorisation; this period may be extended to 2 months from such notification; before decision, the tripartite committee is to hear the employer and the works council, must obtain the necessary information, and must take into account both the interests of the employers and the workers affected and the general interest, as well as the situation of the labour market).

[3] Chile, Labour Code, section 86, and Decree No. 98 of 10 February 1945 (decision is by resolution of the Ministries of Economy and Commerce and of Labour, following the necessary investigations and after the trade union concerned has had the opportunity of being heard; if approval is refused, the employer may nevertheless terminate the workers concerned, but must pay compensation of 15 days' wages for each year of service or part thereof in excess of 9 months (this amount may have been superseded by the compensation for unjustified termination, in the absence of reinstatement, of 1 month's wages for each year of service, or part thereof of 6 months or more, provided for in Act No. 16455 of 5 April 1966 to issue rules for the termination of contracts of employment, section 8)).

[4] Mauritius, Termination of Contracts Service Ordinance, section 8 (if the tripartite board constituted by the Minister decides that the planned reduction of the work force is unjustified, the employer is required to pay to any worker whose employment is terminated 6 times the severance allowance otherwise payable, which is the same compensation payable in case of unjustified termination generally).

[5] Iraq, Labour Code, section 26*(f)* (prior approval of the Minister of Labour and Social Affairs required for reduction of activities in the private sector; decision by the responsible Minister after approval by the Minister of Labour required in case of workers employed in official and semi-official services of the state and public sector); Panama, Labour Code, sections 215-216 (prior authorisation required for termination due to reduction of operations or activities for various reasons).

[6] Peru, Legislative Decree No. 18471 of 10 November 1970 to Prescribe the Grounds for Dismissal of Workers Employed in the Private Sector, sections 1*(b)* and 5 (decision on reductions of the work force due to economic or technical reasons, unforeseen causes or *force majeure* to be made by the labour authority if the representatives of the employer and workers are unable to reach agreement in conciliation proceedings); Spain, Decree No. 3090/1972 of 2 November 1972 on Employment Policy, sections 7-25, and Order of 18 December 1972 to apply these provisions (prior authorisation required for termination of employment of permanent workers due to technological or economic reasons).

[7] Morocco, Royal Legislative Decree No. 314-66 of 14 August 1967 to Provide for the Maintenance of Operations in Industrial and Commercial Undertakings and for the Dismissal of Their Employees (authorisation required for closure or dismissal of all or part of the work force without replacing them; contravention of this requirement is sanctioned by imprisonment or fine in case of closure, or fine in case of reduction of the work force).

percentage of the work force[1], usually following a procedure permitting the interested parties to give their opinion and following any investigations or inquiries deemed necessary. In several cases, reduction of the work force for given reasons [2] or redundancy [3] must be submitted to a labour tribunal for approval. In some of these various cases in which prior approval is required for reductions of the work force, termination of employment as part of such a reduction which is carried out without such approval is stated to be null and void[4], to be unjustified termination[5], or to make the employer liable to penal sanctions.[6] In several countries in which prior authorisation by public authorities is required for cases of individual termination of employment, the provisions concerned, which may in certain cases be impractical of application where only individual termination is involved, may permit the authorities to verify the justification of termination of employment in cases involving reduction of the work force.[7]

141. In countries with planned economies, in which manpower requirements and changes are subject to the planning process, the public authorities would normally be involved in decisions entailing reductions of the work force in an industry, region or undertaking.[8]

Criteria for Selection of the Workers to Be Affected by a Reduction of the Work Force

142. According to Paragraph 15(1) of the Recommendation, the selection of workers to be affected by a reduction of the work force should be made according to precise criteria, which it is desirable should be established wherever possible in advance, and which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers. Paragraph 15(2) states that these criteria may include *(a)* need for the efficient operation of the undertaking, establishment or service, *(b)* ability, experience, skill and occupational qualifications of

[1] Greece, Acts Nos. 99 and 173 of 1967 concerning Control of Collective Dismissals (collective dismissal, defined as dismissals in undertakings employing more than 50 persons which exceed during any month a fixed percentage of the work force employed at the beginning of the month—which may be from 2 to 10 per cent but which, according to the Government, has been fixed at 6 per cent since the entry into force of the Act—requires prior authorisation and is null without such authorisation).

[2] Mexico, Federal Labour Act, sections 434-435 and 439 (prior authorisation by the conciliation arbitration tribunal is required for termination of employment due to installation of machinery or new methods of work entailing reduction of the work force, *force majeure* or unforeseen events, inability of the undertaking to pay its way, etc.).

[3] Kenya, Trade Disputes Act, section 9 A (6).

[4] Greece. Spain, Decree No. 909/1966 of 21 April 1966 concerning procedures on labour matters, section 116.

[5] Panama.

[6] Morocco.

[7] For example, France, Mali, Netherlands, Sri Lanka (see above para. 72, fourth footnote). In Sri Lanka, where the legislation concerned is not applicable to disciplinary dismissal, the requirement of prior authorisation would seem to be aimed in large part at termination in connection with reduction of the work force.

[8] For example, the Government of Bulgaria indicates that reductions of the work force are effected by decisions of the public authorities to reduce the budget for staff, the Governments of Byelorussian SSR and USSR refer to the system of planning of the national economy, including planning of manpower requirements, and the Government of Cuba indicates that movements of personnel due to rationalisation measures, closure or merger of units or services, etc., are carried out through obligatory co-ordination between the administrations of the organisations and the Ministry of Labour.

individual workers, *(c)* length of service, *(d)* age, *(e)* family situation, *(f)* such other criteria as may be appropriate under national conditions; the order and relative weight of these criteria are left to national customs and practice. As mentioned earlier in this chapter, under Paragraph 13(2) of the Recommendation, the selection of workers to be affected by a reduction of the work force might be included among questions on which consultation with workers' representatives should take place.

143. Criteria for selection of the workers to be affected by a reduction of the work force are laid down in a number of countries by legislation [1] or by collective agreement.[2] Such criteria may be determined by agreement between the employer and the works council (or in absence of agreement, by a conciliation committee)[3], or by the works council alone where the employer is represented thereon, but without affecting the power of decision of the management regarding the organisation and operation of the undertaking.[4] In certain countries the criteria, if not determined by collective agreements, are to be laid down by works rules, in the establishment of which the works council or workers' representatives are entitled to give their opinion.[5] Such

[1] Argentina, Commercial Code, section 157(3); Bangladesh, Employment of Labour (Standing Orders) Act, section 13; Byelorussian SSR, Labour Code, section 34; Congo, Labour Code, section 39; Czechoslovakia, Notification No. 174 of 1970; Democratic Yemen, Act No. 1 of 1969 concerning Settlement of Labour Reduction Disputes, section 9; India, Industrial Disputes Act, section 25G; Mali, Labour Code, section 41; Malta, Conditions of Employment (Regulation) Act, section 25 (2) A; Mauritania, Labour Code, Book I, section 20; Mexico, Federal Labour Act, section 437; Morocco, Order of 23 October 1948 to Fix Model Works Rules, section 4 of the Model Works Rules; Niger, Labour Code, section 37; Pakistan, Industrial and Commercial Employment (Standing Orders) Ordinance, Standing Order No. 13; Panama, Labour Code, section 213C; Spain, Decree No. 3090, of 2 November 1972, on Employment Policy, section 15; Sweden, Job Security Act, section 22; Ukrainian SSR, Labour Code, section 42; USSR (Russian SFSR, Labour Code, section 34). The Government of Algeria refers to draft legislation laying down such criteria.

[2] For example, Italy, Inter-confederal Agreement on Dismissals Due to Reduction of Personnel, 5 May 1965, section 2; Kenya, Industrial Relations Charter, 1962; Madagascar (the Government states that collective agreements provide for such criteria); Netherlands (the Government states that a number of collective agreements prescribe such criteria); New Zealand (the Government refers to an industrial award containing such criteria); Niger, Inter-occupational Collective Agreement, 15 December 1972, section 33 (identical with section 37 of the Labour Code). In the United States criteria for selection of workers to be terminated or laid off are included in many collective agreements (see Bureau of National Affairs, *Collective Bargaining: Negotiations and Contracts* (Washington, DC, loose-leaf), 60:61).

[3] Federal Republic of Germany, Works Constitution Act, section 95 (guidelines for the selection of employees for termination require the approval of the works council, in the absence of which the employer may apply to the conciliation committee for a decision, which takes the place of an agreement; in establishments with more than 1,000 employees, the works council may request the drawing up of guidelines on the technical, personal and social criteria to be applied in selecting workers for termination and, in the absence of agreement, the conciliation committee shall take a decision on the matter, which takes the place of an agreement).

[4] Belgium, Collective Labour Agreement co-ordinating the National Agreements and Collective Labour Agreements concerning Works Councils, concluded by the National Labour Council on 9 March 1972, section 12 (general criteria to be applied in case of termination due to economic or technical circumstances are to be determined by the works council on the proposal of the management or the workers' representatives, without prejudice to the powers of decision of management regarding the organisation and operation of the undertaking; according to the commentary to this provision, management retains the power to decide what parts of the undertaking, functions and skills are to be affected by the terminations) (the provision in question is adopted in application of section 15*(e)* of the Act of 20 September 1948 on the organisation of the Economic Life of the Country, providing for examination by the works councils of the general criteria to be followed in case of termination of workers).

[5] For example, France, Ordinance of 24 May 1945 concerning Placement of Workers and Control of Employment, section 10 (employers are to establish works rules—after obtaining the opinion of the works council or workers' representatives—which are to determine, in the absence of provisions

(footnote continued overleaf

criteria may also be established by the administrative authorities which are required to give prior authorisation for termination of employment.[1] In another country, in which prior authorisation is required in certain cases of reduction of the work force, the choice of the persons to be affected is made in agreement with a tripartite committee.[2] In certain countries, although the legislation does not lay down the criteria to be followed for selection of workers to be affected by a reduction of the work force, the courts or tribunals consider, in case of complaint, whether the selection by the employer for termination of the individual worker was unfair[3], or socially unwarranted[4], having regard to the circumstances of the case.

144. In a number of countries length of service (seniority) is either the sole criterion mentioned [5] (sometimes stated to be applicable within the category of workers affected by the reduction of the work force), or is supplemented by further criterial[6], such as age[7], nationality, trade union membership and efficiency[8], or the worker's

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in collective agreements, the general rules governing the order of termination, in case of collective termination, having regard to family responsibility, seniority and occupational skills).

[1] The Government of the Netherlands indicates that some of the criteria mentioned in the Recommendation are applied by the district employment offices, in connection with granting permission for termination of workers, in accordance with directives for these offices.

[2] Iraq, Labour Code, section 26*(f)* (the Government states that the tripartite termination of contracts of employment committee takes into account all relevant factors, including the interests of the workers and of the undertaking or project).

[3] United Kingdom (the Government states that under section 24(6) of the Industrial Relations Act, the tribunals have usually considered whether in the particular circumstances of the case the employer was justified in selecting the complainant for redundancy).

[4] Federal Republic of Germany, Protection against Dismissal Act, section 1(3) (even where an employee is dismissed due to urgent operating requirements, his dismissal is socially unwarranted if, when selecting the employee for dismissal, the employer failed to take account or took insufficient account of social considerations, except where technical, economic or other justifiable operating requirements necessitate the continued employment of one or more particular employees and consequently do not permit the selection to be made according to social considerations). The Government of Austria refers, in connection with the selection of workers to be affected by a reduction of the work force, to the possibility under section 25 of the Works Councils Act, for a council to oppose dismissals deemed by it to be particularly harsh from a social point of view and not justified by the situation of the undertaking.

[5] Argentina, Commercial Code, section 157(3); Bangladesh, Employment of Labour (Standing Orders) Act, section 13 (employer ordinarily to retrench the last person employed in a category of workers, unless for reasons to be recorded in writing, he retrenches another worker); India, Industrial Disputes Act, section 25G (same provision as in Bangladesh); Malta, Conditions of Employment (Regulation) Act, section 25(2) (termination on grounds of redundancy to begin by the last person engaged in the class of employment affected by such redundancy, except where such person is related to the employer); Mexico, Federal Labour Act, section 437; Pakistan, Industrial and Commercial Employment (Standing Orders) Ordinance, Standing Order No. 13 (retrenchment of last the person employed in a category of workers); Spain, Decree No. 3090/1972 on Employment Policy, section 15 (termination in each category of worker and, as a general rule, beginning with workers having the least seniority; exceptionally, on request by the undertaking and after hearing the trade union, the labour authority may authorise the undertaking not to observe the seniority rule); United States (a number of collective agreements) (see paragraph 143, second footnote). The Governments of Nigeria and Zambia indicate that the seniority principle ("first in—last out") is applied in practice. The Government of Singapore indicates that, while the selection of workers to be affected by a reduction of the work force is at the discretion of the employer and depends upon the interests of the undertaking concerned, the principle of "first in, last out", is often observed.

[6] United States (a number of collective agreements) (see para. 143, second footnote).

[7] Sweden, Job Security Act, section 22.

[8] Panama, Labour Code, section 213(C) (workers with least seniority to be terminated first; once this rule is applied, preference for retention in employment is to be given to nationals, trade union members, and the most efficient workers). In connection with the criterion of nationality, see para. 23 *in fine* of the present survey.

social situation[1], which are applicable in case of equal seniority. In a number of other countries the principal criterion applicable is occupational ability, skills or efficiency; in case of equality in this regard, selection is to be based on length of service[2], length of service combined with family situation[3], or family situation followed by length of service, and other factors.[4] In several other countries legislation or collective agreements stipulate that several criteria are to be applied concurrently[5], such as seniority and efficiency [6]; seniority, family situation and whether disabled in wartime or in connection with work [7]; ability, seniority and family situation [8]; or technical and production requirements, seniority and family situation.[9] The governments of several countries indicate that the criteria mentioned in Paragraph 15 of the Recommendation, or certain of these criteria, are applied in practice.[10] In some cases, where one or more of the above-mentioned criteria are stated to be generally applicable, provision is made for special priority to be given to certain particular categories of workers, such

[1] Finland (criteria applied in practice, according to the Government).

[2] Kenya, Industrial Relations Charter (skill, merit, ability and reliability; if equal, last in first out; United States (a number of collective agreements) (see para. 143, second footnote).

[3] Congo, Labour Code, section 39; Mauritania, Labour Code, Book I, section 20; Niger, Labour Code, section 37, and Inter-occupational Collective Agreement, 15 December 1972, section 33. (Under these provisions, length of service is deemed to be increased by one year for a married worker and for each dependent child.) The Government of Algeria indicates that draft legislation provides for termination, first, of the least qualified workers, then of those with the least seniority, and finally of those with the fewest dependants and persons having priority in employment.

[4] Byelorussian SSR, Labour Code, section 34; Ukrainian SSR, Labour Code, section 42; USSR (Russian SFSR, Labour Code, section 34). (In case of equal skills and productivity, preference is to be given to those maintaining two or more family dependants; those whose family does not include any other person engaged in remunerated activity; those having a long uninterrupted record of service; those who sustained an industrial accident or occupational disease in the undertaking; those who have improved their skills during employment by attending a training establishment; disabled veterans and next of kin of members of the armed forces and partisans killed or missing in the defence of the country.) The Government of Bulgaria states that priority for retention in employment in case of reduction of the work force is given to workers with the highest qualifications and productivity, and in case of equal qualifications and ability to certain categories of workers having regard to their family situation, number of dependants, etc.

[5] United States (some collective agreements) (see para. 143, second footnote).

[6] Democratic Yemen, Act No. 1 of 1969, respecting the Settlement of Labour Reduction Disputes] section 9 (the principle of "last in, first out" to be applied, with consideration given to efficiency),

[7] Morocco, Order of 23 October 1948, to determine Model Works Rules, section 4 of the Mode· Works Rules; see also footnote 4, above.

[8] Dahomey, Labour Code, section 33; Mali, Labour Code, section 41 (criteria applicable within each occupational category).

[9] Italy, Inter-confederal Agreement on Dismissals Due to Reduction of Personnel, 5 May 1965, section 2, para. 7.

[10] Australia; Greece; Netherlands (the Government states that some collective agreements refer to these criteria, while some of them are applied by the employment offices in connection with authorisation of termination of employment); Sudan.

as pregnant women[1], workers with reduced working capacity[2], aged workers[3], or trade union officers.[4]

Special Rights of Workers in Connection with Termination of Employment Due to Reduction of the Work Force

Special Periods of Notice

145. Where a worker's employment is to be terminated in connection with a reduction of the work force, the notice periods normally required to be given before termination of employment (Paragraph 7 of the Recommendation) are as a rule applicable.[5] However, in a number of countries special notice periods to be given to workers whose employment is to be terminated in connection with a reduction of the work force are provided for.[6]

Special Income Protection in Case of Termination of Employment Due to Reduction of the Work Force

146. Workers whose employment has been terminated due to a reduction of the work force would normally be entitled to whatever income protection is provided in case of termination of employment generally, such as unemployment insurance or

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[1] Panama, Labour Code, section 213(C) (pregnant women to be terminated last of all and only in case of absolute necessity).

[2] Sweden, Job Security Act, section 23.

[3] Sweden, Job Security Agreement, 1973, section 5 (termination of the employment of a redundant employee who is 55 years of age or older, has been employed for 10 years and is considered to have special difficulties in obtaining a new, acceptable, job, should not take place until all possibilities have been tried to provide continued employment within the company or combined group of companies). The Government of the Federal Republic of Germany refers to provisions in collective agreements concerning protection against rationalisation, in mechanical, iron and steel, and textile industries and in the public service, under which workers having attained a given age (from 55 to 60 years of age) and who have been employed for a given period of time (from 10 to 20 years) may not have their employment terminated.

[4] Spain, Decree No. 3090/1972, section 15.

[5] See above, paras. 101-108.

[6] Bangladesh, Employment of Labour (Standing Orders) Act, section 12 (1 month or wages in lieu of notice); Gabon, Labour Code, section 36 as amended by section 3 of Ordinance No. 51-PR of 23 September 1964 to provide certain Guarantees for Workers Dismissed for Economic Reasons (minimum of 1 month's notice must be given to a worker dismissed because of economic reasons entailing reorganisation, reduction or cessation of activity, without prejudice to more favourable provisions in collective agreements); India, Industrial Disputes Act, section 25F (1 month's notice or wages in lieu of notice); Ireland, Redundancy Payments Act, section 17 (not less than 2 weeks' notice of termination due to redundancy—presumably subject to the minimum notice periods to be given in case of individual termination of employment under the Minimum Notice and Terms of Employment Act, 1973); Peru, Legislative Decree No. 18471 of 10 November 1970, section 5 (30 days' notice to be given to workers whose employment is to be terminated due to reduction of the work force, from the date of decision by the labour authority concerning the request by the employer for authorisation). In Australia section 88G of the New South Wales Industrial Arbitration Act and section 82 of the South Australia Conciliation and Arbitration Act empower industrial tribunals or commissions to include in awards or agreements provisions requiring a minimum notice period of 3 months to be given in case of termination due to automation or other technological change; the Government states that provision is made in private redundancy agreements for notice periods depending usually on length of service. The Government of New Zealand states that some industrial awards or agreements contain provisions requiring 1 or 2 weeks' notice of termination of employment in connection with redundancy.

severance pay, or a combination of such benefits[1], as envisaged under Paragraph 9 of the Recommendation. In a number of countries, provision is also made either in legislation or collective agreements, or through negotiation in individual cases, for special allowances to be paid by the employer in the event of termination due to reduction of the work force.

147. In a number of countries the legislation makes provision for payment by the employer of severance allowances, which generally increase with length of service, in case of termination of employment due to redundancy[2], and retrenchment[3], reduction of the work force because of installation of machinery or new methods of work or suspension or cessation of operations for given reasons[4], or to closure of the undertaking.[5] In one country the allowance payable is decided upon by the labour authorities in connection with granting authorisation for termination of employment for technical or economic reasons or by the labour courts in the absence of such determination.[6] In another country the legislation provides for the payment of com-

[1] See Ch. VI; also para. 126, first footnote.

[2] Cyprus, Termination of Employment Law, section 16 and Schedules 1 and 4 (worker having been continuously employed for 2 years whose employment is terminated due to redundancy is entitled to 2 weeks' wages for each of the first 6 years' service and 1 week's wages for each year of service in excess of 6 up to a maximum of 20 years' service in all; where the result of redundancy is to reduce costs or increase productivity, the compensation payable is that to be paid in case of unjustified termination of employment which is determined at the discretion of the tribunal but which must not be less than the above amount); Ireland, Redundancy Payments Act, sections 7 and 19 and Schedule 3 (worker having been employed for 2 continuous years who is dismissed due to redundancy is entitled to ½ week's pay for each year of service between the ages of 16 and 40 and 1 week's pay for each year of service from 41 years of age); United Kingdom, Redundancy Payments Act, sections 1-2 and 8 and Schedule 1 (worker having been employed for 2 continuous years who is dismissed due to redundancy is entitled to ½ week's pay for each year of service before 22 years of age, 1 week's pay for each year of service between the ages of 23 and 40 years of age). (For definition of "redundancy" in these 3 cases, see above paragraph 137, fifth footnote). The Government of Nigeria indicates that under proposed legislation employers would be obliged to negotiate redundancy payments with trade unions or workers' representatives and that the Commissioner of Labour would be empowered to make regulations providing generally or in particular cases for compulsory payment of redundancy allowances.

[3] Bangladesh, Employment of Labour (Standing Orders) Act, section 12 (a worker having been employed continuously for at least 1 year is entitled to 14 days' wages for each year of service or part thereof in excess of 6 months, if retrenched); India, Industrial Disputes Act, sections 25 F and 25 FFF (a worker having been in continuous service for at least 1 year is entitled, if retrenched, to 15 days' pay for each year of continuous service or part thereof in excess of 6 months; in case of closure on account of unavoidable circumstances beyond the control of the employer, the compensation thus payable shall not exceed the worker's average pay for 3 months).

[4] Mexico, Federal Labour Act, sections 434-439 (in case of termination of employment due to introduction of new machinery or methods of work, the worker is entitled to 4 months' salary plus 20 days' wages per year of service in addition to the severance allowance to which he is entitled under section 162; in case of termination of employment due to suspension of work as a result of *force majeure* or closure resulting from financial difficulties, bankruptcy, etc., the worker is entitled to 3 months' wages and to the severance allowance).

[5] Belgium, Act concerning Compensation of Workers Dismissed in Case of Closure of Undertakings, 1966, sections 4-8 (a worker employed for at least 1 year who is dismissed in connection with closure of the undertaking—for definition, see fourth footnote to para. 137—is entitled to a certain amount per year of service up to a given maximum, amounts which are to vary with the cost of living index if the sum due is not paid, it is to be paid by a fund set up for this purpose).

[6] Spain, Decree No. 3090/1972 on Employment Policy, sections 15, 18-20 (in granting authorisation for such termination of employment, the labour authorities are to decide on all questions submitted, including any offer of compensation made by the undertaking, provided it is greater than the maximum provided for by the law governing procedure in labour matters; if the compensation is not so determined, it shall be determined by the labour courts); Decree No. 909/1966 of 21 April 1966 on Procedure, sections 114-115 (the labour courts are to determine the allowance to be paid to workers whose employment is terminated as a result of suspension of work or closure of the undertaking; these allowances must not be less than 15 days' nor more than 1 year's salary).

pensation to workers adversely affected by important alteration of the organisation or operations of an undertaking, pursuant to a social compensation plan to be adopted by agreement between the employer and the works council or by a conciliation committee in the absence of such agreement.[1] The governments of a number of countries indicate that severance allowances payable in case of reduction of the work force are provided for in collective agreements or industrial awards.[2] In several countries provision is made in legislation or collective agreements for the payment of a severance grant in case of termination of employment due to reduction of the work force to workers who are subsequently unemployed and have difficulty finding new employment due to their advanced age or other circumstances.[3] In other countries supplemental unemployment benefits (or in certain cases, benefits to supplement allowances paid during vocational training or reduced salary on re-employment), are payable for a given period of time under legislation or collective agreements in case of reduction of the work force or closure of an undertaking.[4] The government of one country states that workers declared redundant, who become part of the labour reserve, continue to receive their salary.[5] In several other countries, as previously indicated, termination of a worker's employment in connection with reduction of the work force appears to be assimilated to unjustified termination of employment,

[1] Federal Republic of Germany, Works Constitution Act, sections 112-113.

[2] Australia, Ghana, Guyana, Nigeria. In Kenya the Industrial Relations Charter, 1962, enunciates the principle that severance pay in case of redundancy should be paid, but provides that the form and amount shall be subject to joint negotiation.

[3] Finland, Severance Pay Act, sections 1-4 (the payments are made out of a severance pay fund constituted by contributions from the unemployment fund and by the State); Sweden, Job Security Agreement, 1973, section 2 (compensation is payable to workers below a given category who have been employed for 5 consecutive years for one or more companies in the same group and have attained 40 years of age when employment ceases, if the Job Security Council finds that having regard to the possibilities of obtaining a new job compensation should be paid). In the United States severance allowance, payable to workers whose employment is terminated due to permanent shutdown or who have been laid off for more than a specified period of time is provided for in a certain number of collective agreements (see Bureau of National Affairs, *Collective Bargaining: Negotiations and Contracts* (Washington, DC, loose-leaf), Ch. 53: 1 and 51-62).

[4] Belgium, Act concerning the Grant of a Waiting Benefit to Workers who are Victims of certain Closures of Undertakings, 20 July 1968, sections 1-2, and Royal Order to apply this Act, 16 August 1968 (waiting benefits are payable to workers who are unemployed, who are undergoing vocational training or who are in new employment at a lower salary than their previous employment, during 12 months, or during 18 months in the case of workmen 50 years of age or more, salaried employees 40 years of age or more, or workers with decreased ability to work; the amount is a percentage of the difference between the previous salary and the amount of benefits or new salary received); Collective Labour Agreement concerning Collective Dismissals, adopted by the National Labour Council, 8 May 1973 (workers employed in undertakings employing at least 20 workers who are dismissed in connection with collective dismissal within a 30-day period of at least 10 per cent of the work force or in undertakings employing 20-59 workers at least 6 workers, are entitled to similar benefits to those provided by the aforementioned Act, payable during a period of 4 months from termination, which may be reduced to the extent that the notice period is superior to 3 months; these benefits are not payable to workers receiving the indemnities due under the previously mentioned legislation in case of closure of the undertaking and may be reduced by the amount of any severance allowances provided for in other collective agreements); Italy, Inter-confederal Agreement on Dismissals due to Reduction of Personnel, 5 May 1965, section 4 (providing for payment to workers dismissed due to reduction of personnel of a benefit for an initial unemployed period, independently of the severance allowance provided for by collective agreement, through a statutory social welfare body; this provision has been implemented by a protocol adopted in October 1968, which was embodied in Act No. 1115 of 5 November 1968, Part IV, as modified by Act No. 464 of 8 August 1972); United States, see Bureau of National Affairs, *Collective Bargaining: Negotiations and Contracts* (Washington, DC, loose-leaf), Ch. 53: 2-6 and 601 et seq.

[5] Cuba.

as the worker concerned is entitled to compensation additional to the normal severance allowance or equivalent or similar to that payable for unjustified termination.[1]

Priority of Re-engagement

148. Paragraph 16 of the Recommendation provides (1) that workers whose employment has been terminated owing to a reduction of the work force should be given priority of re-engagement, to the extent possible, by the employer when he again engages workers; (2) that such priority of re-engagement may be limited to a specified period of time and that, where appropriate, the question of the retention of seniority rights should be determined in accordance with national laws or regulations, collective agreements or other appropriate national practices; (3) that re-engagement should be effected on the basis of the principles set out in Paragraph 15 (concerning selection of workers in accordance with precise criteria); and (4) that the rate of wages of re-engaged workers should not be adversely affected as a result of the interruption of their employment, regard being had to differences between their previous occupation and the occupation in which they are re-engaged and to any intervening changes in the structure of wages in the undertaking, establishment or service.

149. Priority of re-engagement of workers whose employment has been terminated due to reduction of the work force, when the employer again engages workers, is provided for in legislation[2], or collective agreements[3], or is a principle followed in practice [4] in a number of countries. In certain of these countries it is stated that such

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[1] See above, para. 34.

[2] Bangladesh, Employment of Labour (Standing Orders) Act, section 14; Congo, Labour Code, section 39; Cyprus, Termination of Employment Law, section 22; Dahomey, Labour Code, section 34; Gabon, Ordinance No. 51/PR of 23 September 1964 providing Guarantees for Workers Dismissed for Economic Reasons, section 5; India, Industrial Disputes Act, section 25H; Iraq, Labour Code, section 31; Liberia, Labour Practices Law, section 4504(2); Luxembourg, Act respecting Workmen's Contracts of Employment, section 18; Malta, Conditions of Employment (Regulation) Act, section 25(2); Mauritania, Labour Code, Book I, section 20; Mexico, Federal Labour Act, section 438, read together with section 154 (where employer recommences production or sets up a new undertaking, preference in hiring shall be given to nationals, those who served satisfactorily for the greatest length of time, and trade union members); Morocco, Order of 3 October 1948 providing for Model Works Rules, section 3 of the Model Works Rules; Niger, Labour Code, section 37; Pakistan, Industrial and Commercial (Standing Orders) Ordinance, Standing Order 14; Peru, Legislative Decree No. 18471 of 10 November 1970, section 7; Sweden, Job Security Act, sections 25-28; Turkey, Labour Act, section 24. The Governments of Algeria and Lebanon indicate that draft legislation which is under consideration would provide for priority of re-engagement.

[3] Belgium (the Government states that several joint committees have included in collective labour agreements provisions for priority of re-engagement of persons whose employment was terminated due to lack of work resulting from economic causes); Finland, General Agreement on Protection against Dismissal, section 4; France, National Inter-occupational Agreement on Employment Security, 10 February 1969, section 25 (the Government also states that such priority exists in certain branches of industry under certain collective agreements); Italy, Inter-confederal Agreement on Dismissals Due to Reduction of Personnel, 5 May 1965, section 5; Madagascar (the Government states that such priority is provided for in collective agreements); Netherlands (the Government states that such priority is provided for in certain collective agreements); New Zealand (the Government states that such priority is provided for in certain industrial awards and agreements); Niger, Inter-occupational Collective Agreement, 15 December 1972, sections 11 and 33. Priority of re-engagement is a normal feature of lay-off: with regard to the United States, see Bureau of National Affairs, *Collective Bargaining: Negotiations and Contracts* (Washington, DC, loose-leaf), Ch. 60:361.

[4] The Governments of Australia, Nigeria, Sudan and Zambia indicate that such priority of re-engagement is normal practice, while the Government of Malawi states that this question is dealt with in consultations with workers' representatives, and the Government of the Netherlands indicates that the Directors of Employment Offices, who are responsible for deciding on authorisation of termination of employment, may impose as a condition of authorisation that the workers concerned be given priority of re-engagement.

priority is to be accorded to workers who were previously employed in the category of employment in which new posts are available or who have the skills required by the new jobs[1], or if the post formerly occupied again becomes available.[2] In several cases the workers concerned, to benefit from this priority, must have notified the employer within a given period of time after termination of their employment, of their desire to be re-engaged when jobs again become available.[3] In some of these countries priority of engagement is accorded for a limited period of time, ranging from 3 months to 2 years[4], while in the others there is no indication regarding such a time-limit. In several cases it is specified that the order of re-engagement shall be the reverse order of termination of employment, or shall be based on length of service or on certain other stated factors.[5]

150. The above-mentioned national provisions on rights of re-engagement give few indications concerning retention of seniority rights or the rate of wages of re-engaged workers. Where the system of lay-off is used to implement a reduction of the work force, collective agreements frequently provide for retention or accumulation of seniority rights.[6] The legislation of one country provides that a re-employed worker is to be deemed to have continued in his employment notwithstanding the termination and shall be re-employed at conditions not less favourable than those to which he would have been entitled if the contract of service relating to him had not been terminated.[2] Elsewhere, re-engaged workers may in practice retain seniority rights[7], or the right to receive the salary formerly paid.[8]

Utilisation of National or Other Appropriate Employment Agencies for Placement in Alternative Employment

151. Paragraph 17 of the Recommendation provides that there should be full utilisation of national employment agencies or other appropriate agencies to ensure, to the extent possible, that workers whose employment has been terminated as a

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[1] For example, Bangladesh, Congo, Cyprus, Finland, Gabon, Italy, Mali, Mauritania, Morocco, Niger, Pakistan, Peru.

[2] Malta.

[3] France, Morocco.

[4] Priority of re-engagement is to be accorded, under the above-mentioned provisions, for a period of 3 months in Finland; 6 months in Turkey; 8 months in Cyprus; 1 year in Bangladesh, Congo, France (Interoccupational Agreement on Employment Security), Gabon, Italy, Luxembourg, Mali, Mauritania, Malta, Pakistan, Sweden; and 2 years in Mali and Mauritania (subject to the right of the employer to require a trial period) and in Dahomey and Niger.

[5] Bangladesh (priority according to length of service); Italy (re-engagement in reverse order to that of dismissals); Mexico (priority to be given to nationals, those who served satisfactorily the greatest length of time and trade union members, if the employer recommences production or sets up a new undertaking); Pakistan (priority according to length of service); Sweden (priority based on length of service, and in case of equal length of service, on age); United States (reverse order of lay-off—see footnotes to paragraph 144 above); Zambia (the Government states that the principle "last out, first in" is applied to the extent possible).

[6] For example, United States (see Bureau of National Affairs, *Collective Bargaining: Negotiations and Contracts* (Washington, DC, loose-leaf), Ch. 75: 121-122).

[7] The Government of Pakistan states that re-engaged workers are deemed to be in continuous service if re-engaged within 1 month of retrenchment.

[8] The Government of Sudan states that the former salary is generally paid on re-engagement.

result of a reduction of the work force are placed in alternative employment without delay.[1]

152. For such agencies to take effective action to this end, it is desirable that they be informed as early as possible of the impending reduction.[2] Where they are so informed, they may be able to adopt certain special measures to assist in finding alternative employment for the workers affected. If they are not informed of the reduction, utilisation of these agencies will depend upon whether the workers whose employment has been terminated seek their assistance in finding new employment.

153. A number of governments have indicated that public employment services or other public authorities are fully utilised to find alternative employment for workers whose employment was terminated as a result of reduction of the work force, or assist workers who address themselves to these services in finding alternative employment[3]; in some cases priority is given by these services to such workers.[4] Certain governments state that since there is no unemployment in their countries, workers whose employment has been terminated due to a reduction of the work force are guaranteed other employment immediately[5], or that the continued high demand for labour has minimised redundancy problems while technological innovations have usually opened up new employment opportunities enabling employers to avoid reductions and those workers whose employment has been terminated have in most cases been soon re-employed in other industries.[6] Another government has stated, on the contrary, that due mainly to the high rate of unemployment prevailing in the country, the employment exchanges are ineffective.[7] Some countries state that the undertaking concerned is required to take measures to find alternative employment for workers affected by a reduction of the work force[8], or to co-operate with public authorities to assist the worker affected to find alternative employment.[9] Several governments have indicated that special measures may be taken by the employment services to assist workers affected by a reduction of the work force; these measures may include the sending of placement officers or vocational consellors to the work-

[1] For more detailed standards regarding the employment service, see the Employment Service Convention, 1948 (No. 88), and Recommendation, 1948 (No. 83). See also *Report of the Committee of Experts on the Application of Conventions and Recommendations, General Survey on the Report Relating to the Employment Policy Convention and Recommendation, 1964, Ch. IV*, Report III (Part 4B), International Labour Conference, 57th Session, Geneva, 1972.

[2] See paras. 137-139 above. The Government of Australia states that employers are encouraged to advise the employment service of impending reductions as early as possible before they take place.

[3] Algeria, Argentina, Australia, Bulgaria, Byelorussian SSR, Canada, France, Federal Republic of Germany, Greece, Iraq, Japan, Madagascar, Netherlands, New Zealand, Norway, Romania, Singapore, Sudan, Switzerland, USSR, United Kingdom, Republic of Viet-Nam, Zambia.

[4] Iraq, Sudan.

[5] Byelorussian SSR, USSR.

[6] Australia.

[7] Bangladesh.

[8] Ukrainian SSR, Yugoslavia.

[9] Bulgaria (the trade union committee and management draw up proposals for placement of such workers in another undertaking in the same locality, which are submitted to local labour bodies); Canada (such co-operation is required in the federal jurisdiction, Manitoba and Ontario); Czechoslovakia (the undertaking co-operates with the People's Committee to assist the workers); Iraq (management of official and semi-official undertakings and undertakings in the public sector are required, in collaboration with the employment offices, to assist workers to find new employment); Romania, Labour Code, section 133 (management is required to offer transfer to other employment with the assistance of the higher administrative body and the bodies responsible for distribution, of labour).

place to provide information and give advice[1], active measures to seek out possibilities of new employment in the area[2], or action by a preparedness committee to co-ordinate the various measures which are available.[3]

154. The ability of national employment or other appropriate agencies to place workers who have lost their employment due to reduction of the work force in alternative employment—as the possibility of individual workers finding jobs through such services or on their own—depends in good measure on the employment situation prevailing in the locality, region or country. Where there is massive unemployment, the chances of such persons finding new jobs are slight. Effective implementation of Paragraph 17 of the Recommendation thus depends not only on the action of the employment services but also, and in some cases primarily, upon the vigorous pursuit of a policy designed to promote full employment.[4]

155. Even where the level of unemployment is low or where full employment has been attained, a worker who has lost his employment due to a reduction of the work force may have difficulty in obtaining alternative employment if he is untrained for the jobs available. This may particularly be the case where the reduction is due to technological or structural change involving a modification in the structure of the work force generally, with a change in need for persons having particular qualifications. To enable workers facing such difficulties to be placed in new employment, measures need to be taken to ensure their training or re-training. The availability of such measures, which may include provision of income protection during training, has been referred to by several governments in connection with application of the Recommendation[5]; they would seem to be provided for in a number of other countries as well.[6]

156. Difficulties in obtaining new employment may also arise where response to the available job opportunities would require moving to another locality or region. Measures to assist workers in this regard, particularly through the grant of an allowance for this purpose, are provided for in a number of countries.[7]

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[1] France, United Kingdom.

[2] United Kingdom.

[3] Norway.

[4] International standards are laid down in this regard by the Employment Policy Convention (No. 122) and Recommendation (No. 122), 1964. See the previously mentioned general survey by the Committee relating to these instruments (cited above footnote to para. 151.

[5] For example, Bulgaria, Cuba, France, Japan, Romania.

[6] For information on provision for such measures in the European region, see ILO: *Income Security in the Light of Structural Changes*, Report III, Second European Regional Conference, Geneva, 1974, Ch. II. See also para. 126, footnote 1.

[7] Ibid.

CONCLUSIONS

157. In summing up the main findings which emerge from the present survey, the Committee wishes at the outset to lay stress on two factors which have characterised the task entrusted to it by the Governing Body in connection with the reports due under article 19 of the Constitution: the nature of the standards reviewed, and the broad response by the States Members. For the first time since the initiation of article 19 reporting, the Governing Body had decided to limit it to a single Recommendation so that governments, as well as the Committee of Experts, were able to focus their attention on the effect given to an important instrument over the decade following its adoption by the International Labour Conference. As a result this survey could draw on information received from close to 100 countries, the largest cross-section ever covered by reports submitted under article 19 of the Constitution. In addition, the Committee has had available the comments from two employers' organisations and one workers' organisation on their governments' reports and wishes to reiterate the value of this source of information in examining reports under articles 19 and 22 of the Constitution; it would have wished that a larger number of such comments were available for consideration.

158. The impressive response from governments reflects the subject-matter of the Termination of Employment Recommendation and the growing interest given in all parts of the world to the problems involved and to their solution. Measures aimed at ensuring security of employment respond to a fundamental aspiration which is acutely felt today in countries at all levels of economic development. Loss of one's job can produce economic and social hardship to a worker and his family, and may even represent a personal tragedy. While the need for security of employment is thus felt everywhere, social consciousness and solidarity have today attained a level at which positive action to meet this need has become possible in many countries.

159. The basic feature of the Recommendation thus resides in the enunciation of an internationally agreed principle that a worker's employment should not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking. In laying down this principle, the Recommendation seeks to reconcile the interest of the worker in job security and that of the employer in the proper functioning of the undertaking, interests which, while not necessarily conflicting, may obviously diverge. To do so, it requires a valid reason for termination and the observance of this principle is sought through a right of appeal to a neutral body empowered to examine the reasons for termination, to render a decision on its justification and to award appropriate remedies. While the Recommendation deals comprehensively with all aspects of termination of employment, including notice periods, income protection on termination, and special measures in case of reduction of the work force, it is this provision for protection against unjustified termination of a worker's employment that represents both the core of the instrument and its major element of impact.

160. According to the Committee's findings, this essential principle—that a worker's employment should not be terminated without a valid reason—has now been adopted in many countries throughout the world, including countries at all levels of development and with differing economic and social systems. The survey shows that protection against arbitrary termination of employment can be provided in both developed and developing countries, and that it is an acceptable objective regardless of the systems of the countries concerned. Protection against arbitrary termination of employment thus reflects the basic principles of social justice.

161. In view of the growing acceptance of this principle, there arises the more special question of the influence of the Recommendation. Since its adoption in 1963, new or revised legislation or generally applicable collective agreements in over 20 countries [1] provide for or improve protection against unjustified termination of employment. Some of these countries, as well as others, have taken similar measures in respect of other safeguards provided for in the Recommendation (such as regarding periods of notice before termination, unemployment insurance or severance pay, or measures applicable in case of reduction of the work force). From the information available, it would appear that in a number of these cases the Recommendation was relied upon to a greater or lesser degree either to provide guidance or support in the formulation of national provisions.[2] In a number of other cases as well, although evidence in this regard is not presently available, the Recommendation may well have played a similar role. The influence which these ILO standards has had—in industrialised as well as developing countries—also tends to confirm the positive role which a Recommendation can play, even on its own, in guiding and stimulating national action.

162. The survey has moreover brought out that the Recommendation may prove of help in the adoption of future measures in several other cases and that the request for reports on its application may in fact have served as an occasion for some countries to review their law and practice in this field with a view to the possible adoption of new legislation. The Committee has, in the course of its review, referred to indications supplied by a number of countries in their reports, regarding their intention to adopt measures to give effect to one or more provisions of the Recommendation not yet implemented or regarding draft legislation that is currently under consideration.[3]

163. The methods of implementation mentioned in the Recommendation leave in fact considerable latitude as to the type of measures most appropriate to national practice or conditions. Thus, in addition to legislation, works rules, arbitration awards or court decisions, employers and workers can also use collective agreements to carry out the purposes of the Recommendation; use of collective agreements may in fact prove particularly important where appropriate legislation does not exist on the matter, or where such legislation does not appear to furnish sufficient guarantees in this field.

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[1] Byelorussian SSR, Chile, Cyprus, Denmark, Finland, France, India, Iraq, Italy, Kenya, Khmer Republic, Libyan Arab Republic, Luxembourg, Malta, Mauritius, New Zealand, Panama, Peru, Rwanda, Singapore, Sweden, Ukrainian SSR, USSR, United Kingdom.

[2] For example, Chile, Cyprus, France, India, Khmer Republic, Mauritius, New Zealand, Sweden, United Kingdom. The Recommendation appears to have been relied upon in Finland and Sweden in the drawing up or amendment of generally applicable collective agreements.

[3] Algeria, Australia (Western Australia), Guatemala, Jamaica, Kenya, Kuwait, Lebanon, Liberia, Morocco, Nigeria, Singapore, Thailand, Netherlands (Surinam), United Kingdom (with respect to Northern Ireland and Jersey).

164. While the principle that workers should be protected against unjustified termination of their employment is now recognised in many countries around the world, it is far from universally accepted. In certain countries more limited protection is offered by prohibition of termination for certain particular reasons, such as trade union membership or activity, but this cannot be considered to provide the more general guarantees against unjustified termination called for by the Recommendation. Nor do the existence of notice periods or severance allowances, although necessary aspects of the more comprehensive protection aimed at by the Recommendation, meet this fundamental requirement.

165. The Committee has also found that even in countries in which certain limitations on unjustified termination of employment appear to have been imposed, problems in the implementation of the Recommendation may arise. First, significant groups of persons covered by the Recommendation may be excluded from the protection afforded nationally, e.g. where part of the work force is not covered by collective agreements which afford such protection, or where legislation is limited in scope, excludes certain groups of persons or imposes qualifying periods other than the probationary periods authorised by the Recommendation. Secondly, the limitations on unjustified termination may result from provisions which are worded very generally or are unclear in their effect on substantive law; in such cases the extent of protection depends largely upon the interpretation given to these provisions by the bodies competent to apply them, and a detailed examination of specific cases would be required to determine whether judicial or other remedies provide effective protection against termination of employment for other than valid reasons. For example, such guarantees cannot be deemed to exist where provisions for the payment of damages in case of "abusive" termination of employment are interpreted so as to afford redress only where the worker can prove that the termination was due to certain limited types of illegitimate motives on the part of the employer.

166. Even where protection against unjustified termination exists in law or collective agreements, there arises the question of the effectiveness of such protection in practice. In this regard, there must first of all be adequate appeal procedures and remedies. In addition, if a worker is to make use of these possibilities of recourse against unjustified termination of his employment, he must know his rights in the matter and the procedure to be followed to ensure that they are respected. The existence of workers' organisations equipped to offer information, advice and assistance to workers on their rights and their enforcement can be essential in obtaining effective protection.

167. The question of effectiveness also arises in determining whether or not termination is justified. Where ordinary procedural rules impose on the worker the burden of proving that the employers' motives were illegitimate, the degree of the protection may be seriously jeopardised, because of the difficulties which the worker may encounter in producing evidence as regards the employer's motives. The Committee has drawn attention in the survey to the methods utilised in a number of countries in order to help the worker to overcome this disadvantage, by placing the burden on the employer to provide that there were valid reasons for termination or by granting powers of investigation to the courts, labour tribunals or other bodies called upon to decide upon justification of the termination.

168. Of the two principal types of remedies for unjustified termination of employment envisaged by the Recommendation—reinstatement and compensation—reinstatement is obviously the most effective in safeguarding the worker's security of employment against unjustified termination. As already noted earlier, there appears to

be a trend in national legislation towards empowering the competent body to award reinstatement or to nullify the termination (thereby ensuring continuity of the employment relationship) either as the principal or as a possible remedy. If countries in which this remedy is not provided for should wish to review the position in the light of this trend, the present survey affords indications as to the range of solutions which have been adopted in dealing with the complex issues involved.

169. In countries where compensation is the sole or usual remedy for unjustified termination of employment, the effectiveness of compensation as a remedy depends upon the amount which may be awarded. The survey has shown that this amount may be at the discretion of the competent body or may be calculated according to certain rules. Compensation is most effective as a remedy when it can act as a deterrent against unjustified termination. This might be the case in a number of countries in which the amount payable is likely to be considerable, such as where the compensation is calculated on the basis of length of service and is additional or superior to the amount provided for as severance allowance (which is provided for separately under the Recommendation). In some cases, where the amount of compensation is limited to the amount of loss that the worker can show that he has suffered, a question may arise as to whether such compensation would be sufficient to afford the protection required.

170. While the Committee has placed emphasis, in the foregoing paragraphs, on the principle that a worker should not lose his employment where there is no valid reason for its termination, and on various measures which have been adopted in a number of countries to make this principle effective, the survey has also dealt with those other aspects of the Recommendation aimed at affording adequate guarantees in case termination of employment occurs. Periods of notice before termination —important in giving the worker time to find new employment—are required, except in cases of serious misconduct, almost everywhere. On the other hand, income protection on termination in one form or the other, is provided for in a number but not in all countries. Although it may be difficult for less developed countries to afford or administer a system of unemployment insurance [1], it should be possible for provision to be made for the payment of some severance allowance or other separation benefits on termination of employment.

171. Furthermore, the severe impact which reduction of the work force is likely to have underlines the importance of special measures along the lines of those provided for in Part III of the Recommendation. Because of the diversity of individual situations in which reduction of the work force may be effected, it is difficult for detailed rules to be laid down in this regard. The Recommendation, while laying down the principle that steps should be taken as far as possible to avert or minimise such reductions, therefore suggests consultation with workers' representatives as soon as possible on all appropriate questions, recalls that public authorities may be available to assist in such consultation, and provides for notification to public authorities where the reduction may significantly affect the manpower situation in a given area or branch of economic activity, as well as for utilisation of national or other appropriate employment agencies to find alternative employment for the workers whose employment is terminated. It is through such consultations, and where appropriate with the assistance of the public authorities, that measures to avert or minimise reductions or to find as soon as possible alternative employment for the workers affected may be worked out

[1] Relevant standards are contained more particularly in the Unemployment Convention, 1934 (No. 44), and the Social Security (Minimum Standards) Convention, 1952 (No. 102), Part IV.

in the most satisfactory manner possible. Clearly, the principle of social justice, fundamental to the Recommendation, also applies in connection with reduction of the work force through the principles that selection of the workers to be affected should be made in accordance with precise criteria established as far as possible beforehand, and that the workers terminated in connection with reduction of the work force should be given priority of re-engagement Success in reaching agreement on appropriate measures to avert or minimise reductions of the work force and to alleviate their consequences will depend in good measure on the state of labour-management relations, on the general economic situation, and on the existence of a systematic and actively pursued employment policy by the government concerned. In this context, the relevance and importance of the implementation of the Employment Policy Convention and Recommendation, 1964 (Nos. 122), hardly needs stressing.[1]

* * *

172. To play a fully effective role, the Termination of Employment Recommendation must be placed within the wider context of international efforts to promote fundamental human rights. Seen in this light, the adoption of the Recommendation a decade ago served to spell out an essential aspect of the "right to work", proclaimed by the Universal Declaration of Human Rights and since confirmed by the International Covenant on Economic, Social and Cultural Rights, by recognising a worker's right not to be deprived of his job except for a valid reason.

173. The present survey has shown that, while protection against loss of employment without valid reason has made remarkable progress and is now firmly established in many countries, much remains to be done to secure universal acceptance of this principle and, once accepted, to get it effectively implemented. The comprehensive findings and conclusions in this survey will, the Committee trusts, facilitate further progress in ensuring fair treatment and valid procedures whenever a worker's job is in jeopardy or has been lost.

[1] Recently, the Committee on Income Security of the ILO Second European Regional Conference, Geneva, January 1974 (*Provisional Record*, No. 9, para. 32) called upon the governments concerned to give effect, inter alia, to the two instruments on employment policy, as well as to the Termination of Employment Recommendation, 1963 (No. 119).

APPENDIX I

TEXT OF THE PROVISIONS OF THE TERMINATION OF EMPLOYMENT RECOMMENDATION, 1963 (No. 119)

I. Methods of Implementation

1. Effect may be given to this Recommendation through national laws or regulations, collective agreements, works rules, arbitration awards, or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions

II. Standards of General Application

2. (1) Termination of employment should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

(2) The definition or interpretation of such valid reason should be left to the methods of implementation set out in Paragraph 1.

3. The following, inter alia, should not constitute valid reasons for termination of employment:

(a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

(b) seeking office as, or acting or having acted in the capacity of, a workers' representative;

(c) the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of laws or regulations; or

(d) race, colour, sex, marital status, religion, political opinion, national extraction or social origin.

4. A worker who feels that his employment has been unjustifiably terminated should be entitled, unless the matter has been satisfactorily determined through such procedures within the undertaking, establishment or service, as may exist or be established consistent with this Recommendation, to appeal, within a reasonable time, against that termination with the assistance, where the worker so requests, of a person representing him to a body established under a collective agreement or to a neutral body such as a court, an arbitrator, an arbitration committee or a similar body.

5. (1) The bodies referred to in Paragraph 4 should be empowered to examine the reasons given for the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination.

(2) Subparagraph (1) should not be construed as implying that the neutral body should be empowered to intervene in the determination of the size of the work force of the undertaking, establishment or service.

6. The bodies referred to in Paragraph 4 should be empowered, if they find that the termination of employment was unjustified, to order that the worker concerned, unless reinstated, where appropriate with payment of unpaid wages, should be paid adequate compensation, or afforded such other relief as may be determined under the methods of

implementation set out in Paragraph 1, or granted such compensation and other relief as may be so determined.

7. (1) A worker whose employment is to be terminated should be entitled to a reasonable period of notice or compensation in lieu thereof.

(2) During the period of notice the worker should, as far as practicable, be entitled to a reasonable amount of time off without loss in pay in order to seek other employment.

8. (1) The worker whose employment has been terminated should be entitled to receive, on request, at the time of the termination, a certificate from the employer specifying the dates of his engagement and termination and the type or types of work on which he was employed.

(2) Nothing unfavourable to the worker should be inserted in such certificate.

9. Some form of income protection should be provided for workers whose employment has been terminated; such protection may include unemployment insurance or other forms of social security, or severance allowance or other types of separation benefits paid for by the employer, or a combination of benefits, depending upon national laws or regulations, collective agreements and the personnel policy of the employer.

10. The question whether employers should consult with workers' representatives before a final decision is taken on individual cases of termination of employment should be left to the methods of implementation set out in Paragraph 1.

11. (1) In case of dismissal for serious misconduct, a period of notice or compensation in lieu thereof need not be required, and the severance allowance or other types of separation benefits paid for by the employer, where applicable, may be withheld.

(2) Dismissal for serious misconduct should take place only in cases where the employer cannot in good faith be expected to take any other course.

(3) An employer should be deemed to have waived his right to dismiss for serious misconduct if such action has not been taken within a reasonable time after he has become aware of the serious misconduct.

(4) A worker should be deemed to have waived his right to appeal against dismissal for serious misconduct if he has not appealed within a reasonable time after he has been notified of the dismissal.

(5) Before a decision to dismiss a worker for serious misconduct becomes finally effective, the worker should be given an opportunity to state his case promptly, with the assistance where appropriate of a person representing him.

(6) In the implementation of this Paragraph the definition or interpretation of "serious misconduct" as well as the determination of "reasonable time" should be left to the methods of implementation set out in Paragraph 1.

III. Supplementary Provisions concerning Reduction of the Work Force

12. Positive steps should be taken by all parties concerned to avert or minimise as far as possible reductions of the work force by the adoption of appropriate measures, without prejudice to the efficient operation of the undertaking, establishment or service.

13. (1) When a reduction of the work force is contemplated, consultation with workers' representatives should take place as early as possible on all appropriate questions.

(2) The questions on which consultation should take place might include measures to avoid the reduction of the work force, restriction of overtime, training and retraining, transfers between departments, spreading termination of employment over a certain period, measures for minimising the effects of the reduction on the workers concerned, and the selection of workers to be affected by the reduction.

(3) As and when consultation takes place, both parties should bear in mind that there may be public authorities which might assist the parties in such consultation.

14. If a proposed reduction of the work force is on such a scale as to have a significant bearing on the manpower situation of a given area or branch of economic activity, the employer should notify the competent public authorities in advance of any such reduction.

15. (1) The selection of workers to be affected by a reduction of the work force should be made according to precise criteria, which it is desirable should be established wherever possible in advance, and which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria may include—

(a) need for the efficient operation of the undertaking, establishment or service;

(b) ability, experience, skill and occupational qualifications of individual workers;

(c) length of service;

(d) age;

(e) family situation; or

(f) such other criteria as may be appropriate under national conditions,

the order and relative weight of the above criteria being left to national customs and practice

16. (1) Workers whose employment has been terminated owing to a reduction of the work force should be given priority of re-engagement, to the extent possible, by the employer when he again engages workers.

(2) Such priority of re-engagement may be limited to a specified period of time; where appropriate, the question of the retention of seniority rights should be determined in accordance with national laws or regulations, collective agreements or other appropriate national practices.

(3) Re-engagement should be effected on the basis of the principles set out in Paragraph 15.

(4) The rate of wages of re-engaged workers should not be adversely affected as a result of the interruption of their employment, regard being had to differences between their previous occupation and the occupation in which they are re-engaged and to any intervening changes in the structure of wages in the undertaking, establishment or service.

17. There should be full utilisation of national employment agencies or other appropriate agencies to ensure, to the extent possible, that workers whose employment has been terminated as a result of a reduction of the work force are placed in alternative employment without delay.

IV. Scope

18. This Recommendation applies to all branches of economic activity and all categories of workers: Provided that the following may be excluded from its scope:

(a) workers engaged for a specified period of time or a specified task in cases in which, owing to the nature of the work to be effected, the employment relationship cannot be of indeterminate duration;

(b) workers serving a period of probation determined in advance and of reasonable duration;

(c) workers engaged on a casual basis for a short period; and

(d) public servants engaged in the administration of the State to the extent only that constitutional provisions preclude the application to them of one or more provisions of this Recommendation.

19. In accordance with the principle set forth in article 19, paragraph 8, of the Constitution of the International Labour Organisation, this Recommendation does not affect any provisions more favourable to the workers concerned than those contained herein.

20. This Recommendation should be considered as having been implemented in respect of workers whose conditions of employment are governed by special laws or regulations where those laws or regulations provide for such workers conditions which, in their entirety, are at least as favourable as the totality of those provided in this Recommendation.

APPENDIX II

LIST OF PRINCIPAL LEGISLATION AND GENERALLY APPLICABLE COLLECTIVE AGREEMENTS

ALGERIA

Labour Code.

Ordinance No. 45-1030, respecting the Placing of Employees and the Supervision of Employment. Dated 24 May 1945. (*Journal officiel de la République française (JORF)*, No. 122, p. 2970) (*LS*[1] 1945—Fr. 7), applicable to Algeria by virtue of Decree No. 46-1351 (6 June 1946) (*JORF*, 8 June 1946, p. 5061).

Ordinance No. 71-71 on the Socialiste Management of Undertakings. Dated 16 November 1971 (*Journal officiel de la République algérienne (JORA)*, No. 101, p. 1350), 13 Dec. 1971 (*LS* 1971—Alg. 2).

Ordinance No. 71-75 of 16 November 1971 repecting Collective Labour Relationships in the Private Sector (*JORA*, 13 Dec. 1971, No. 101, p. 1354) (*LS* 1971—Alg. 3).

ARGENTINA

National Constitution.

Commercial Code, as amended by Act No. 11729 (*Boletin Oficial (BO)*, No. 12086, 25 Sep. 1934, p. 1188) (*LS* 1934—Arg. 3) a nd Act No. 20163 (*BO*, 23 Feb. 1973).

Act No. 20615 on Industrial Associations of Employees, dated 29 November 1973 (*BO*, No. 22812, 17 Dec. 1973).

Act No. 18345, respecting the organisation and procedure of the national Labour courts. Dated 12 September 1969 (*BO*, 24 Sep. 1969).

AUSTRALIA

Commonwealth

Conciliation and Arbitration Act, No. 53, of 24 June 1970 (*LS* 1970—Aust. 1).

Social Services Act, No. 59, of 28 September 1970.

States

New South Wales

Industrial Arbitration Act, No. 2 of 19 April 1940, as amended.

Queensland

Industrial Conciliation and Arbitration Act, No. 25 of 11 April 1961, amended by Act No. 67 of 23 December 1964.

Factories and Shops Act, No. 41 of 16 December 1960 (*LS* 1960—Aust. 1), as amended by Act No. 32 of 19 November 1968.

South Australia

Industrial Conciliation and Arbitration Act, No. 125 of 30 November 1972.

Prohibition of Discrimination Act Amendment Act, No. 41 of 3 December 1970.

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[1] *LS* = *Legislative Series* published by the ILO.

Tasmania

Wages Boards Act, No. 51 of 24 December 1920.

Victoria

Labour and Industry Act, No. 6283 of 30 September 1958 (*Victorian Statutes*, 1958 ed., Vol. IV).

Western Australia

Industrial Arbitration Act, No. 47 of 8 November 1968.

AUSTRIA

Civil Code, as completed by Ordinance dated 19 March 1916 (*Reichsgesetzblatt (RGBl)*, 21 Mar. 1916, Text No. 69).

Act respecting the Employment Contracts of Private Employees (*Bundesgesetzblatt (BGBl)*, 1921, Text No. 292) (*LS* 1921—Aus. 1).

Federal Act respecting the Employment Contracts of Persons Employed in Agricultural and Forestry Undertakings. Dated 26 September 1923 (*BGBl*, 5 Oct. 1923, Text No. 538) (*LS* 1923—Aus. 2).

Industrial Code as appearing in the Act adopted in 1885 (*RGBl*, 1885, Text No. 22).

Federal Act to lay down Principles to govern Labour Law in Agriculture and Forestry, dated 2 June 1948 (*BGBl*, 12 Aug. 1948, No. 31, Text No. 140, p. 515) (*LS* 1948—Aus. 2), as amended in 1971 (*LS* 1971—Aus. 1).

Federal Act on Employees Contractually Employed, dated 17 March 1948 (*BGBl*, 1 June 1948, Text No. 86).

Federal Act on Employment Security, dated 18 July 1956 (*BGBl*, 1956, Text No. 154).

Federal Act on Boards of Young Workers, dated 9 July 1972 (*BGBl*, 28 July 1972, Text No. 287).

Federal Act on Works Councils, No. 97 of 28 March 1947 (*BGBl*, 2 June 1947, No. 25, p. 587) (*LS* 1947—Aus. 2), as amended on 23 July 1962 (*BGBl*, 7 Aug. 1962), on 7 July 1965 (*BGBl*, 3 Aug. 1965, No. 5, Text No. 235) (*LS* 1965—Aus. 2 A) and on 13 July 1971 (*BGBl*, 13 Aug. 1971, No. 89, Text No. 319) (*LS* 1971—Aus. 2).

BANGLADESH

Road Transport Workers Ordinance, No. 28 of 30 June 1961 (*Gazette of Pakistan (G. o. P.)* 4 July 1961, Extraordinary, p. 1075) (*LS* 1961—Pak. 1).

Industrial and Commercial Employment (Standing Orders) Ordinance, No. 8 of 1 September 1965 (*Dacca Gazette*, Special Issue, Part III, p. 1657, 1 Sep. 1965) (*LS* 1965—Pak. 4).

Industrial Relations Ordinance, No. 23 of 25 October 1969 (*G. o. P.*, 13 Nov. 1969, Special Issue, p. 943) (*LS* 1969—Pak. 2), as amended by Ordinance No. 19 of 16 October 1970 (*G. o. P.*, 17 Oct. 1970).

BELGIUM

Act of 10 March 1900 on workmen's contracts of service, as amended by Act of 22 July 1952 (*Moniteur belge (Mb)*, 31 July 1952, No. 213, p. 5494) and by Act of 4 March 1954 (*Mb*, 12 Mar. 1954, No. 71, p. 1770) (*LS* 1954—Bel. 3) and by Act of 21 November 1969 (*Mb*, 9 Jan. 1970, No. 6, p. 232) (*LS* 1969—Bel. 2).

Act of 24 May 1921 to guarantee freedom of association (*Revue du Travail*, XXII, 1921, p. 690) (*LS* 1921—Bel. 2-3).

Act of 20 September 1948 to make provision for the organisation of the economic life of the country (*Mb*, 27-28 Sep. 1948, No. 271/272, p. 7768) (*LS* 1948—Bel. 8), as amended by Act of 16 January 1967 (*Mb*, 21 Jan. 1967, No. 14, p. 554) (*LS* 1967—Bel. 1 A and 1 B).

Royal Order of 20 July 1955 respecting contracts of salaried employment (consolidated text) (*Mb*, 3-4 Oct. 1955, No. 276/277, p. 6212) (*LS* 1955—Bel. 3) as amended in 1969 (*Mb*, 9 Jan. 1970, No. 6, p. 232) (*LS* 1969—Bel. 2).

Act of 28 June 1966 respecting the compensation payable to workers dismissed on the closure of their undertakings (*Mb*, 2 July 1966, No. 127, p. 6879) (*LS* 1966—Bel. 1) and Royal Order of 20 September 1967 to apply the above Act.

Code of Justice, Act of 10 October 1967 (*Mb*, 31 Oct. 1967, Supplement).

Act of 20 July 1968 respecting the granting of waiting benefits to workers affected by certain closures of undertakings (*Mb*, 1 Aug. 1968, No. 148, p. 8157) and Royal Order of 16 August 1968 to apply to the above Act (*Mb*, 3 Sep. 1968).

Collective labour agreement of 9 March 1972 to co-ordinate national agreements and collective labour agreements respecting works councils, concluded by the *Conseil national du travail* (*Bulletin de la Fédération des industries belges*, No. 16, 1 June 1972, reference D/1972/0140/11).

Collective labour agreement No. 10 of 8 May 1973 respecting collective dismissals, adopted by the *Conseil national du travail* (ibid., No. 16, 1 June 1973).

BRAZIL

Constitution promulgated on 24 January 1967, as amended on 17 October 1969 (*Diário Oficial (DO)*, 20 Oct. 1969).

Consolidated Labour Laws, promulgated by Legislative Decree No. 5452 of 1 May 1943 (*DO*, 9 Aug. 1943, No. 184, p. 11937) (*LS* 1943—Braz. 1) (Part IV), as amended.

Act No. 5107 of 13 September 1966 to establish a length-of-service guarantee fund, and for other purposes (*DO*, 14 Sep. 1966, No. 174, p. 10587) (*LS* 1966—Bra. 1).

BULGARIA

Constitution of 15 May 1971 (*D'rzhaven Vestnik (DV)*, No. 39, 18 May 1971).

Labour Code, Ukase No. 544 of 13 November 1951 (*Izvestiya (Iz.)*, 13 Nov. 1951, No. 91, p. 1) (*LS* 1951—Bul. 2), as amended by Ukase No. 466 of 6 November 1957 (*Iz.*, 15 Nov. 1957) (*LS* 1957—Bul. 2), Decree No. 198 of 21 March 1963 (*Iz.*, 26 Mar. 1963) (*LS* 1963—Bul. 1 A), Decree No. 799 of 23 November 1963 (*Iz.*, 26 Nov. 1963) (*LS* 1963—Bul. 1 B), Act of 30 June 1973 (*DV*, 6 July 1973, No. 53, p. 4) and Decree No. 2227 of 5 October 1973 (*DV*, 12 Oct. 1973, No. 81, p. 1).

Ordinance of 31 March 1953 respecting work books (*Iz.*, 31 Mar. 1953).

Decision No. 30, dated 25 February 1958, of the Council of Ministers to approve regulations respecting the examination of labour disputes (*Iz.*, No. 17, 28 Feb. 1958) (*LS* 1958—Bul. 2).

Decision No. 455 of 7 April 1958 of the Council of Ministers to approve an Ordinance respecting the indemnities and benefits payable in the event of the dismissal of wage and salary earners (*Iz.*, No. 29, 11 Apr. 1958) (*LS* 1958—Bul. 5 A).

Resolution No. 3 of 20 January 1967 of the Council of Ministers to settle certain questions connected with the efficient use of manpower resources (*DV*, No. 8, 27 Jan. 1967).

BYELORUSSIAN SSR

Constitution.

Labour Code of the Byelorussian SSR, dated 1 October 1972.

CAMEROON

Labour Code, Law No. 67-LF-6 of 12 June 1967 (*Official Gazette (OG)*, 1 Sep. 1967, Supplement) (*LS* 1967—Cam. 1).

Order No. 8 of 17 June 1968 to determine the conditions and length of notice of dismissal (*OG*, 15 Dec. 1968, Supplement No. 3).

CANADA

Federal Legislation

Canada Labour Code, R.S.C., 1970, C. L-1; as amended by R.S.C. 1970 (1st Suppl.), C. 22; R.S.C. 1970 (2nd Suppl.), C. 17; S.C. 1972, C. 18 (21 Eliz. II, Ch. 18).

Canada Labour Standards Regulations, 1972 (*Statutory Orders and Regulations* 72-7).

Unemployment Insurance Act of 23 June 1971 (19-20 Eliz. II, Ch. 48) (*LS* 1971—Can. 4).

Provincial Legislation

Alberta

Labour Act, 1947 as amended in 1970 (*Revised Statutes*, 1970, Ch. 196) and in 1972 (*Statutes of Alberta*, Ch. 2, 35 and 58).

Individual's Rights Protection Act, 1972 (*Statutes*, Ch. 2).

British Columbia

Human Rights Act, 1969 (*Statutes of British Columbia*, 1969, Ch. 10).

Labour Relations Act (*Revised Statutes*, 1960, Ch. 205) as amended in 1961 (*Statutes*, Ch. 31), 1963 (Ch. 20), 1968 (Ch. 26), 1970 (Ch. 16) and 1972 (Bill No. 5).

Manitoba

Employment Standards Act (*Revised Statutes (RS)*, 1970, Ch. E 110) as amended in 1970 (*Statutes*, Ch. 48), 1971 (Ch. 82) and 1972 (Ch. 52).

Human Rights Act *(RS)*, 1970, Ch. 104) as amended in 1972 (Bill No. 110).

Labour Relations Act, 1972 (*Statutes*, Ch. 75).

New Brunswick

Human Rights Act, 1971 (*Statutes*, Ch. 8).

Industrial Relations Act, 1971 (*Statutes*, Ch. 9) as amended in 1972 (Ch. 37).

Newfoundland

Employment (Notice of Termination) Act, 1969 (*Statutes*, Ch. 35) as amended in 1971 (ibid., Ch. 37).

Labour Relations Act, 1950 (*Revised Statutes*, 1952, Ch. 258) as amended in 1959 (*Statutes*, Ch. 1), 1960 (Ch. 58), 1963 (Ch. 82), 1966 (Ch. 39), 1967 (Ch. 12) and 1968 (Ch. 71).

Human Rights Act, 1969 (*Statutes*, Ch. 75).

Nova Scotia

Human Rights Act, 1969 (*Statutes*, Ch. 11) as amended in 1970 (Ch. 85), 1971 (Ch. 69) and 1972 (Ch. 65).

Labour Standards Code, 1972 (*Statutes*, Ch. 10) and Regulations.

Trade Union Act, 1972 (*Statutes*, Ch. 19).

Ontario

Employment Standards Act, 1968 (*Revised Statutes of Ontario (RSO)*, 1970, Ch. 147) *LS* 1968—Can. 3), as amended in 1971 (*RSO*, 1971, Ch. 50) and 1972 (Bills Nos. 27 and 200).

Labour Relations Act (*RSO*, 1970, Ch. 232).

Human Rights Code (*RSO*, 1970, Ch. 318) as amended in 1971 (*RSO* 1971, Ch. 50) and 1972 (Bill No. 199).

General Regulation pursuant to the Employment Standards Act (*Revised Regulations (RR)*, 1970, Reg. 244), as amended by Regulation 91/1971, Regulation 7/1972 and Regulation 369/1972.

Termination of Employment Regulation pursuant to the Employment Standards Act (*RR*, 1970, Reg. 516).

Prince Edward Islands

Human Rights Code, 1968 (*Statutes*, Ch. 24).

Labour Act, 1971 (*Statutes*, Ch. 35) as amended in 1972 (*Statutes*, 1972, Ch. 33).

Quebec

Labour Code of 31 July 1964, 12-13 Eliz. II, Ch. 45 (*Quebec Official Gazette*, 7 Aug. 1964, Supplement, p. 4155) (*LS* 1964—Can. 2), as amended in 1965 (*Statutes*, Ch. 50), 1968 (Ch. 19 and 45), 1969 (Ch. 14, 20, 26, 47 and 48), 1970 (Ch. 9 and 33), 1971 (Ch. 44) and 1972 (Bill No. 71).

Employment Discrimination Act (*Revised Statutes*, 1964, Ch. 142) (*LS* 1964—Can. 3).

Construction Industry Labour Relations Act, 1968 (*Statutes*, Ch. 45), as amended in 1969 (Ch. 51), 1970 (Ch. 35), 1971 (Ch. 46) and 1972 (Bills Nos. 15 and 58).

Saskatchewan

Fair Employment Practices Act (*Revised Statutes*, 1965, Ch. 293) as amended in 1972 (*Statutes of the Province of Saskatchewan (SPS)*, Ch. 43).

Labour Standards Act, 1969 (*SPS*, Ch. 24, p. 54) (*LS* 1969—Can. 1) as amended in 1971 (*SPS*, Ch. 19) and 1972 (*SPS*, Ch. 59).

Human Rights Commission Act, 1972 (*SPS*, Ch. 108).

Trade Union Act, 1972 (*Statutes*, Ch. 137) as amended in 1972 (Bill No. 134).

Northwest Territories

Fair Practices Ordinance.

Labour Standards Ordinance.

Yukon Territory

Fair Practices Ordinance.

Labour Standards Ordinance, 1968 (*Ordinances of the Yukon Territory*, 1968, 2nd session, Ch. 1).

CENTRAL AFRICAN REPUBLIC

Labour Code, Act. No. 61-221 of 2 June 1961 (*Journal officiel de la République centrafricaine*, Special Issue, Aug. 1961).

CHILE

Labour Code.

Decree No. 98 of 20 January 1945 (*Diario Oficial (DO)*, 10 Feb. 1945).

Act No. 16455, of 5 April 1966, to issue rules for the termination of contracts of employment (*DO*, 6 Apr. 1966, No. 26409, p. 1) (*LS* 1966—Chile 1).

Decree No. 464 of 3 June 1966 to issue regulations for the application of Act No. 16455 (*DO*, 13 Feb. 1967).

Proclamation No. 36 of 18 September 1973.

CONGO

Labour Code, Act No. 10-64 of 25 June 1964 (*Journal officiel*, 9 July 1964, No. 14, Extraordinary, p. 547) (*LS* 1964—Congo (Bra.) 1).

CUBA

Fundamental Law of 7 February 1959 (*Gaceta oficial (GO)*, 7 Feb. 1959, Extraordinary).

Act No. 962 of 1 August 1961 respecting industrial associations (*GO*, 3 Aug. 1961) (*LS* 1961—Cuba 1).

Act No. 1166 of 23 September 1964 respecting the dispensation of justice in labour matters (*GO*, 29 Sep. 1964).

Law No. 1225 of 29 August 1969 (*GO*, 1 Sep. 1969, No. 6, p. 121).

Resolution No. 459 of 31 August 1969 (*GO*, 22 Sep. 1969, No. 8, p. 141).

CYPRUS

Termination of Employment Law, No. 24 of 27 May 1967 (*Episemos Efimeros*, 27 May 1967, No. 577, First Supplement, Part I, p. 485) (*LS* 1967—Cyp. 2).

Basic Agreement of 1962 on standard rules for the negotiation of agreements and for settlement of disputes and/or grievances (ILO: *Labour-Management Relations Series*, No. 38, p. 25).

CZECHOSLOVAKIA

Labour Code, dated 16 June 1965 (*Sbírka Zákonů (SZ)*, 30 June 1965, No. 32, Text 65) (*LS* 1965—Cz. 1), as amended by the Act of 18 December 1969 (*SZ*, 23 Dec. 1969, No. 47, Text 153) (*LS* 1969—Cz. 1).

Notification of 3 July 1970, of the Federal Ministry of Labour and Social Affairs to issue regulations concerning termination of the employment relationship, placement and income security of employees in connection with the implementation of organisational and rationalisation measures (*SZ*, Text 74 of 1970).

Resolution respecting Works Committees of the Basic Units of the Revolutionary Trade Union Movement, as adopted by the IVth Trade Union Congress and amended and supplemented by the Resolution of the National Trade Union Conference held in May 1965.

Code of Civil Procedure, Act No. 99 of 1963.

DAHOMEY

Labour Code: Ordinance No. 33 P.R./M.F.P.T.T. of 28 September 1967 (*Journal officiel*, 15 Dec. 1967, No. 27, p. 831) (*LS* 1967—Dah. 1).

DEMOCRATIC YEMEN

Labour Ordinance, Ch. 84

Law No. 1 of 1969 respecting the settlement of labour reduction disputes.

DENMARK

Seamen's Act, No. 229 of 7 June 1952 (*Lovtidende A (Lov. A)*, 19 June 1952, No. 23, p. 485) (*LS* 1952—Den. 1), last amended by Act No. 151 of 10 May 1967 (*Lov. A*, 1967, Text No. 151).

Act No. 156 of 31 May 1961 respecting agricultural and domestic workers (*Lov. A*, 1961, No. XI, p. 284) (*LS* 1961—Den. 2), amended by Act No. 292 of 9 June 1971 (*Lov. A*, 1971, Text No. 292, p. 721).

Act respecting the legal relations between employers and salaried employees, notification No. 413 of 30 August 1971 (*Lov. A*, 1971, No. XXXV, Text No. 413, p. 1087) (*LS* 1971—Den. 1).

General Agreement of 31 October 1973 concluded between the Danish Employers' Confederation and the Danish Federation of Trade Unions.

EGYPT

Labour Code: Law No. 91 of 5 April 1959 (*Al-Jarida al-Rasmiya*, 7 Apr. 1959, p. 1) (*LS* 1959—UAR 1).

Order No. 96 of 1962 to prescribe the disciplinary penalties, rules and formalities applicable to workers (*Al-Waqa'u al-Misriya*, 6 Dec. 1962) (*LS* 1962—UAR 1)

EL SALVADOR

Constitution of 8 January 1962 (*Diario oficial* (*DO*), 16 Jan. 1962).

Labour Code: Legislative Decree No. 15 of 23 June 1972 (*DO*, 31 July 1972, No. 142).

Decree No. 455 of 27 November 1963 to reorganise the Ministry of Labour and Social Welfare (*DO*, 10 Dec. 1963, No. 232, p. 11646) (*LS* 1963—Sal. 2).

ETHIOPIA

Civil Code, 1960

Labour Relations Proclamation, No. 210 of 1 November 1963 [the Labour Relations Decree (No. 49 of 5 September 1962) (*LS* 1962—Eth. 1 A) to be known henceforth as the Labour Relations Proclamation (No. 210 of 1963)]. (*Negarit Gazeta*, 1 Nov. 1963).

FINLAND

Unemployment Insurance Act, No. 125 of 23 March 1934 (*Finlands Författningssamling (FF)*, 27 March 1934, No. 125, p. 309) (*LS* 1934—Fin. 3).

Seafarers' Act, No. 341 of 30 June 1955 (*FF*, 1955, No. 341) (*LS* 1955—Fin. 2).

Severance Pay Act, No. 169 of 6 March 1970 (*FF*, 1970, No. 169, p. 354) (*LS* 1970—Fin. 8).

Contracts of Employment Act, No. 320 of 30 April 1970 (*FF*, 1970, No. 320, p. 665) (*LS* 1970—Fin. 2).

The Shop Steward Agreement, 1969 (ILO: *Labour-Management Relations Series*, No. 38, p. 46).

General Agreement of 22 February 1966 respecting protection against dismissal.

FRANCE

Labour Code, Act No. 73-4 of 2 January 1973 (*Journal officiel (JO)*, 3 Jan. 1973).

Act No. 73-680 of 13 July 1973 to amend the Labour Code in respect of the termination of contracts of employment of indefinite duration (*JO*, 18 July 1973).

Ordinance No. 45-280 of 22 February 1945 to institute works committees (*JO*, 23 Feb. 1945, p. 954) (*LS* 1945—Fr. 8), as amended by Act No. 66-427 of 18 June 1966 (*JO*, 25 June 1966, No. 146, p. 5267) (*LS* 1966—Fr. 1).

Decree of 23 August 1945.

Act No. 46-730 of 16 April 1946 to fix the status of employees' delegates in undertakings (*JO*, 17 Apr. 1946, No. 91, p. 3224) (*LS* 1946—Fr. 7).

Act No. 63-1240 of 18 December 1963 respecting a National Employment Fund (*JO*, 20 Dec. 1963, No. 97, p. 11331), supplemented by Ordinance No. 67-579 of 13 July 1967 (*JO*, 19 July 1967, No. 166, p. 7239) (*LS* 1967—Fr. 1 D).

Ordinance No. 67-578 of 13 July 1967 to establish a national employment agency (*JO*, 19 July 1967, No. 166, p. 7238) (*LS* 1967—Fr. 1 A).

Decree No. 67-806 of 25 September 1967 to lay down conditions for the grant of public assistance allowances to unemployed workers (*JO*, 26 Sep. 1967) as amended by Decree No. 71-693 of 17 August 1971 (*JO*, 26 Aug. 1971).

Act No. 68-1179 of 27 December 1968 respecting the exercise of the right of association in undertakings (*JO*, 31 Dec. 1968, No. 307, p. 12403) (*LS* 1968—Fr. 1 A).

Decree No. 73-808 of 10 August 1973 to apply paragraph 1*bis* of Ch. II of Title II of Book I of the Labour Code concerning termination of contracts of employment of indefinite duration (*JO*, 15 Aug. 1973, No. 189, p. 8885).

National inter-occupational agreement of 10 February 1969 respecting employment security.

GABON

Labour Code, Act No. 88/61 of 4 January 1962 (*Journal officiel (JO)*, 1 Mar. 1962, No. 5, Extraordinary, p. 189) (*LS* 1962—Gab. 1).

Ordinance No. 51-PR of 23 September 1964 to provide certain guarantees for workers dismissed from their employment for reasons of an economic nature (*JO*, 27 Sep. 1964, No. 27, Extraordinary, p. 14) (*LS* 1964—Gab. 1).

GERMANY (Fed. Rep. of)

Civil Code.

Protection against dismissal Act, as consolidated on 25 August 1969 (*Bundesgesetzblatt (BGBl)*, Part I, 27 Aug. 1969, No. 83, p. 1317) (*LS* 1969—Ger.F.R. 3).

Works Constitution Act, dated 15 January 1972 (*BGBl*, Part I, 18 Jan. 1972, No. 2, p. 13) (*LS* 1972—Ger.F.R. 1).

An Act on dismissal of wage-earners, dated 9 July 1926 (*Reichsgesetzblatt*, Part I, 1926, p. 399) (*LS* 1926—Ger. 7).

Commercial Code.

Industrial Code.

Labour Courts Act, dated 3 September 1953 (*BGBl*, Part I, 4 Sep. 1953, No. 57, p. 1267) (*LS* 1953—Ger.F.R. 2), amended by the Act dated 26 May 1972 (*BGBl*, Part I, 31 May 1972).

Employment Promotion Act, dated 25 June 1969 (*BGBl*, Part I, 28 June 1969, No. 51, p. 582) (*LS* 1969—Ger.F.R. 1).

GHANA

Industrial Relations Act, No. 299 of 23 June 1965, as amended (*LS* 1965—Ghana 2).

Labour Decree, N.L.C.D. No. 157 of 10 April 1967 (*LS* 1967—Ghana 1).

GREECE

Act No. 2112 of 11 March 1920 respecting obligatory notice of the termination of the contract of employment of private employees (*LS* 1920—Gr. 3-4) and Royal Decree No. 16 of 18 July 1920, as amended by Act No. 3198 of 20 April 1955 (*Ephemeris tes Kyberneseos (EK)*, Part I, 23 Apr. 1955, No. 98, p. 636) (*LS* 1955—Gr. 1).

Civil Code (*LO*, No. 2250) of 1940.

Legislative Decree No. 2656 of 17 October 1953 respecting the organisation and supervision of the employment market (*EK*, 31 Oct. 1953, Part I, No. 299, p. 2152) (*LS* 1953—Gr. 4).

Legislative Decree No. 2961 of 10 August 1954 to create an employment and unemployment insurance organisation (*EK*, 25 Aug. 1954, Part I, No. 197, p. 1595) (*LS* 1954—Gr. 2).

Act No. 3464 of 30 December 1955 to amend and supplement the provisions on unemployment insurance (*EK*, 31 Dec. 1955, Part I, No. 350, p. 2841) (*LS* 1955—Gr. 3).

Emergency Act No. 99 of 18 July 1967 to provide for the supervision of collective dismissals and to amend and supplement Act No. 2112 of 1920 respecting obligatory notice of the termination of the contract of employment (*EK*, 11 Aug. 1967, Part I), as amended by Act No. 173 of 1967.

GUATEMALA

Labour Code (amended), Decree No. 1441 of 5 May 1961 (*El Guatemalteco (El G.)*, 16 June 1961, No. 14, p. 145) (*LS* 1961—Gua. 1).

Decree No. 1748 of 10 May 1968 to promulgate a Civil Service Act (*El G.*, 23 May 1968, No. 60, p. 633).

GUINEA

Labour Code, Act No. 1 AN/60 dated 30 June 1960 (*LS* 1960—Gui. 1).

Ordinance No. 48/PRG of 8 October 1959 to issue general rules for public servants (*Journal officiel*, 10 Oct. 1959).

GUYANA

Labour Ordinance (*Laws of British Guiana*, 1953 ed., Ch. 103).

HAITI

Labour Code, Act of 6 October 1961 (*Le Moniteur*, 19 Oct. 1961, Extraordinary) (*LS* 1961—Hai. 1).

HUNGARY

Labour Code, Act No. II of 8 October 1967 (*Magyar Közlöny (MK)*, 8 Oct. 1967, No. 73, p. 665) (*LS* 1967—Hun. 2 A).

Decree No. 34 of 8 October 1967 for the application of Act No. II of 1967 to promulgate a Labour Code (*MK*, 8 Oct. 1967, No. 73, p. 512) (*LS* 1967—Hun. 2 B).

ICELAND

Act No. 80 of 1938 respecting trade unions and labour disputes.

Act No. 16 of 9 April 1958 respecting the right of workers to a period of notice of dismissal (*Stjórnartidindi A*, 2, p. 33).

INDIA

Industrial Disputes Act of 17 March 1947 (*Gazette of India (GI)*, 17 Mar. 1947, Extraordinary, p. 226) (*LS* 1947—Ind. 1) as amended by Act No. 35 of 19 November 1965 (*GI*, No. 41, Extraordinary, 20 Nov. 1965, Part II, Section 1, p. 555) (*LS* 1965—Ind. 1) and by Act No. 45 of 8 December 1971 (*GI*, 9 Dec. 1971, Part II, Section 3(i)).

Industrial Employment (Standing Orders) Act, No. XX of 23 April 1946 (*GI*, 4 May 1946, No. 18, Part IV, p. 65) (*LS* 1946—Ind. 2).

SRO No. 770: Industrial Disputes (Central) Rules, 1957 (*GI*, 10 Mar. 1957), as amended in 1972.

States

Bombay

Industrial Relations Act, 1946.

Madhya Pradesh

Industrial Relations Act, No. 27 of 17 November 1960 (*Madhya Pradesh Government Gazette*, 31 Dec. 1960, Extraordinary).

Uttar Pradesh

Industrial Disputes Act, 1947.

INDONESIA

Act No. 22 of 8 April 1957 respecting the settlement of labour disputes (*Lembaran Negara (LN)*, 1957, No. 42) (*LS* 1957—Indo. 1).

Act No. 12 of 23 September 1964 concerning termination of employment in private enterprises (*LN*, 1964, No. 64).

IRAN

Labour Act of 17 March 1959 (*LS* 1959—Iran 1).

Regulations of 19 October 1959 respecting tripartite councils (*Rouznameh Rasmi Kechvar Chahanchi Iran*, 30 Sep. 1959).

Regulations of 20 October 1959 respecting disputes boards (ibid).

IRAQ

Labour Code, Act No. 151 of 16 July 1970 (*Al-Waqayi'u al-Iraqiya*, 10 Aug. 1970, No. 1906) (*LS* 1970—Iraq 1).

IRELAND

The Redundancy Payments Act, No. 21 of 18 December 1967 (*LS* 1967—Ire. 1) amended by Act No. 20 of 27 July 1971 and by Act No. 11 of 28 June 1973.

Industrial Relations Act, 1946 (*LS* 1946—Ire. 1), as amended by Act No. 14 of 3 June 1969 (*LS* 1969—Ire. 1).

The Minimum Notice and Terms of Employment Act, No. 4 of 2 May 1973.

ITALY

Civil Code.

Legislative Decree No. 1825 of 13 November 1924 respecting the contract of employment of salaried employees (*Gazetta Ufficiale (GU)*, 22 Nov. 1924, No. 273, p. 4107) (*LS* 1924—It. 3).

Act No. 604 of 15 July 1966 relating to individual dismissals (*GU*, No. 195 of 6 Aug. 1966, p. 3986) (*LS* 1966—It. 1).

Act No. 300 of 20 May 1970 to make provisions respecting the protection of workers' freedom and dignity, trade union freedom and freedom of action within the workplace, and provisions respecting placement (*GU*, No. 131 of 27 May 1970, p. 3404) (*LS* 1970—It. 2).

Act No. 1115 of 5 November 1968 to extend to the workers' benefit the facilities of the Wages Equalisation Fund, the unemployment insurance scheme and the Family Allowances Fund and to make provisions in favour of ageing workers who have been dismissed (*GU*, No. 282, 5 Nov. 1968), amended by Act No. 464 of 8 August 1972 (*GU*, No. 218, 23 Aug. 1972, p. 5954).

Interconfederal agreement on individual dismissals. Dated 29 April 1965 (ILO: *Labour-Management Relations Series*, No. 38, p. 88).

Interconfederal agreement on dismissals due to reduction of personnel. Dated 5 May 1965 (ibid., p. 94).

Interconfederal agreement concerning the establishment and functioning of works committees. Dated 18 April 1966 (ibid., p. 95).

IVORY COAST

Labour Code, Act No. 64-290 of 1 August 1964 (*Journal Officiel (JO)*, 17 Aug. 1964, No. 44, Extraordinary, p. 1059) (*LS* 1964—I.C. 1).

Decree No. 388 of 13 September 1966 to consolidate the regulations made under Part III of the Labour Code (*JO*, 3 Nov. 1966), as amended by Decree No. 394 of 29 August 1968 to fix the rates of dismissal compensation payable to workers of all classes (*JO*, 18 Sep. 1968).

JAMAICA

Masters and Servants Law, Ch. 240, 1940.

JAPAN

Labour Standards Law, No. 49 of 5 April 1947 (*Official Gazette (OG)*, 7 Apr. 1947) (*LS* 1947—Jap. 3).

Employment Security Law, No. 141 of 30 November 1947 (*OG*, 30 Nov. 1947, Extra p. 1) (*LS* 1947—Jap. 4), as amended by Law No. 88 of 20 May 1949 (*OG*, 20 May 1949, Extra, No. 46, p. 8) (*LS* 1949—Jap. 2).

Unemployment Insurance Law, No. 146 of 1 December 1947 (*OG*, 1 Dec. 1947, No. 502, p. 4) (*LS* 1947—Jap. 1 (B)), as amended by Law No. 87 of 20 May 1949 (*OG*, 20 May, Extra, No. 46, p. 1) (*LS* 1949—Jap. 1) and by Law No. 230 of 31 July 1950 (*OG*, 31 July 1950, Extra, No. 95, p. 11) (*LS* 1950—Jap. 1).

Public Corporation Labour Relations Law, No. 257 of 20 December 1948 (*OG*, 20 Dec. 1948, Extra, No. 47, p. 17).

Trade Union Law, No. 174 of 1 June 1949 (*OG*, 1 June 1949, Extra, No. 68, p. 2) (*LS* 1949—Jap. 3).

Local Public Enterprise Labour Relations Law, No. 289 of 31 July 1952.

Employment Measures Law, No. 132 of 21 July 1966 (*Kampoo*, 21 July 1966, No. 11881, p. 2 (*LS* 1966—Jap. 1).

Law No. 100 of 1 September 1947 respecting mariners (*OG*, 1 Sep. 1947 Extra (I), p. 1) (*LS* 1947—Jap. 5).

KENYA

Employment Act (*Laws of Kenya*, rev. ed. 1964, Ch. 226).

Trade Disputes Act, No. 15 of 4 June 1965 (*Kenya Gazette (KG)*, 8 June 1965, Supplement, No. 44, p. 141) (*LS* 1965—Ken. 1), as amended by Act No. 22 of 9 August 1971 (*KG*, 10 Aug. 1971, No. 63, Acts Supplement No. 7).

Industrial Relations Charter of July 1962 (ILO: *Labour Management Relations Series*, No. 38, p. 110).

KHMER REPUBLIC

Labour Code, Ordinance No. 2 of 14 January 1972 (*Journal officiel*, 14 Jan. 1972, Special).

KUWAIT

Labour Act No. 18 of 1960 (public sector).

Labour Act No. 38 of 1964 (private sector) (*Kuwait Al-yawm*, No. 489, p. 5).

LEBANON

Labour Code, Act of 23 September 1946 (*LS* 1946—Leb. 1).

Code of Obligations and Contracts, Act of 9 March 1932.

Legislative Decree No. 112 of 12 June 1959 concerning the Civil Service.

LIBERIA

Labor Practices Law.

Act of 26 May 1972 to amend the Labor Practices Law with respect to administration and enforcement.

LIBYAN ARAB REPUBLIC

Labour Code, Act No. 58-2970 of 1 May 1970 (*Al-Jarida al-Rasmiya*, 1 May 1970, Special Supplement) (*LS* 1970—Lib. 1).

LUXEMBOURG

Grand-Ducal Order of 30 June 1945 respecting the institution of a national labour office (*Mémorial (M)*, 1945, No. 34, p. 375).

Grand-Ducal Order of 30 October 1958 respecting the establishment of workers' committees in industrial, commercial and handicraft undertakings (*M*, 17 Nov. 1958, No. 58, p. 1459) (*LS* 1958—Lux. 1).

Act of 24 June 1970 to issue regulations respecting contracts for the hire of workers' services (*M*, Series A, No. 35, 30 June 1970).

Consolidated text of the laws respecting contracts of service of salaried employees in private employment of 12 November 1971 (*M*, Series A, No. 82, 1 Dec. 1971, p. 2105; *Errata : M*, Series A, No. 85, 9 Dec. 1971, p. 2221).

MADAGASCAR

Labour Code, Ordinance No. 60-119 of 1 October 1960 (*Journal officiel (JO)*, 8 Oct. 1960, No. 125, p. 2012) (*LS* 1960—Mad. 1).

Act No. 60-003 of 15 February 1960 (*JO*, 20 Feb. 1960, p. 365).

Decree No. 64-212 of 27 May 1964 (*JO*, 30 May 1964, p. 1083).

Decree No. 64-495 of 18 November 1964 to establish an employment service (*JO*, 28 Nov. 1964, No. 388, p. 2612) (*LS* 1964—Mad. 1).

Decree No. 64-213 of 27 May 1964 (*JO*, 30 May 1964, p. 1091).

Decree No. 62-214 (*JO*, 26 May 1962, p. 901).

MALAWI

Employment Act, No. 14 of 17 March 1964 (*Nyasaland Gazette*, 20 Mar. 1964, Supplement 15 C.) (*LS* 1964—Ny. 1).

MALAYSIA

Ordinance No. 38 of 27 June 1955 to consolidate and amend the law relating to employment. (*LS* 1955—Mal. 2).

Industrial Relations Act, No. 35 of 20 July 1967 (*Government Gazette*, Act Supplement No. 6, 3 Aug. 1967, p. 269) (*LS* 1967—Mal. 1 A).

MALI

Labour Code, Act No. 62-67 A.N.-M.R. of 19 August 1962 (*Journal officiel de la République du Mali*, 15 Oct. 1962, No. 128, p. 708) (*LS* 1962—Mali 1).

MALTA

Conditions of Employment (Regulation) Act, No. XI of 22 March 1952 (*LS* 1952—Malta 1), as amended by the Conditions of Employment (Regulation) (Amendment) Act, 1969, No. XXI of 24 July 1969 (*LS* 1969—Malta 1).

National Insurance Act, No. VI of 28 April 1956.

MAURITANIA

Labour Code, Act No. 63-023 of 23 January 1963 (*Journal officiel*, 20 Feb. 1963, No. 106, p. 53 (*LS* 1963—Mau. 1).

MAURITIUS

Termination of Contracts of Service Ordinance, No. 33 of 29 November 1963 (*Government Gazette (GG)*, 30 Nov. 1963, Supplement), as amended by Ordinances No. 42 of 17 December 1965 (*GG*, 18 Dec. 1965, Supplement) and No. 40 of 2 September 1966 (*GG*, 3 Sep. 1966, Supplement) and by Act No. 33 of 29 June 1971.

Employment and Labour Ordinance (*Laws of Mauritus*, 1965, Ch. 214, Sections 7 and 12OA), as amended by Act No. 54 of 13 December 1968 (*GG*, 14 Dec. 1968, No. 128, Extraordinary, Legal Supplement (Acts), p. 394) (*LS* 1968—Maur. 3).

Employment and Labour (Termination of Employment Certificate Regulations, 1972 (*Government Notice*, No. 122 of 1972).

MEXICO

Federal Labour Act of 2 December 1969 (*Diario Oficial (DO)*, 1 Apr. 1970, No. 26, p. 1) (*LS* 1969—Mex. 1).

Act of 22 February 1973 respecting social security (*DO*, 12 Mar. 1973, No. 8, p. 10).

Federal Act respecting workers in the service of the State.

MOROCCO

Code of obligations and contracts, Dahir of 12 August 1913, as amended by the Dahir of 8 April 1938.

Dahir of 23 October 1948 concerning model rules of employment for determining the relations between employed persons in industry, trade or the professions, and their employers (*Bulletin officiel du Protectorat de la République française au Maroc (BOP)*, 26 Oct. 1948, No. 1878*bis*, p. 1178) (*LS* 1948—Mor. 3),

Order fixing the model rules of employment for determining the relations between employed persons in industry, trade or the professions, and their employers (ibid., p. 1179) as amended by the Dahir of 18 March 1954 (*BOP*, 26 Mar. 1954) and by Decree No. 2-57-1081 of 20 August 1957 (*Bulletin officiel (BO)*, 15 Sep. 1957).

Dahir of 24 February 1958 to establish civil service rules.

Royal Legislative Decree No. 314-66 of 14 August 1967 to provide for the maintenance of operations in industrial and commercial undertakings and for the dismissal of their employees (*BO*, 23 Aug. 1967) (*LS* 1967—Mor. 1 A).

Royal Legislative Decree No. 316-66 of 14 August 1967 to provide for the payment of compensation on the dismissal of certain classes of employees (*BO*, 23 Aug. 1967) (*LS* 1967—Mor. 1 B).

Dahir to promulgate Act No. 1-72-110 to establish special courts for labour and social security matters. Dated 27 July 1972 (*BO*, No. 3120, 16 Aug. 1972, p. 1125).

Dahir to promulgate Act No. 1-72-219 to lay down the conditions of employment and remuneration of agricultural workers. Dated 24 April 1973 (*BO*, No. 3156, 25 Apr. 1973, p. 669).

NETHERLANDS

Civil Code.

An Act to amend the provisions of the Civil Code respecting the termination of contracts of employment, dated 17 December 1953 (*Staatsblad (Sb.)*, 1953, No. 619) (*LS* 1953—Neth. 3).

Commercial Code.

Civil Service Act, 1929.

Extraordinary (Employment Relations) Decree of 5 October 1945 (*Sb.*, 1945, No. 214) (*LS* 1945—Neth. 1), as amended by the Act of 20 June 1963 (*Sb.* 1963, No. 267) (*LS* 1963—Neth. 1).

Unemployment Act of 9 September 1949 (*Sb.*, 1949, No. J 423) (*LS* 1949—Neth. 2), as amended by the Act of 14 August 1967 (*Sb.*, 1967, No. 421) (*LS* 1967—Neth. 1).

Works Councils Act of 4 May 1950 (*Sb.*, 1950, No. K 174) (*LS* 1950—Neth. 2), as amended by the Act of 28 January 1971 (*Sb.*, 1971, No. 54) (*LS* 1971—Neth. 1).

Surinam

Government Order of 8 September 1947 concerning contracts of employment (*Gouvernementsblad von Suriname (GB)*, 1947, No. 140) (*LS* 1947—Sur. 1), as amended on 19 December 1963 (*GB*, 1963, No. 164).

Commercial Code.

Public Servant's Decree of 1963.

NEW ZEALAND

Social Security Act, No. 7 of 14 September 1938 (*Public Acts of New Zealand (Reprint of Statutes)*, 1908-1931, Vol. VII, p. 522) (*LS* 1938—NZ. 1).

Act No. 22 of 29 October 1948 to consolidate and amend the Law relating to apprentices (*LS* 1948—NZ. 2).

State Services Act, No. 132 of 14 December 1962.

Industrial Relations Act, No. 19 of 14 September 1973.

Factories Act, No. 43 of 12 October 1946 (*LS* 1946—NZ. 4).

Race Relations Act, No. 150 of 17 December 1971 (*LS* 1971—NZ. 1).

Shops and Offices Act, No. 32 of 20 October 1955 (*LS* 1955—NZ. 1).

NICARAGUA

Labour Code, Decree No. 336 of 12 January 1945 (*LS* 1945—Nic. 1), as amended by Decree No. 765 of 12 October 1962 (*La Gaceta*, 13 Oct. 1962, No. 233, p. 2309) (*LS* 1962—Nic. 1).

NIGER

Labour Code, Act No. 62-12 of 13 July 1962 (*Journal officiel*, 25 Aug. 1962, Extraordinary).

Inter-occupational collective agreement of 15 December 1972.

NIGERIA

Labour Code, Ordinance No. 54 of 5 November 1945 (*LS* 1946—Nig. 1 B), amended by Ordinance No. 8 of 20 May 1946 (*LS* 1946—Nig. 1 A), Ordinance No. 29 of 1 September 1948 (*LS* 1948—Nig. 1), Ordinance No. 7 of 29 April 1949 (*LS* 1949—Nig. 1) and Ordinance No. 34 of 14 October 1950 (*LS* 1950—Nig. 1).

National Provident Fund Act, No. 20 of 26 June 1961 (*Official Gazette*, 30 June 1961, No. 47, Extraordinary Supplement, p. A. 85) (*LS* 1961—Nig. 1).

NORWAY

Labour Disputes Act, No. 1 of 5 May 1927 (*Norsk Lovtidend (NL)*, Part I, No. 17, p. 322) (*LS* 1927—Nor. 1).

Employment Promotion Act, No. 9 of 27 June 1947 (*NL*, 8 July 1947, Part I, No. 25, p. 453; Part II, p. 299) (*LS* 1947—Nor. 2), as amended by Act No. 70 of 19 June 1970 (*NL*, 1970, p. 1042) (*LS* 1970—Nor. 2) and by Act No. 83 of 18 June 1971 (*NL*, 1971, No. 21, p. 835) (*LS* 1971—Nor. 3).

Workers' Protection Act, No. 2 of 7 December 1956 (*NL*, 31 Dec. 1956, No. 45, p. 1235) (*LS* 1956—Nor. 2), as amended by Act No. 33 of 13 June 1969 (*NL*, 23 July 1969) and Act No. 78 of 15 December 1972 (*NL*, 29 Dec. 1972).

Basic Agreement of 1969 between the Norwegian Employers' Confederation (NAF), etc., and the Norwegian Federation of Trade Unions (LO), etc. (ILO: *Labour-Management Relations Series*, No. 38, p. 119).

PAKISTAN

West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, No. VI of 18 May 1968 (*Gazette of West Pakistan*, 22 May 1968, Extraordinary, p. 1922 - A (*LS* 1968—Pak. 1).

Industrial Relations Ordinance, No. XXIII of 25 October 1969 (*Gazette of Pakistan*, 13 Nov. 1969, Extraordinary, p. 943 (*LS* 1969—Pak. 2).

PANAMA

Labour Code, Decree No. 252 of 30 December 1971 (*Gaceta Oficial*, 18 Feb. 1972, No. 17040) (*LS* 1971—Pan. 1).

PERU

Legislative Decree No. 18138 of 6 February 1970 to prescribe the conditions for the conclusion of individual contracts of fixed duration or for a specified piece of work (*El Peruano (El P.)*, 7 Feb. 1970, No. 8641, p. 1) (*LS* 1970—Per. 1).

Legislative Decree No. 18471 of 10 November 1970 to prescribe the grounds for dismissal of workers employed in the private sector (*El P.*, 11 Nov. 1970, No. 8872, p. 5) (*LS* 1970—Per. 3).

Act No. 11377 of 29 March 1950 respecting the dismissal of civil servants (*Anuario de la legislación peruana*. Vol. 41, Jan.-July 1950, p. 201).

Presidential Decree No. 007/71 TR of 30 November 1971 and Presidential Decree No. 006/72 TR of 30 May 1972 respecting the procedure in the labour courts (*El P.*, 1 Dec. 1971; ibid., 1 June 1972).

POLAND

Act of 2 July 1924 relating to the employment of women and young persons (*Dziennik Ustaw (DU)*, 1924, No. 65, Text 636, p. 962) (*LS* 1924—Pol. 2).

Decree of 6 February 1945 to institute works councils (*DU*, 20 Mar. 1945, No. 8, Text 36, p. 45) (*LS* 1945—Pol. 2 A).

Act No. 52 of 4 February 1950 respecting the Social Inspectorate of Labour (*DU*, 28 Feb. 1950, No. 6, Text 52, p. 67) (*LS* 1950—Pol. 1).

Ordinance of the Council of Ministers of 24 April 1954 respecting the works arbitration committees (*DU*, 27 Apr. 1954, No. 18, Text 68) (*LS* 1954—Pol. 1 B, extracts).

Decree of 18 January 1956 to restrict the right to terminate contracts of employment without notice, and to ensure continuity of employment (*DU*, 25 Jan. 1956, No. 2, Text 11) (*LS* 1956—Pol. 1).

Civil Code of 23 April 1964.

QATAR

Labour Law, No. 3 of 1962.

ROMANIA

Constitution of the Socialist Republic of Romania. Dated 13 March 1969 (*Buletinul Oficial (BO)*, Part I, No. 34, 16 Mar. 1969) (*LS* 1969—Rom. 1) (extracts).

Labour Code, Act No. 10 of 23 November 1972 (*BO*, Part I, No. 140, 1 Dec. 1972) (*LS* 1972—Rom. 1).

Act No. 1 of 26 March 1970 respecting labour organisation and discipline in specialised State socialist units (*BO*, No. 27, 27 Mar. 1970).

RWANDA

Labour Code, Act of 28 February 1967 (*Journal officiel de la République rwandaise*, 1 Mar. 1967, No. 5, p. 107) (*LS* 1967—Rwa. 1).

SINGAPORE

Industrial Relations Act No. 27 of 1965 (*Government Gazette (GG)*, Acts Supplement, 18 Feb. 1966, No. 17, p. 129) (*LS* 1965—Sin. 1), as amended by Act No. 22 of 6 August 1968 (*GG*, Acts Supplement, 15 Aug. 1968, No. 23, p. 229) (*LS* 1968—Sin. 2).

Employment Act, No. 17 of 6 August 1968 (*GG*, 12 Aug. 1968, Acts Supplement, No. 18, p. 141) (*LS* 1968—Sin. 1).

SPAIN

Act of 17 October 1940 respecting labour courts (*Boletín Oficial del Estado (BO)*, 3 Nov. 1940, No. 308, p. 7556) (*LS* 1940—Sp. 6).

Act respecting contracts of employment (*BO*, 24 Feb. 1944) (*LS* 1944—Sp. 1), as amended by Decree No. 44 of 26 October 1956 (*BO*, 25 Dec. 1956, No. 360, p. 8085) (*LS* 1956—Sp. 3).

Decree of 13 May 1938 respecting the establishment of labour courts.

Decree No. 909 of 21 April 1966 respecting the procedures to be followed in the settlement of labour disputes (*BO*, 23 Apr. 1966).

Decree No. 1878 of 23 July 1971 to issue rules concerning the legal protection of and guarantees concerning persons elected to trade union office (*BO*, 13 Aug. 1971, No. 193, p. 13228) (*LS* 1971—Sp. 4).

Decree to define the general principles of social security, No. 907, dated 21 April 1966 (*BO*, 22 and 23 Apr. 1966) (*LS* 1966—Sp. 3 A).

Decree No. 3090 of 2 November 1972 respecting employment policy (*BO*, 15 Nov. 1972, No. 274, p. 20331) (*LS* 1972—Sp. 1).

Order dated 18 December 1972 governing the pretraining, general or special cultural courses and additional costs of vocational training courses for the unemployed (*BO*, 2 Feb. 1973, No. 29, p. 1897).

Order dated 18 December 1972 governing action taken with a view to vocational training under the Employment Policy Decree (*BO*, 2 Feb. 1973, No. 29, p. 1899; *errata :* 2 Apr. 1973).

Order dated 18 December 1972 concerning procedures for the cessation, suspension or modification of employment relationships (*BO*, 2 Feb. 1973), No. 29, p. 1900).

SRI LANKA

Industrial Disputes Act, No. 43 of 16 December 1950 (*LS* 1950—Cey. 1).

Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 28 October 1971 (*LS* 1971—Cey. 1).

SUDAN

Employers and Employed Persons Ordinance of 1948 (*Laws of Sudan*, 1950 edition, Vol. 8, p. 119), as amended in 1969.

Trade Disputes Act, No. 16 of 1966 (*Sudan Gazette (SG)*, 15 May 1966, No. 1022, Legislative Supplement No. 1, p. 55) (*LS* 1966—Sud. 1), as amended by Act No. 36 of 1969 (*SG*, 26 July 1969, Legislative Supplement).

SWEDEN

Collective Bargaining Act, No. 506 of 11 September 1936 (*Svensk Författningssamling (SF)*, 22 Sep. 1936, p. 957) (*LS* 1936—Swe. 8).

Act No. 727 of 14 October 1939 respecting the reinstatement of employees after military service (*SF*, 16 Oct. 1939, No. 727, p. 1889) (*LS* 1939—Swe. 6).

Act No. 844 of 21 December 1945 to prohibit the dismissal of employees on the ground of marriage or pregnancy (*SF*, 31 Dec. 1945, p. 1843).

Workers' Protection Act, No. 1 of 3 January 1949 (*SF*, 12 Jan. 1949, p. 1) (*LS* 1949—Swe. 1).

Act No. 199 of 4 June 1971 respecting protection of employment for certain employees (*SF*, 10 June 1971, p. 1) (*LS* 1971—Swe. 2) (to be repealed on 1 July 1974, on entry into force of the Job Security Act).

Job Security Act, No. 12 of 9 January 1974 (*SF*, 1974:12), to enter into force on 1 July 1974.

Act concerning certain employment promotion measures, No. 13 of 9 January 1974 (*SF*, 1974:13), to enter into force on 1 July 1974.

Basic Agreement between the Swedish Employers' Confederation and the Confederation of Swedish Trade Unions, 1938, as amended in 1947, 1958 and 1964 (ILO: *Labour-Management Relations Series*, No. 38, p. 168).

Agreement on works councils, 1966 (ibid., p. 187).

Agreement on employment security. Entered into force on 1 April 1973.

SWITZERLAND

Civil Code.

Federal Act of 25 June 1971 to amend Parts X and X*bis* of the Code of Obligations (labour contracts) (*Recueil des Lois Fédérales*, 22 Oct. 1971, No. 42, p. 1461) (*LS* 1971—Swi. 1).

THAILAND

Announcement No. 103 of the National Executive Council, to revise the laws on labour and the settlement of labour disputes. Dated 16 March 1972 (*Government Gazette (GG)*, 16 Mar. 1972, No. 41, Special Issue) (*LS* 1972—Thai. 1).

Announcement of the Ministry of the Interior respecting labour protection. Dated 16 April 1972 (BE 2515) (*GG*, 16 Apr. 1972, No. 61, Special Issue) (*LS* 1972—Thai. 2 A).

Announcement of the Ministry of the Interior respecting labour relations. Dated 16 April 1972 (BE 2515) (*GG*, 16 Apr. 1972, No. 61, Special Issue) (*LS* 1972—Thai. 3).

TRINIDAD AND TOBAGO

Masters and Servants Ordinance (*Revised Ordinances*, 1950, Vol. III, Ch. 22, No. 5).

Industrial Relations Act, No. 23 of 16 June 1972.

TUNISIA

Labour Code, Act No. 66-27 of 30 April 1966 (*Journal officiel*, 3-6 May 1966, No. 20, p. 716; 10-13 May 1966, No. 21, p. 758; 17-24 May, No. 22, p. 800) (LS 1966—Tun. 1).

TURKEY

Labour Courts Act, No. 5521 of 30 January 1950 (*Resmî Gazete (RG)*, 4 Feb. 1950, No. 7424, p. 17713) (*LS* 1950—Tur. 2).

Labour Act, No. 1475 of 25 August 1971 (*RG*, 1 Sep. 1971).

Maritime Labour Act, No. 6379 of 10 March 1954 (*RG*, 20 Mar. 1954, No. 8663, p. 8742) (*LS* 1954—Tur. 4).

UKRAINIAN SSR

Constitution.

Labour Code, approved by Act of 10 December 1971 (*Vedomosti Verkhovnogo Soveta Ukrainskoi SSR*, 1971, Text No. 194).

UNITED KINGDOM

Safeguarding of Employment Act of 23 December 1947 (Northern Ireland) (10 and 11 Geo. VI, Ch. 24).

Contracts of Employment and Redundancy Payments Act (Northern Ireland) of 19 October 1965 (*Public General Acts (PGA)*, Ch. 19, p. 217).

Redundancy Payment Act of 5 August 1965 (*PGA*, 1965, Ch. 62) (*LS* 1965— UK. 1).

Redundancy Rebates Act of 6 March 1969 (*PGA*, 1969, Ch. 8, p. 28).

Race Relations Act of 25 October 1968 (*PGA*, 1968, Ch. 71) (*LS* 1968—UK. 1).

Industrial Relations Act of 5 August 1971 (*PGA*, 1971, Ch. 72) (*LS* 1971—UK. 1).

Industrial Relations Code of Practice of February 1972 (*LS* 1971—UK. 1 a).

Contracts of Employment Act of 27 July 1972 (*PGA*, 1972, Ch. 53).

Guernsey

Industrial Disputes and Conditions of Employment Laws, 1947/71.

UNITED STATES

Railway Labor (Conciliation and Arbitration) Act of 20 May 1926 (45 *United States Code (USC)*, 151 et seq.) (LS 1926—USA 1).

Longshoremen's and Harbor Workers' Compensation Act of 4 March 1927 (33 *USC*, 901 et seq.) (*LS* 1927—USA 1).

Fair Labor Standards Act of 25 June 1938 (29 *USC*, 200 et seq.) (*LS* 1938—USA 1), with amendments (*LS* 1966—USA 1).

Labor Management Relations Act of 23 June 1947 (29 *USC*, 151 et seq.) (*LS* 1947—USA 2)

Civil Rights Act of 2 July 1964 (42 *USC*, 2000 et seq.) (*LS* 1964—USA 1).

Executive Order No. 11246 of 24 September 1965: Equal employment opportunity (*Federal Register (FR)*, 28 Sep. 1965; *errata :* ibid., 12 Oct. 1965), amended by Executive Order 11375 of 13 October 1967 (*FR*, 17 Oct. 1967).

Age Discrimination in Employment Act of 15 December 1967 (29 *USC*, 621 et seq.) (*LS* 1967—USA 1).

Executive Order No. 11478 of 8 August 1969: Equal employment opportunity in the Federal Government (*FR*, 12 Aug. 1969, No. 153, p. 12985) (*LS* 1969—USA 2).

Occupational Safety and Health Act of 29 December 1970 (29 *USC*, 651 et seq.) (*LS* 1970—USA 1).

USSR

Constitution of the USSR.

Constitutions of the Union and Autonomous Republics.

Fundamental principles governing the labour legislation of the USSR and of the Union Republics, approved by Act No. 2-VIII of the Supreme Soviet dated 15 July 1970 (*Vedomosti Verkhovnogo Soveta SSSR*, 22 July 1970, No. 29, Text No. 265) (*LS* 1970—USSR 1).

Labour Code of the Russian SFSR. Dated 9 December 1971 (*Vedomosti Verkhovnogo Soveta RSFSR*, 16 Dec. 1971, No. 50, Text No. 1007) (*LS* 1971—USSR 1).

UPPER VOLTA

Labour Code, Act No. 26-62-AN of 7 July 1962 (promulgated by Decree No. 348-PRES-LAN of 17 August 1962) (*Journal officiel (JO)*, 18 Aug. 1962, Extraordinary).

Order No. 98/TFP/DTMO of 15 February 1967 respecting the notification of movements of workers (*JO*, 23 Feb. 1967, No. 10).

REPUBLIC OF VIET-NAM

Labour Code, Ordinance No. 15 of 8 July 1952, amended and supplemented in 1956 (*LS* 1956—V.N. 1).

YUGOSLAVIA

Constitution of 7 April 1963 (*Službeni List (SL)*, 10 Apr. 1963, No. 14, Text No. 209) (*LS* 1963—Yug. 3 (extracts).

Decree of 4 April 1965 to promulgate a Basic Act respecting the organisation and financing of placement (*Sl*, 5 Apr. 1965, Text 313) (*LS* 1965—Yug. 2), supplemented by the Act of 26 November 1966 (*Sl*, 7 Dec. 1966, Text 566) (*LS* 1966—Yug. 2), as amended by the Act of 17 December 1969 (*Sl*, 25 Dec. 1969, Text 658) and by the Act of 18 February 1970 (*Sl*, 26 Feb. 1970, Text 82) (*LS* 1970—Yug. 1).

Decision of 30 June 1971 to promulgate certain amendments to the Constitution (*SL*, 1971, Text 344).

Act of 13 April 1973 respecting the mutual relationships between workers engaged in collective work (*SL*, 1973, Text 310).

ZAMBIA

Act No. 3 of 11 January 1965 to amend the Trade Unions and Trade Disputes Ordinance (*Government Gazette (GG)*, 15 Jan. 1965, Supplement, p. 33) (*LS* 1965—Zam. 1).

Employment Act, No. 57 of 20 September 1965 (*GG*, 1 Oct. 1965, No. 70 Supplement, p. 449) (*LS* 1965—Zam. 2).

Industrial Relations Act, No. 36 of 20 December 1971 (*LS* 1971—Zam. 2).

APPENDIX III

REPORTS RECEIVED

State	Recommendation No. 119	State	Recommendation No. 119
Afghanistan	—	India	×
Algeria	×	Indonesia	×
Argentina	×	Iran	×
Australia	×	Iraq	×
Austria	×	Ireland	×
Bangladesh	×	Israel	—
Barbados	—	Italy	×
Belgium	×	Ivory Coast	×
Bolivia	—	Jamaica	×
Brazil	×	Japan	×
Bulgaria	×	Jordan	—
Burma	×	Kenya	×
Burundi	—	Khmer Republic	×
Byelorussian SSR	×	Kuwait	×
Cameroon	×	Laos	—
Canada	×	Lebanon	×
Central African Republic	×	Liberia	×
Chad	—	Libyan Arab Republic	×
Chile	×	Luxembourg	×
China	—	Madagascar	×
Colombia	—	Malawi	×
Congo	×	Malaysia	×
Costa Rica	—	Mali	×
Cuba	×	Malta	×
Cyprus	×	Mauritania	×
Czechoslovakia	×	Mauritius	×
Dahomey	×	Mexico	×
Democratic Yemen	×	Mongolia	—
Denmark	×	Morocco	×
Dominican Republic	—	Nepal	—
Ecuador	—	Netherlands	×
Egypt	×	New Zealand	×
El Salvador	×	Nicaragua	×
Ethiopia	×	Niger	×
Finland	×	Nigeria	×
France	×	Norway	×
Gabon	×	Pakistan	×
Germany (Federal Republic)	×	Panama	×
Ghana	×	Paraguay	—
Greece	×	Peru	×
Guatemala	×	Philippines	—
Guinea	×	Poland	×
Guyana	×	Portugal	—
Haiti	×	Qatar	×
Honduras	—	Romania	×
Hungary	×	Rwanda	×
Iceland	×	Senegal	×
		Sierre Leone	—

See notes and explanations of symbols at the end of the table, p. 118.

State	Recommendation No. 119	State	Recommendation No. 119
Singapore	×	Uganda	—
Somalia	—	Ukrainian SSR	×
Spain	×	USSR	×
Sri Lanka	×	United Arab Emirates	—
Sudan	×	United Kingdom	×
Sweden	×	United States	×
Switzerland	×	Upper Volta	×
Syrian Arab Republic	—	Uruguay	—
Tanzania	—	Venezuela	—
Thailand	×	Republic of Viet-Nam	×
Togo	—	Yemen	—
Trinidad and Tobago	×	Yugoslavia	×
Tunisia	×	Zaire	—
Turkey	×	Zambia	×

× = reports received; — = reports not received.

Note: A total of five reports has also been received from the following non-metropolitan territories: Australia (Norfolk Island, New Guinea, Papua); Netherlands (Surinam); United Kingdom (Guernsey, Jersey, Isle of Man).