



THIRD ITEM ON THE AGENDA

**Deferred examination of the Paid Educational Leave Recommendation, 1974 (No. 148), and the Termination of Employment Recommendation, 1982 (No. 166)**

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## Introduction

1. At the 279th Session of the Governing Body, the Working Party on Policy regarding the Revision of Standards agreed to defer the examination of the Paid Educational Leave Recommendation, 1974 (No. 148), and the Termination of Employment Recommendation, 1982 (No. 166), to its next meeting so that they would be examined at the same time as the corresponding Conventions, i.e. the Paid Educational Leave Convention, 1974 (No. 140), and the Termination of Employment Convention, 1982 (No. 158).<sup>1</sup> In response to this request, the present document is submitted for consideration by the Working Party at its 12th meeting. The same applies to the short surveys<sup>2</sup> on the Conventions concerned.

### I. R.148 – Paid Educational Leave Recommendation, 1974

- (1) *Related instruments:* Recommendation No. 148 is linked to the Paid Educational Leave Convention, 1974 (No. 140). Both of these instruments are closely related to the Human Resources Development Convention, 1975 (No. 142), and the Human Resources Development Recommendation, 1975 (No. 150). In particular, Paragraph 23(2) of Recommendation No. 150 provides that workers receiving training off the job should be granted educational leave in accordance with the terms of Convention No. 140 and Recommendation No. 148.
- (2) *Need for revision:* The structure of Recommendation No. 148 follows that of Convention No. 140. Its provisions set forth useful guidelines for the application of this Convention. The different parts of the Recommendation cover the definition of paid educational leave, the formulation of a policy for granting such leave and the methods of its implementation, measures for promotion of such leave, financing and the conditions for granting of paid educational leave. The Ventejol Working Parties classified this Recommendation among the instruments to be promoted on a priority basis.<sup>3</sup> Following its examination by the Working Party at the 268th and 271st Sessions of the Governing Body, the Governing Body decided to invite member States to contemplate ratifying Convention No. 140 and requested that a short survey be undertaken on it.<sup>4</sup> This short survey is submitted for examination by the Working Party at its present meeting. It concludes that Convention No. 140 is up to date and can continue to contribute to the implementation of the objectives of the Organization, as it appears to fit perfectly within the context of the contemporary policy of lifelong learning. In this respect, it should be noted that the proposals for the agenda of the 91st Session (2003) of the Conference submitted to this session of the Governing Body include a proposal for revision of Recommendation No. 150 with a

<sup>1</sup> Document GB.279/11/2, Appendix I, p. 12.

<sup>2</sup> Documents GB.280/LILS/WP/PRS/2/1 and GB.280/LILS/WP/PRS/2/2.

<sup>3</sup> *Official Bulletin*, Special Issue, Vol. LXX, 1987, Series A, p. 31, and *Official Bulletin*, Special Issue, Vol. LXII, 1979, Series A, p. 16.

<sup>4</sup> Document GB.271/11/2.

view to defining new needs and new directions in this area.<sup>5</sup> If this revision is carried out, it will certainly have implications for certain aspects of Recommendation No. 148; in particular a new approach could be taken with regard to financing and planning of education and training needs in general. The proposal for the revision of Recommendation No. 150 highlights in particular the importance of forging partnerships among all of the parties concerned (government, enterprises, employers' and workers' organizations, training institutions, individuals, etc.) and the need to enhance individuals' employability in the light of new economic challenges. In these circumstances, the Working Party might wish to recommend the maintenance of the status quo regarding Recommendation No. 148, pending a possible revision of Recommendation No. 150.

(3) *Proposal:*

- (a) The Working Party might recommend to the Governing Body the maintenance of the status quo with regard to the Paid Educational Leave Recommendation, 1974 (No. 148).
- (b) The Working Party (or the LILS Committee) might re-examine the status of Recommendation No. 148 in due course.

## II. R.166 – Termination of Employment Recommendation, 1982

- (1) *Related instruments:* This Recommendation is linked to the Termination of Employment Convention, 1982 (No. 158), and supplements it. These two instruments replace the Termination of Employment Recommendation, 1963 (No. 119).
- (2) *Need for revision:* The Recommendation has the same structure as the Convention and is intended to supplement each of the three main parts of the latter with detailed provisions. The first part concerns methods of implementation, scope and definitions; the second part concerns standards of general application; and the third part contains supplementary provisions concerning terminations of employment for economic, technological, structural or similar reasons. The Ventejol Working Party of 1987 placed this Recommendation in the category of "instruments to be promoted on a priority basis".<sup>6</sup> The General Survey of the Committee of Experts on the Application of Conventions and Recommendations in 1995 drew attention to:

... the importance of the measures advocated in the Recommendation which, although not legally binding, usefully supplement the Convention. They propose a preventive and also a promotional approach to the issue of employment protection. These measures are related to the supply and demand for labour, working time, training and the mobility of the workforce, as well as a certain quality of employment, and correspond to the provisions contained in several basic ILO instruments establishing overall policies, including the standards on employment policy, employment

<sup>5</sup> Document GB.280/2.

<sup>6</sup> *Official Bulletin*, Special Issue, Vol. LXX, 1987, Series A, p. 30.

services, human resources development and collective bargaining. These Conventions are widely ratified, often by the same member States.<sup>7</sup>

Following the examination of the Convention by the Working Party during the 268th and 271st Sessions of the Governing Body, the Governing Body decided that a short survey be carried out on Convention No. 158.<sup>8</sup> That survey is submitted to the Working Party at its present meeting.<sup>9</sup> The conclusions of the survey offer two possible options: promotion of the instrument and maintenance of the status quo. Promotion is justified in this particular case by the fact that the principles embodied in the Convention, and taken up in the Recommendation, remain highly relevant and the Convention therefore appears still to be very useful. Nevertheless, certain countries, in particular those consulted in 1997 by the Office, have reported difficulties that prevent them from ratifying Convention No. 158. Those difficulties, while apparently technical rather than substantive, might justify the maintenance of the status quo. As regards Recommendation No. 166, such arguments in favour of maintaining the status quo do not appear to apply. Indeed, the Recommendation is a non-binding instrument which is intended to provide guidelines for member States on a particular aspect of social policy; the relevance of those guidelines is not questioned in this particular case. In addition to this flexibility of form, the instrument has a degree of flexibility in the substance concerning methods of implementation, given that Paragraph 1 provides for the possibility of applying the instrument's provisions by various means, including "such other manner consistent with national practice as may be appropriate under national conditions". Furthermore, Paragraph 2 allows for fairly wide exclusions from the scope of application of the instrument, while maintaining the safeguards against recourse to contracts for a specified period of time aimed at avoiding the protection resulting from the Convention and Recommendation. In the light of these considerations, the recommendation made by the Ventejol Working Party and the conclusions of the 1995 General Survey still appear to be valid. The Working Party might therefore propose the promotion of Recommendation No. 166.

- (3) *Proposal*: The Working Party might recommend to the Governing Body that it invite member States to give effect to the Termination of Employment Recommendation, 1982 (No. 166).

## Concluding remarks

2. With the examination of these two Recommendations, the Working Party, at the present meeting, will have completed its examination of all of the Recommendations included in its mandate, with the exception of the Maternity Protection Recommendation, 1952 (No. 95), the examination of which was postponed by the Working Party pending the entry into force of the Maternity Protection Convention, 2000 (No. 183). All of the decisions taken in this area are presented in the *Information note on the progress of work and decisions taken concerning the revision of standards*.<sup>10</sup> In the case of some of these

<sup>7</sup> *Protection against unjustified dismissal*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ILO, Geneva, 1995, p. 139.

<sup>8</sup> Document GB.271/11/2.

<sup>9</sup> Document GB.280/LILS/WP/PRS/2/2.

<sup>10</sup> Document GB.280/LILS/WP/PRS/1/2.

Recommendations, the Working Party has however formulated requests for additional information which will continue to be followed up by the Office.<sup>11</sup>

- 3. *The Working Party is invited to examine the proposals listed above and to present its recommendations to the Committee on Legal Issues and International Labour Standards.***

Geneva, 27 February 2001.

*Point for decision:* Paragraph 3.

<sup>11</sup> Follow-up to the recommendations of the Working Party: (a) General document GB.280/LILS/WP/PRS/1/1.