



## THIRD ITEM ON THE AGENDA

**Deferred examination of Conventions****(a) Holidays with Pay Convention (Revised), 1970  
(No. 132) (short survey)****Contents**

|   | <i>Page</i> |
|---|-------------|
| Introduction .....  | 1           |
| Re-examination of the Holidays with Pay Convention (Revised), 1970 (No. 132) .....  | 1           |
| Recent developments.....  | 1           |
| Short survey.....   | 1           |
| Remarks .....   | 2           |
| Proposals .....   | 3           |
| Appendix I. Short survey concerning the Holidays with Pay Convention (Revised),<br>1970 (No. 132), by Professor R. Blanpain, Faculties of Law of Leuven<br>(Belgium) and of Tilburg (the Netherlands) |             |
| Appendix II. Previous examinations of the Holidays with Pay Convention (Revised),<br>1970 (No. 132)   |             |



## Introduction

1. The Working Party undertook a first examination of the Holidays with Pay Convention (Revised), 1970 (No. 132), in March 1997. The examination resulted in a decision to request information from member States on the obstacles and difficulties encountered with regard to ratification and on the possible need for revision of Convention No. 132. The Working Party re-examined this Convention in the light of the results of consultations held with constituents on this issue. As a result the Governing Body decided that a short survey should be carried out concerning Convention No. 132. It was agreed that this short survey would be commissioned from an external expert.
2. The Office requested Professor Roger Blanpain, Professor at the Faculties of Law of Leuven (Belgium) and Tilburg (the Netherlands), an external expert with substantial international expertise,<sup>1</sup> to carry out the requested short survey. The commissioned short survey is attached as Appendix I.
3. This document contains a review of the need for revision of the Holidays with Pay Convention (Revised), 1970 (No. 132), against the background of this short survey and of recent developments concerning that Convention. Excerpts from the relevant Governing Body documents containing the previous examinations and decisions regarding Convention No. 132 are also appended (Appendix II). This document is submitted for examination by the Working Party on Policy regarding the Revision of Standards at its tenth meeting.

---

## Re-examination of the Holidays with Pay Convention (Revised), 1970 (No. 132)

### Recent developments

4. Since the previous examinations of Convention No. 132, four additional ratifications have been registered.<sup>2</sup> These include: *The former Yugoslav Republic of Macedonia* (1991), *Brazil*, *Hungary* and the *Republic of Moldova* (all three in 1998). The number of current ratifications now stands at 30. As regards the Committee of Experts on the Application of Conventions and Recommendations, comments are pending for 17 member States.

### Short survey

5. The short survey contains an outline of the main provisions of Convention No. 132 and examines the level of ratifications, the obstacles and difficulties to ratification and developments in other international bodies as well as recent labour market developments. Based on this examination the author concludes that “there are uncertain prospects for

<sup>1</sup> A curriculum vitae of Professor Blanpain is available on request.

<sup>2</sup> The ratifications by The former Yugoslav Republic of Macedonia and the Republic of Moldova are confirmations of existing ratifications following the accession to independence of those States.

further ratification of Convention No. 132; a significant number of obstacles and difficulties have been noted; and a few calls for revision have been made”,<sup>3</sup> and that, with reference to the “guiding principles [...] universality, subsidiarity and flexibility” ... “it follows clearly from [the] study that Convention No. 132 should be revised”.<sup>4</sup> Against this background, a detailed proposal of “main areas to revise”<sup>5</sup> is submitted.

## Remarks

6. While the short survey contains a more detailed analysis of the reports on the obstacles and difficulties examined by the Working Party in March 1998, it is not based on any new information obtained from constituents. The survey contains an analysis, in a comparative legal perspective, of developments on similar questions, mainly in Europe. It also contains a review of current labour market developments, including the development of calls for flexibility; flexibility in relation to working time; the effects on labour markets of globalization; and the growth of the informal sector. In addition, it contains the author’s personal opinion on how the Convention should be revised. The views of member States and of the Employers’ and Workers’ groups, as reflected in the appended excerpts from the previous examination of Convention No. 132 and in the short survey, are divided as regards the most appropriate action to take with respect to this Convention.
7. The short survey’s conclusion that the Convention should be revised is based principally on the following considerations: it has attracted relatively few ratifications; it is considered by some governments and by employers’ organizations as being too prescriptive and detailed; and it sets out standards, particularly in relation to the length of annual holidays, that are beyond the current practice in many member States, especially developing countries. In addition to these general points, the survey’s conclusions are based on difficulties reported by some governments in ratifying the Convention because of certain details in its provisions. The main issues raised by the independent expert concern whether governments are required to legislate; the compulsory nature of the holiday; the qualification period for entitlements; and restrictions concerning the timing of holidays.
8. On the other hand, there has recently been a significant increase in the rate of ratifications, suggesting that the Convention is still seen as relevant. Three additional ratifications of this Convention were registered in 1998. Furthermore, there were 12 ratifications or confirmations of previous ratifications in the 1990s, as opposed to three in the 1980s.
9. Despite concerns expressed over its geographic balance, the survey’s conclusions are based on a limited number of responses, predominantly from European countries, many of which have already ratified the Convention. The expert has therefore had to generalize based on the views of a few constituents, and the short survey acknowledges that only seven member States had specifically proposed a revision of the Convention. Its analysis is based largely on the European legal framework and subsequent case law. In particular, the treatment of some of the guiding principles such as subsidiarity and proportionality mentioned in the survey does not appear consistent with current approaches adopted on a tripartite basis in the ILO.

<sup>3</sup> Short survey, para. 77.

<sup>4</sup> Short survey, para. 78.

<sup>5</sup> Short survey, paras. 84-92.

10. The impact of labour market developments on the needs, capacities and expectations of employers and workers concerning holidays with pay is considered in the short survey to be an important factor in assessing the need to revise the Convention. Unfortunately, while the survey summarizes some of these developments, it does not make the link (except in the case of Belgium) between labour market developments and questions of holidays. It is therefore not a sufficient basis to assess the need for revision of Convention No. 132.
11. It is evident that the Convention does not enjoy tripartite support. However, the points raised by constituents in their responses to the short survey are essentially the same as those raised before the adoption of this Convention, including those in the survey by the Committee of Experts on the Application of Conventions and Recommendations in 1964, when consideration was being given to the need to update the Holidays with Pay Convention, 1936 (No. 52). It is therefore not evident whether the conditions yet exist to develop a revised Convention that would remove the obstacles that have prevented wider ratification of the existing Convention, and which would at the same time offer substantial protection, be sufficiently forward-looking and pave the way for further improvement at the national level according to the socio-economic conditions of each member State. Against this background, the Office considers on balance that the information presented in the survey and the analysis of it do not sufficiently support the survey's conclusion regarding the need for revision or the suggested directions that such a revision is proposed to take.
12. The Working Party would seem to have two main options. It could consider that conclusions drawn in the short survey are justified, and that a recommendation for a revision of Convention No. 132 should be made. The Working Party may, alternatively, wish to consider that the short survey does not provide it with sufficient elements to conclude that Convention No. 132 should be revised, and that, in the light of the present and previous examinations of this Convention as well as the discussions held, the maintenance of the status quo should be recommended.

## Proposals

13. The Working Party may hence wish to recommend *either* –
- (a) that the Holidays with Pay Convention (Revised), 1970 (No. 132), be revised;
- or*
- (b) the maintenance of the status quo regarding the Holidays with Pay Convention (Revised), 1970 (No. 132).
14. ***The Working Party is invited to re-examine the Holidays with Pay Convention (Revised), 1970 (No. 132), against the background of the appended short survey as well as of recent developments concerning this Convention and, on the basis of the proposals set out above, to make recommendations to the Committee on Legal Issues and International Labour Standards.***

Geneva, 22 February 2000.

*Point for decision:* Paragraph 14.

