

## CHAPTER IV

### DEDUCTIONS FROM WAGES AND THE ATTACHMENT AND ASSIGNMENT OF WAGES

**212.** Article 8 of the Convention lays down the principle that deductions from wages may only be permitted subject to the conditions and within the limits prescribed by national laws, or fixed by collective agreement or arbitration award, and that workers should be kept properly informed of such conditions and limits. In addition, Paragraphs 1 to 3 of the Recommendation offer some guidance concerning the need to establish overall limits to permissible deductions, as well as specifying the conditions applicable to deductions for the loss or damage, or supply of tools. Article 9 singles out a particular type of deduction, that is any direct or indirect payment to the employer, his representative or an intermediary for the purpose of obtaining or retaining employment, and requires the outright prohibition of such deductions. Article 10 requires the adoption of national laws and regulations setting out the manner and the limits within which wages may be attached or assigned, and which protect wages against attachment or assignment to the extent deemed necessary for the maintenance of the workers and their families. The Committee will consider each of the above provisions in turn.

#### **1. Deductions from wages**

##### **1.1. Definition and scope of wage deductions**

**213.** Employed persons rarely receive the full amount of the remuneration to which they are nominally entitled. Their wages are normally subject to various deductions, which represent the difference between the gross amount of their earnings and the net amount they actually receive. These deductions have to be regulated in order to protect workers from arbitrary and unfair deductions, which would amount, in effect, to an unjust decrease in their remuneration. The Convention does not provide any definition of the term “deduction”. Although the advisability of drafting such a definition was briefly considered during the preparatory work preceding the second Conference discussion, it was finally concluded that since deductions would be regulated by law, agreement or award,

these texts could also be expected to provide an appropriate definition of the term.<sup>1</sup>

**214.** The Committee believes that Article 8 of the Convention applies to all kinds of deductions.<sup>2</sup> It is indicative in this respect that Article 8, paragraph 1, refers to “deductions from wages” in general while Paragraph 7(b) of the Recommendation requires workers to be informed of “any deduction which may have been made”. The Convention does not list, either selectively or exhaustively, any specific types of deductions from wages, nor is it worded in a way that might suggest that it was meant to cover certain types of deductions and not others.

**215.** Another question that arises is whether Article 8 refers to deductions made from gross or net wages. The Committee tends to believe that what is meant here is gross rather than net remuneration. This reading is also supported by Paragraph 7 of the Recommendation, according to which workers “should be informed” of “(a) the gross amount of wages earned; (b) any deduction which may have been made, including the reasons therefor and the amount thereof; and (c) the net amount of wages due”. In addition, the definition of “wages” in Article 1 of the Convention, while not referring explicitly to gross remuneration, is worded in such general terms that covers not only take-home pay, but also earnings and benefits in a broad sense, including employer’s contributions to health insurance, pension plans, etc. Furthermore, deductions in practice affect gross remuneration, as they often take the form of deductions at source. The situation is different with regard to the attachment of wages which mostly concerns net remuneration, i.e. remuneration from which deductions have already been taken.

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<sup>1</sup> According to a suggested definition, deductions should extend to and include any payment made by the worker to the employer or his agent; otherwise the worker would run the risk of being given the full wages, but of being compelled to pay back immediately a portion of the wages in deductions; see ILC, 32nd Session, 1949, Report VII(2), pp. 5, 17. From a purely linguistic point of view, it is of some interest that in other ILO instruments, the term “deductions from wages” has not always been rendered in French as “*retenues sur les salaires*”. For instance, in the Forced Labour Convention, 1930 (No. 29), the term “deduction” is translated as “*dédution*”, whereas in the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), the term used is “*prélèvement*”.

<sup>2</sup> It may be recalled, in this respect, that at the second Conference discussion it was proposed to narrow the scope of Article 8 to cover only deductions “other than those for the benefit of the worker made on his express authority”. The Conference Committee, however, rejected this proposal and adopted the text in the form submitted by the Office; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 507.

## 1.2. Conditions governing deductions from wages

### 1.2.1. Authorization by national laws or regulations, collective agreement or arbitration award

**216.** Article 8, paragraph 1, of the Convention provides that deductions from wages may be effected only under conditions and to the extent prescribed by laws, regulations, collective agreements or arbitration awards.<sup>3</sup> This provision presupposes the existence of a general rule limiting wage deductions to those remaining within the limits prescribed by laws, regulations, collective agreements or arbitration awards, and the application, in accordance with Article 15(c) of the Convention, of “adequate penalties or other appropriate remedies” for any contravention of that general rule. In the Committee’s view, adequate protection in respect of wage deductions therefore implies the regulation of the legal conditions and limits of permissible deductions, which may also be supplemented by an appropriate legislative provision prohibiting deductions, except as authorized by one of the instruments referred to in Article 8, paragraph 1, of the Convention. The Committee recalls that this Article of the Convention is considered as fully applied by those States whose national laws or regulations enumerate the types of deductions authorized, if any, and also prohibit any other deductions. The Committee has frequently commented on the failure to adopt laws or regulations prescribing the conditions and the extent to which deductions from wages may be made.<sup>4</sup> In other instances, the Committee has pointed out that, in addition to the authorization of certain types of deductions by law, detailed conditions and specific limits upon deductions still need to be set.<sup>5</sup>

**217.** Attention should also be drawn to another point which has often been the subject of the Committee’s comments, namely the conformity of deductions provided for in individual labour agreements and deductions made with the worker’s written consent with the requirements of the Convention. In this connection, it should be recalled that Article 8, paragraph 1, of the Convention (much like Article 4, paragraph 1, regulating payments in kind) makes exclusive

<sup>3</sup> In its preliminary law and practice report, the Office concluded that, in view of the diversity of national legislation in this regard, it was necessary to leave to national action the details of the conditions under which and the extent to which deductions might be legally authorized; see ILC, 31st Session, 1948, Report VI(c)(1), p. 25. The text initially proposed by the Office therefore made reference only to national laws and regulations. At the first Conference discussion, upon the proposal of the Worker members, a reference was added to collective agreements and arbitration awards; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 462.

<sup>4</sup> For instance, the Committee has addressed a direct request in this sense to *Yemen* in 1992.

<sup>5</sup> For instance, the Committee has addressed a direct request in this sense to the *Dominican Republic* in 2000.

reference to national laws or regulations, collective agreements and arbitration awards as being the only valid legal bases for effecting deductions from wages. In both cases, the aim is clearly to exclude “private” arrangements which might involve unlawful or abusive deductions, or unsolicited payments in kind, to the detriment of the worker’s earnings. In the Committee’s opinion, provisions of national legislation which permit deductions by virtue of individual agreements or consent are not therefore compatible with Article 8, paragraph 1, of the Convention.<sup>6</sup>

#### 4.1. Permissible wage deductions under the European Social Charter

Under Article 4, paragraph 5 [of the European Social Charter], States undertake to “permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards”. [...] The underlying principle of this provision is that the worker’s wage should be subject to deductions only in circumstances, which are well-defined in a legal instrument (covering the basis and the procedure) and subject to the limits specified therein. [...] National legislation which appears to permit the parties to the employment contract the scope to agree on deductions invariably attracts closer scrutiny. In its most recent supervision of this provision, the Committee [of Independent Experts] raised questions over the possibility of deductions being permitted with the written consent of the worker, as laid down in the relevant national regulations. It is submitted that this degree of latitude is not compatible with the Charter. [...] When considering the conditions under which deductions may be made to wages, the Committee looks not just to the situations in which this arises, but also to the procedures involved. It takes note of any duty to consult worker representatives, the right of the worker to make his case, and seeks information on appeal to the courts. This is quite in keeping with the principle behind this provision, i.e. that deductions to wages should only be permissible in accordance with a higher legal norm than the employment contract. [...] At the same time, the Committee considers the limits laid down in national law for wage deductions. National rules on this point vary, choosing either to protect a fraction of the wage from deductions or stipulating a minimum sum which must be set aside for the worker. In assessing these limits, the Committee’s concern is that the worker be assured of an income which assures subsistence for them and their dependants.

Source: *Conditions of employment in the European Social Charter*, Council of Europe, 1999, pp. 80-83.

<sup>6</sup> For instance, the Committee has addressed direct requests in this sense to *Azerbaijan*, *Norway*, *Poland* and *Tajikistan* in 2001, to *Bulgaria* in 1995, and to *Sudan* in 1987. In the United Kingdom (1), s. 13(1), deductions are permissible when authorized by virtue of a relevant provision of the worker’s contract or when the worker has previously signified in writing his agreement or consent to the making of the deduction. See also United Kingdom: Isle of Man (14), s. 13(1)(a). Similarly, in the Australian State of Western Australia (10), s. 17D, an employer may deduct from an employee’s pay an amount the employer is authorized to deduct and pay on behalf of the employee under the contract of employment.

**218.** In addition, in some countries, such as *Cameroon*,<sup>7</sup> *Côte d'Ivoire*<sup>8</sup> and *Senegal*,<sup>9</sup> deductions from wages may be made for deposits (“*consignations*”) set out in individual agreements. In this regard, the Committee has consistently recalled that provisions in national legislation authorizing deductions from wages by virtue of individual agreements or consent do not offer the level of protection required by the Convention and it has urged governments to adopt suitable measures to specify the types and extent of the deductions permitted under contracts of employment.<sup>10</sup>

**219.** Permissible deductions are exhaustively enumerated in the laws of a considerable number of countries, including *Bulgaria*,<sup>11</sup> *China*,<sup>12</sup> *Cuba*,<sup>13</sup> *Ecuador*,<sup>14</sup> *Islamic Republic of Iran*,<sup>15</sup> *Mexico*,<sup>16</sup> *Russian Federation*<sup>17</sup> and *Zambia*.<sup>18</sup> Among the countries where the legislation lists all the authorized deductions, many also provide that any deductions except those specifically authorized are formally prohibited. This is the case, for instance, in *Botswana*,<sup>19</sup>

<sup>7</sup> (1), s. 75(1). This is also the case in *Benin* (1), s. 216(1); *Burkina Faso* (1), s. 128(1); *Central African Republic* (1), s. 112(1); *Congo* (1), s. 100(1); *Djibouti* (1), s. 107; *Guinea* (1), s. 231(1); *Madagascar* (1), s. 79; *Niger* (1), s. 170(1); *Togo* (1), s. 103(1).

<sup>8</sup> (1), s. L.34.1(1).

<sup>9</sup> (1), s. L.130(1).

<sup>10</sup> For instance, the Committee has addressed direct requests in this sense to *Burkina Faso*, *Cameroon*, *Madagascar*, *Niger* and *Senegal* in 2001.

<sup>11</sup> (1), s. 272(1). This is also the case in *Azerbaijan* (1), ss. 175, 176; *Bahamas* (1), ss. 5(2), 7; (4), s. 14(1); *Barbados* (1), ss. 8, 9, 19; *Belarus* (1), s. 107; *Chile* (1), s. 58; *Czech Republic* (1), ss. 82, 87(1), 108(2), 114, 119, 126; *Dominica* (1), ss. 8, 9, 19; *Dominican Republic* (1), s. 201; *Estonia* (2), ss. 36, 37(1); *Guyana* (1), s. 23; *Kenya* (1), s. 6(1); (2), s. 14(1); *Panama* (1), s. 161; *Poland* (1), ss. 129(1), 132(1), (2); *Slovakia* (1), s. 131; *Swaziland* (1), ss. 56, 57; *Ukraine* (1), s. 127.

<sup>12</sup> (1), ss. 15, 16.

<sup>13</sup> (1), s. 125.

<sup>14</sup> (2), ss. 42(6), 42(21), 85, 90.

<sup>15</sup> (1), s. 45.

<sup>16</sup> (2), s. 110.

<sup>17</sup> (1), ss. 137, 236.

<sup>18</sup> (1), ss. 45, 46.

<sup>19</sup> (1), s. 80(1). This is also the case in *Benin* (1), s. 227(1); *Burkina Faso* (1), ss. 128(1), 130(1); *Cameroon* (1), s. 75(1), (3); *Cape Verde* (1), s. 121(1), (2); *Central African Republic* (1), ss. 112(1), 114(2); *Chad* (1), ss. 276(1), 278(1); *Comoros* (1), ss. 112(2), 114(1); *Congo* (1), ss. 100(1), 102(1); *Côte d'Ivoire* (1), ss. L.34.1(1), L.34.3(1); *Djibouti* (1), ss. 107, 109(1); *Gabon* (1), ss. 161(1), 162(2); *Guinea-Bissau* (1), s. 23(h); *Iraq* (1), s. 4(3); *Israel* (1), s. 25; *Kyrgyzstan* (1), s. 242(2); *Madagascar* (1), ss. 79, 80(1); *Malaysia* (1), s. 24(1); *Mali* (1), s. L.121; *Malta* (1), s. 23(1); *Mauritania* (1), s. 107; *Mauritius* (1), ss. 12, 13; *Republic of Moldova* (1), s. 132(1); *Niger* (1), ss. 170(1), 172(1); *Nigeria* (1), ss. 4, 5; *Philippines* (1), ss. 113, 116; *Romania* (1),

*Guinea*,<sup>20</sup> *Norway*,<sup>21</sup> *Slovenia*<sup>22</sup> and *Sri Lanka*.<sup>23</sup> Similarly, in *Argentina*<sup>24</sup> and *Colombia*,<sup>25</sup> the law enumerates both permissible and prohibited deductions. In contrast, in some countries, the national legislation prescribes only the conditions applying to certain deductions, without indicating whether these are the only permissible forms of deductions from wages. This is the situation, for instance, in the *Democratic Republic of the Congo*,<sup>26</sup> where provision is made only for deductions for loss or damage to the property of the employer, and *Turkey*,<sup>27</sup> where the law appears to regulate only deposits for damage claims and fines.

**220.** In certain countries, deductions from wages are also permitted by collective agreements. This is the case, for instance, in *Azerbaijan*,<sup>28</sup> *Brazil*<sup>29</sup> and *Malta*.<sup>30</sup> With regard to the authorization of deductions by collective agreements, the Convention appears to make no distinction between collective agreements which can be legally enforced and those which cannot. However, in cases where the conditions and extent of deductions from wages are fixed by collective agreement, it must be ensured that all workers are covered. This requirement is fulfilled, for example, when national laws and regulations fix the conditions and extent of deductions, while collective agreements only specify possible additional deductions.

s. 87(3); Rwanda (1), ss. 109 to 113; *Senegal* (1), s. L.132; *Sudan* (1), s. 35(8); *Togo* (1), ss. 103(1), 105(1); *Uganda* (1), s. 31; United Kingdom: *Montserrat* (21), ss. 8, 9, 20.

<sup>20</sup> (1), s. 233.

<sup>21</sup> (1), s. 55(3).

<sup>22</sup> (1), s. 136(1).

<sup>23</sup> (1), s. 19(1)(a); (5), s. 2(1); (2), s. 2(a); (4), s. 18.

<sup>24</sup> (1), ss. 131, 132.

<sup>25</sup> (1), ss. 149 to 152.

<sup>26</sup> (1), s. 93(1), (2).

<sup>27</sup> (1), ss. 31, 32. See also *Oman* (1), ss. 35, 58.

<sup>28</sup> (1), s. 175(2)(h). This is also the case in *Chad* (1), s. 276(1); *Gabon* (1), s. 161(1); *Guinea* (1), s. 231(1); *Mali* (1), s. L.122; *Norway* (1), s. 55(3)(d); *Zimbabwe* (4), s. 10; (5), s. 13. Similarly, in *Japan* (2), s. 24(1), partial deduction from wages is permitted in cases where there exists a written agreement with a trade union organized by a majority of the workers at the workplace. Moreover, according to the information supplied by the Government of the Republic of Korea, in the cases where deductions provided by a collective agreement are opposed by individual workers, they are not applied to those opposed. In the Australian states of New South Wales (5), s. 118(2)(b), South Australia (8), s. 68(3)(b), and Western Australia (10), s. 17D, the employer may deduct from the remuneration an amount the employer is authorized to deduct and pay on behalf of the employee under an industrial instrument/award or enterprise agreement.

<sup>29</sup> (1), s. 7(VI).

<sup>30</sup> (1), s. 23(1).

**221.** In this respect, the Committee wishes to draw attention to certain practices which may conflict with the requirements of Article 8 of the Convention. For example, where a certain administrative authority is granted broad discretion to authorize deductions other than those expressly provided for in the national legislation, this tends to nullify the protection afforded by the detailed listing of permissible deductions in the law.<sup>31</sup> Similarly, the waiving of any supervision, whether judicial or administrative, of deductions made by mutual agreement may give rise to serious abuses.<sup>32</sup> Furthermore, where deductions are limited only in respect of minimum wages, for instance, by specifying that minimum wages are to be paid clear of all deductions, the requirements of the Convention are not fully met, since this provision would not apply in cases where minimum wages have not been prescribed or are not applicable.<sup>33</sup>

### **1.2.2. Types of authorized deductions**

**222.** As noted above, the Convention does not contain a list of permissible deductions, as their determination is left to national authorities and the collective bargaining process.<sup>34</sup> Member States therefore enjoy full freedom under the terms of this Article of the Convention when regulating the types of permissible deductions through legislation. Most countries have laws regulating the conditions under which deductions from wages may be made. Deductions are permitted for various reasons, such as the payment of income tax or social security contributions, the settlement of trade union dues or the reimbursement of pay advances and loans. Wage sums may also be withheld in execution of court orders, which are known as attachment, garnishment or distraint orders.

**223.** The only provisions in the ILO instruments under consideration referring to specific types of deductions are found in Paragraphs 2 and 3 of the Recommendation, which deal with deductions from wages for the reimbursement of damages caused by bad or negligent work, or for damage to materials or to the property of the employer, and deductions in payment for the

<sup>31</sup> For instance, the Committee has addressed a direct request in this sense to *Belize* in 1988.

<sup>32</sup> For instance, the Committee has addressed a direct request in this sense to *Gabon* in 1981.

<sup>33</sup> For instance, the Committee has addressed direct requests in this sense to *Sierra Leone* in 1992, *Islamic Republic of Iran* in 1988, and *Nicaragua* in 1980.

<sup>34</sup> The Office had concluded from the outset that the inclusion of regulations concerning particular types of deductions in a comprehensive Convention would give rise to difficulties and had therefore suggested that the international regulations concerning the various circumstances in which different types of deductions should be allowed were considered more suitable for adoption in the form of a Recommendation supplementing a general Convention; see ILC, 31st Session, 1948, Report VI(c)(2), p. 76.

use of materials, tools and equipment supplied by the employer. Another clause regulating deductions in the form of disciplinary fines was initially inserted in the text of the draft Recommendation, but was later omitted in view of the opposition expressed to deductions of this nature. In the following paragraphs, the Committee briefly reviews national law and practice with regard to some of the most common forms of wage deductions, before turning to the specific types of deductions dealt with in the Recommendation. The attachment of wages, which is a particular form of deduction made by virtue of a judicial decision, is addressed in a separate section of this chapter.

#### 1.2.2.1. Common forms of authorized deductions

**224.** In many countries, the national legislation authorizes deductions for mandatory payments to income tax authorities or social security institutions. This is the case, for instance, in *Argentina*,<sup>35</sup> *Bolivia*,<sup>36</sup> *Czech Republic*,<sup>37</sup> *Dominican Republic*,<sup>38</sup> *Norway*,<sup>39</sup> *Philippines*,<sup>40</sup> *Spain*,<sup>41</sup> *Turkey*,<sup>42</sup> *United Kingdom*<sup>43</sup> and the *United States*.<sup>44</sup>

<sup>35</sup> (1), ss. 131, 132(b). This is also the case in *Azerbaijan* (1), s. 175(2)(a); *Belarus* (1), s. 107(1); *Benin* (1), s. 216; *Botswana* (1), s. 81(1)(a)(i); *Bulgaria* (1), s. 272(1)(iii); *Cape Verde* (1), s. 121(2)(a); *Chad* (1), s. 276; *Chile* (1), s. 58; *China* (1), s. 15(1), (2); *Colombia* (1), s. 150; *Democratic Republic of the Congo* (1), s. 95(4); *El Salvador* (2), s. 132; *Estonia* (2), s. 36(1); *Guinea* (1), s. 230; *Guinea-Bissau* (1), s. 106(2)(a); *Israel* (1), s. 25(a)(1), (2); *Luxembourg* (1), s. 6(6); *Mali* (1), s. L.122; *Nicaragua* (3), s. 4; (5), s. 3(3); (6), s. 3(3); *Panama* (1), s. 161(1), (2); *Paraguay* (1), ss. 63(a), 240(c); *Poland* (1), s. 87(1); *Saint Vincent and the Grenadines* (4), s. 21(3); *Senegal* (1), s. L.130(1), (2); *Slovakia* (1), s. 131(1); *Sri Lanka* (2), s. 2(a); *Swaziland* (1), s. 56(1)(a), (b); *Tajikistan* (1), s. 109(1); *Togo* (1), s. 103(1); *Uganda* (1), s. 32(3)(b); *Ukraine* (1), s. 127(1); (2), s. 26(1); *United Kingdom: Isle of Man* (14), s. 13(5)(c); *Virgin Islands* (22), s. C32(a). Similarly, the Governments of Japan, the Republic of Korea and Lithuania have reported that income tax and social insurance premiums are mandatory deductions under relevant income tax legislation.

<sup>36</sup> (2), s. 42.

<sup>37</sup> (1), s. 121(1)(a), (b); (2), s. 12(1)(a); (4), s. 18(1)(b).

<sup>38</sup> (1), s. 201(1); (3), s. 309; (4), s. 62.

<sup>39</sup> (1), s. 55(3)(b).

<sup>40</sup> (1), s. 113(a).

<sup>41</sup> (1), s. 26(4); (4), s. 104(2); (5), s. 82; (6), Annex.

<sup>42</sup> (1), s. 30.

<sup>43</sup> (1), s. 14(3); (2), Schedule 3, s. 3(3)(a), (b).

<sup>44</sup> (2), s. 531.38; *Colorado* (10), s. 8-4-101(7.5)(a); *Massachusetts* (27), s. 150A; *Montana* (33), s. 39-3-101; *Pennsylvania* (46), s. 9.1. In addition, several state laws provide for deductions in respect of medical, surgical or hospital care or service without financial benefit to the employer; see, for instance, *California* (9), s. 224; *Connecticut* (11), s. 31-71e; *Delaware* (13), s. 1107(2); *Kansas* (21), s. 44-319(a); *Kentucky* (22), s. 337.060(1); *Minnesota* (29), s. 181.06(2); *Nevada* (35), s. 608.110; *New Hampshire* (36), s. 275:48(I)(c); *New Jersey* (37), s. 12:55-2.1; *Oregon* (45),

**225.** Certain countries authorize deductions with the worker's consent for the payment of contributions to voluntary provident or pension funds and other similar schemes. This is the case, for example, in *Botswana*,<sup>45</sup> *Dominica*,<sup>46</sup> *Kenya*,<sup>47</sup> *Malaysia*,<sup>48</sup> *Nigeria*,<sup>49</sup> *United States*<sup>50</sup> and *Uruguay*.<sup>51</sup>

**226.** In many countries, trade union fees may be deducted from wages under arrangements made between a workers' organization of which the worker is a member and the employer or an employers' organization of which the employer is a member. This is the situation, for example, in *Argentina*,<sup>52</sup>

s. 652.710; Rhode Island (47), s. 28-14-10(2); Washington (55), s. 49.52.060; West Virginia (57), s. 21-5-1(g).

<sup>45</sup> (1), s. 81(1)(a)(ii). This is also the case in *Argentina* (1), ss. 131, 132(e); *Barbados* (1), s. 19; *Canada*: British Columbia (6), s. 22(1)(b), Newfoundland and Labrador (9), s. 36(3)(e), and Quebec (16), s. 49; *Dominican Republic* (1), s. 201(5); *Israel* (1), s. 25(a)(5); *Luxembourg* (1), s. 6(3); *Malta* (1), s. 23(3); *Mauritius* (1), s. 13(2); *Uganda* (1), s. 32(1)(b); *United Kingdom*: *Montserrat* (21), s. 20; *Zambia* (1), s. 45(1)(a). Similarly, in *Saint Vincent and the Grenadines* (2), s. 13(1), deductions may be lawfully made at the request of the worker either for the purpose of a superannuation scheme or a thrift scheme, or for any other purpose in the carrying out of which the employer has no beneficial interest, either directly or indirectly. In *Sri Lanka* (4), s. 18(1); (5), s. 2(1)(b)(i), an employer may deduct from the remuneration of an employee any contribution which the employee desires to make to any pension fund, provident fund, insurance scheme, savings scheme or recreation club, approved in writing by the labour commissioner and operated wholly or in part by the employer.

<sup>46</sup> (1), s. 19.

<sup>47</sup> (1), s. 6(1)(a); (2), s. 14(1)(a).

<sup>48</sup> (1), s. 24(4)(a).

<sup>49</sup> (1), s. 5(2).

<sup>50</sup> (2), s. 531.40(c); *California* (9), s. 224; *Kentucky* (22), s. 337.060(1); *Massachusetts* (27), s. 150A; *Minnesota* (29), s. 181.06(2); *New Jersey* (37), s. 12:55-2.1(a); *New York* (39), s. 193(1)(b); *North Carolina* (41), s. 13-12.0305(c); *Ohio* (43), s. 4113.15(D)(3); *Pennsylvania* (46), s. 9.1; *Rhode Island* (47), s. 28-14-10; *West Virginia* (57), s. 21-5-1(g).

<sup>51</sup> (7), s. 9.

<sup>52</sup> (1), ss. 131, 132(c). This is also the case in *Botswana* (1), s. 81(1)(b)(ii); *Canada* (1), s. 254.1(2)(b), and *British Columbia* (6), s. 22(1)(a); *Chile* (1), s. 58; *Colombia* (1), s. 150; *Costa Rica* (1), s. 69(k); *Dominica* (1), s. 9(1)(c); *Dominican Republic* (1), s. 201(2); *El Salvador* (2), s. 132; *Guatemala* (2), s. 61(i); *Honduras* (2), s. 95(12); *Malaysia* (1), s. 24(3)(a); *Nicaragua* (5), s. 3(5); (6), s. 3(5); *Panama* (1), s. 161(8); *Peru* (9), s. 28; *Philippines* (1), s. 113(b); *Sri Lanka* (5), s. 2(1)(b)(ii); *Uganda* (1), s. 32(1)(a); *Venezuela* (1), ss. 132, 446. In *Cameroon* (1), s. 21, the law provides that such deduction at source is permitted only if the worker has agreed with such procedure by signing a form jointly accepted by the employer and the trade union. The worker's consent may be withdrawn at any time or tacitly renewed, if it is not withdrawn, except in the case of a change in the amount of the contribution. Similarly, in *Nigeria* (1), s. 5(3), a worker in writing may contract out of the system.

*Brazil*,<sup>53</sup> *Ecuador*,<sup>54</sup> *Hungary*,<sup>55</sup> *Mexico*,<sup>56</sup> *Paraguay*,<sup>57</sup> *Senegal*,<sup>58</sup> *Spain*,<sup>59</sup> *Swaziland*<sup>60</sup> and the United States.<sup>61</sup> In *Honduras*<sup>62</sup> and *Venezuela*,<sup>63</sup> the legislation permits deductions, in the form of a “solidarity fee”, from the wages of non-unionized workers who have benefited from a collective agreement concluded by a trade union. Moreover, in certain countries, such as *Colombia*,<sup>64</sup> *Mexico*,<sup>65</sup> *Uruguay*<sup>66</sup> and *Venezuela*,<sup>67</sup> provision is made for deductions for the payment of contributions to cooperative associations and workers’ mutual funds. In *Israel*,<sup>68</sup> supplements to trade union membership fees intended to finance political party activities may also be deducted, unless employees inform the employer in writing of their objection to the payment of such supplements. In the United States,<sup>69</sup> federal and state regulations provide for deductions in respect of contributions to non-profit or charitable organizations.

<sup>53</sup> (2), s. 545.

<sup>54</sup> (2), s. 42(21).

<sup>55</sup> (1), s. 161(4).

<sup>56</sup> (2), s. 110(VI).

<sup>57</sup> (1), ss. 63(a), 240(d).

<sup>58</sup> (1), s. L.130(1), (2).

<sup>59</sup> (7), s. 11.

<sup>60</sup> (1), s. 56(2).

<sup>61</sup> (2), s. 531.40(c); Georgia (15), ss. 34-6-25, 34-6-26; Idaho (17), s. 44-2004; Kansas (21), s. 44-319(b); Kentucky (22), s. 337.060(1); Massachusetts (27), s. 150A; Michigan (28), s. 408.477(1); Minnesota (29), s. 181.06(2); New Jersey (37), s. 12:55-2.1(a); New York (39), s. 193(1)(b); North Carolina (41), s. 13-12.0305(c); Oregon (45), s. 652.610(4); Pennsylvania (46), s. 9.1; Rhode Island (47), ss. 28-14-3, 28-14-10; Utah (52), s. 34-32-1; West Virginia (57), s. 21-5-1(g).

<sup>62</sup> (2), s. 95(12).

<sup>63</sup> (1), s. 446.

<sup>64</sup> (1), s. 150. This is also the case in *Argentina* (1), ss. 131, 132(c); *Costa Rica* (1), s. 69(k); *Guatemala* (2), s. 61(i); *Honduras* (2), s. 95(13); *Panama* (1), s. 161(5); *Paraguay* (1), ss. 63(a), 240(d); *Peru* (11), s. 79; (13), s. 7.

<sup>65</sup> (2), s. 110(IV). In this regard, deductions may not exceed 30 per cent of the amount by which the worker’s remuneration exceeds the minimum wage.

<sup>66</sup> (8), s. 1; (9), s. 1; (10), s. 1. Deductions in this respect may vary from 35 to 55 per cent of the worker’s wages.

<sup>67</sup> (1), s. 132.

<sup>68</sup> (1), s. 25(a)(3), (3a).

<sup>69</sup> (2), s. 531.40(c); Michigan (28), s. 408.477(2); New Jersey (37), s. 12:55-2.1(2)(v); New York (39), s. 193(1)(b); North Carolina (41), s. 13-12.0305(c); Ohio (43), s. 4113.15(D)(3); Oregon (45), s. 652.610(4); Rhode Island (47), s. 28-14-10; West Virginia (57), s. 21-5-1(g).

**227.** Deductions from wages for the reimbursement of pay advances are also very common. The term “pay advance” is understood to mean any amount of wages earned and paid directly to the employee, or to another person at the employee’s written request, in anticipation of the regular period of payment of the wages. This is the position, for example, in *Barbados*,<sup>70</sup> *Brazil*,<sup>71</sup> *Cameroon*,<sup>72</sup> *Ecuador*,<sup>73</sup> *Egypt*,<sup>74</sup> *Islamic Republic of Iran*,<sup>75</sup> *Russian Federation*,<sup>76</sup> *Tunisia*<sup>77</sup> and the United States.<sup>78</sup> In most cases, the national laws and regulations provide either that there may be no interest charged on any sums advanced to a worker, or that prior authorization is needed from a labour authority before interest can be charged on such advances.

**228.** In addition, deductions are frequently permitted for the repayment of loans, credits and other personal debts. Specific provisions to this effect are

<sup>70</sup> (1), s. 9(1)(b). This is also the case in *Argentina* (1), ss. 130, 131, 132(a); *Azerbaijan* (1), s. 175(3); *Belarus* (1), s. 107; *Bulgaria* (1), s. 272(1)(i); *Burkina Faso* (1), s. 128; *Cape Verde* (1), s. 121(2)(f); *Central African Republic* (1), s. 112(1); *Chad* (1), s. 276; *Colombia* (1), ss. 149(1), 151; *Comoros* (1), s. 112(2); *Congo* (1), s. 100(2); *Costa Rica* (1), s. 173; *Côte d’Ivoire* (1), s. 34.1; *Czech Republic* (1), s. 121(1)(c); (2), s. 12(1)(b); (4), s. 18(1)(b); *Djibouti* (1), s. 107; *Dominica* (1), s. 9(1)(b); *Dominican Republic* (1), s. 201(3); *Estonia* (2), s. 36(2); *Gabon* (1), s. 161(1); *Guinea* (1), s. 231; *Guinea-Bissau* (1), s. 106(2)(f); *Guyana* (1), s. 23(g); *Honduras* (2), s. 372; *Hungary* (1), s. 161(2); *Israel* (1), s. 25(a)(7); *Kyrgyzstan* (1), s. 242(3)(i); *Luxembourg* (1), s. 6(5); *Madagascar* (1), s. 79; *Malaysia* (1), s. 24(2)(c), (4)(b); *Mali* (1), s. L.124; *Mauritania* (1), s. 105; *Mauritius* (1), s. 12(3); *Mexico* (2), s. 110(I); *Republic of Moldova* (1), s. 132(1); *Niger* (1), s. 170(1); *Nigeria* (1), s. 4; *Panama* (1), s. 161(3); *Paraguay* (1), ss. 63(a), 240(b), 242; *Poland* (1), s. 87(1)(iii); *Rwanda* (1), s. 111; *Saint Vincent and the Grenadines* (1), s. 3; *Senegal* (1), s. L.130(4), (5); *Slovakia* (1), s. 131(2)(a); *Spain* (6), Annex; *Sri Lanka* (1), s. 19(1)(a); (2), s. 2(a); *Sudan* (1), s. 37(1); *Swaziland* (1), s. 56(1)(d); *Turkey* (1), s. 30; *Uganda* (1), s. 32(4); *Ukraine* (1), s. 127(2)(i); *United Kingdom: Montserrat* (21), s. 9(b); *Virgin Islands* (22), s. C32(b); *Zambia* (1), s. 46(2).

<sup>71</sup> (2), s. 462.

<sup>72</sup> (1), s. 75(1).

<sup>73</sup> (2), s. 90.

<sup>74</sup> (1), s. 40.

<sup>75</sup> (1), s. 45(b).

<sup>76</sup> (1), s. 137(2)(i).

<sup>77</sup> (1), s. 150.

<sup>78</sup> See, for instance, *Arkansas* (8), s. 11-4-402(a); *Colorado* (10), s. 8-4-101(7.5)(b); *North Carolina* (41), s. 13-12.0305(f); *North Dakota* (42), s. 34-14-04.1.

found, for example, in the laws and regulations in *Bahamas*,<sup>79</sup> *Cuba*,<sup>80</sup> *Egypt*,<sup>81</sup> *Nicaragua*<sup>82</sup> and *Sri Lanka*.<sup>83</sup> In other countries, such as *Argentina*,<sup>84</sup> *Chile*,<sup>85</sup> *Peru*<sup>86</sup> and *Uruguay*,<sup>87</sup> the law makes specific reference to deductions for the repayment of housing loans or the payment of rent in the case that accommodation is provided by the employer.

**229.** In many cases, employers are authorized to make deductions from wages in settlement of workers' purchase of goods manufactured by the enterprise. This is the case, for instance, in *Ecuador*,<sup>88</sup> *Panama*<sup>89</sup> and *Paraguay*.<sup>90</sup> Similarly, in *Canada*<sup>91</sup> and *Spain*,<sup>92</sup> the law provides for the

<sup>79</sup> (1), s. 64(1). This is also the situation in *Argentina* (1), ss. 131, 132(f); *Azerbaijan* (1), s. 175(6); *Botswana* (1), s. 81(3); *Canada*: British Columbia (6), s. 22(4); *Colombia* (1), ss. 149(1), 151; *Costa Rica* (1), s. 36; *Dominican Republic* (1), s. 201(4); *El Salvador* (2), s. 136; *Guatemala* (2), s. 99; *Honduras* (2), s. 372; *Islamic Republic of Iran* (1), s. 45(c); *Israel* (1), s. 25(a)(6); *Kenya* (1), s. 6(1)(h); *Libyan Arab Jamahiriya* (1), s. 35; *Oman* (1), s. 58; *Panama* (1), s. 161(11); *Syrian Arab Republic* (1), s. 51; *Zambia* (1), s. 45(1)(e). Similarly, deductions for the reimbursement of loans are permitted in the United States, at the state level, in *Colorado* (10), s. 8-4-101(7.5)(b); *New Jersey* (37), s. 12:55-2.1(a); *North Carolina* (41), s. 13-12.0305(c); *Ohio* (43), s. 4113.15(D)(3); *Oregon* (45), s. 652.610(3)(e); *Pennsylvania* (46), s. 9.1(10); *Rhode Island* (47), s. 28-14-10.

<sup>80</sup> (1), s. 125.

<sup>81</sup> (1), s. 40.

<sup>82</sup> (5), s. 3(5).

<sup>83</sup> (4), s. 18(8); (5), s. 2(1)(g).

<sup>84</sup> (1), ss. 131, 132(d), (i). This is also the case in *Colombia* (1), ss. 149(1), 152; *Costa Rica* (1), s. 69(k); *Mexico* (2), s. 110(II), (III); *Panama* (1), s. 161(4), (9).

<sup>85</sup> (1), s. 58. Such deductions may not exceed 30 per cent of the worker's total remuneration.

<sup>86</sup> (12), s. 14; (13), s. 7. The maximum permissible amount of such deductions varies from one-fourth to one-third of the worker's wages.

<sup>87</sup> (6), s. 1.

<sup>88</sup> (2), ss. 42(6), 90. This type of deduction is limited to 10 per cent of the worker's monthly remuneration. This is also the case in *Argentina* (1), ss. 131, 132(h); *Canada*: Saskatchewan (17), s. 58(1); *Colombia* (1), s. 149(1); *Mexico* (2), s. 110(I). Similarly, in the United States, some state laws authorize deductions in respect of company products or other goods, wares or merchandise purchased from the employer; see, for instance, *Colorado* (10), s. 8-4-101(7.5)(b); *New Jersey* (37), s. 12:55-2.1(a); *Pennsylvania* (46), s. 9.1.

<sup>89</sup> (1), s. 161(10). Such deductions may not exceed 10 per cent of the worker's wages.

<sup>90</sup> (1), s. 242. The amount deducted may not exceed 30 per cent of the worker's monthly remuneration.

<sup>91</sup> (1), s. 181(b), (c); (2), s. 21; *Alberta* (5), s. 12(1); *Manitoba* (7), s. 39(4); *New Brunswick* (8), s. 9(1)(g); *Newfoundland and Labrador* (9), s. 27(f); *Northwest Territories* (10), s. 14(b); *Nova Scotia* (12), s. 50(2)(i); *Prince Edward Island* (15), ss. 5(1)(d), 13(2)(a); *Saskatchewan* (17), s. 15(4)(e), (f).

<sup>92</sup> (6), Annex. Similarly, in *Cape Verde* (1), s. 121(2)(e), and *Guinea-Bissau* (1), s. 106(2)(e), the law authorizes deductions for the cost of meals in the workplace, the use of

deduction of the value of the products received by the worker in the form of allowances in kind.

**230.** In accordance with the law and practice of certain countries, deductions from wages in the form of caution money, or security amounts, are permissible. In the *Democratic Republic of the Congo*,<sup>93</sup> for instance, employers may make deductions for the purpose of building up a security to guarantee that workers honour their obligation to return to the employer in good condition all goods, products, moneys and, in general, everything that has been entrusted to them. The sums deducted are to be deposited in the worker's name in a bank or similar establishment. By the mere fact of having made the deposit, the employer acquires a preferred claim over the security for any debt arising out of the total or partial failure of the worker to fulfil this obligation. The amount of the security may be restored to the worker or paid over to the employer only by mutual agreement between them, upon the production of a copy of a final court decision. In the *Philippines*,<sup>94</sup> as a general rule, employers may not require their workers to make deposits from which deductions could be made for the reimbursement of loss or of damage to tools, materials or equipment supplied by them, except when they are engaged in such trades, occupations or business where the practice of making deductions or requiring deposits is a recognized one, or is necessary or desirable, as determined by the Secretary of Labor in appropriate rules and regulations.

**231.** In a number of countries, the law authorizes deductions in the case of overpayment made to employees as a result of accounting errors, or any other extra amount, and in the case of the payment in excess of social benefits. This is

telephones, or any other products and services provided by the employer and expressly requested by workers.

<sup>93</sup> (1), ss. 93, 94. This is also the case in *Burkina Faso* (1), ss. 131 to 134; *Central African Republic* (1), ss. 92 to 95; *Comoros* (1), ss. 93 to 96; *Congo* (1), ss. 77 to 79; *Gabon* (1), ss. 136 to 139; *Mali* (1), ss. L.126 to L.129.

<sup>94</sup> (1), s. 114. Similarly, in *Sri Lanka* (4), s. 18(4); (5), s. 2(1)(d), the law provides that the amount required to be furnished as security by the employee may not exceed such percentage of the remuneration as may be approved by the labour commissioner.

the position, for example, in *Botswana*,<sup>95</sup> *Panama*,<sup>96</sup> *Paraguay*<sup>97</sup> and the United States.<sup>98</sup> In *Hungary*,<sup>99</sup> wages paid without any justification may be reclaimed in writing from the employee within 60 days, but no provision is made for any automatic deduction from wages.

**232.** In some other cases, regulations permit wage deductions in the event of a dismissal of employees before the expiration of the business year for which they have already used up their vacation leave for the days of vacation that have not been worked off. This is the situation, for example, in the *Russian Federation*,<sup>100</sup> *Tajikistan*<sup>101</sup> and *Slovakia*.<sup>102</sup> In other countries, such as *Brazil*,<sup>103</sup> in the case of the worker's failure to give due notice of termination,

<sup>95</sup> (1), s. 81(1)(d)(iv). Provided that the deductions are made in such a manner as to cause no undue hardship to the employee. This is also the case in *Azerbaijan* (1), s. 175(2)(f); *Belarus* (1), s. 107; *Bulgaria* (1), s. 272(1)(ii); *Canada* (1), s. 254.1(2)(d), and *Newfoundland and Labrador* (9), s. 36(3)(c); *Costa Rica* (1), s. 173; *Czech Republic* (1), s. 121(1)(h); (2), s. 12(1)(e); *Estonia* (2), s. 36(2); *Islamic Republic of Iran* (1), s. 45(d); *Kenya* (1), s. 6(1)(e); *Kyrgyzstan* (1), s. 242(3)(i); *Malaysia* (1), s. 24(2)(a); *Mexico* (2), s. 110(I); *Republic of Moldova* (1), s. 132(1); *Myanmar* (1), s. 7(2)(f); *Russian Federation* (1), s. 137(2)(iii); *Slovakia* (1), s. 131(2)(d); *Swaziland* (1), s. 56(1)(e); *Tajikistan* (1), s. 109(5); *Ukraine* (1), s. 127(2)(i); *United Kingdom* (1), s. 14(1), and *Isle of Man* (14), s. 13(5)(a); *Zambia* (1), s. 45(1)(c). In *Nigeria* (1), s. 5(5), such deductions may be made from the wages of a worker only in respect of overpayments effected during the three months immediately preceding the month in which the overpayment was discovered.

<sup>96</sup> (1), s. 161(3). Such deductions may not exceed 15 per cent of the worker's wages.

<sup>97</sup> (1), s. 242. This type of deduction is limited to 30 per cent of the worker's monthly remuneration.

<sup>98</sup> See, for instance, *North Carolina* (41), s. 13-12.0305(h), and *Pennsylvania* (46), s. 9.1. In *Indiana* (19), s. 22-2-6-4(a), the aggregate disposable earnings of an employee that may be subjected to an employer deduction for overpayment may not exceed 25 per cent of the employee's disposable weekly earnings. However, when a single gross wage overpayment is equal to ten times the employee's gross wages earned due to an inadvertent misplacement of a decimal point, the entire overpayment may be deducted immediately. In *Michigan* (28), s. 408.477(4), any deduction for overpayment may not be greater than 15 per cent of the gross wages earned in the pay period in which the deduction is made.

<sup>99</sup> (1), s. 162. Similarly, in *Romania* (1), s. 106, any persons who have received a sum which was not owed to them are required to refund it. In the Australian State of *Queensland* (7), s. 396, employers may recover overpaid wages by deducting amounts from the employee's wages but may not reduce the employee's wages for the pay period by more than a quarter.

<sup>100</sup> (1), s. 137(2)(iv). This is also the case in *Azerbaijan* (1), s. 175(2)(d); *Belarus* (1), s. 107(2)(ii); *Estonia* (2), s. 36(1); *Kyrgyzstan* (1), s. 242(3)(ii); *Republic of Moldova* (1), s. 132(2); *Ukraine* (1), s. 127(2)(ii).

<sup>101</sup> (1), s. 109(6).

<sup>102</sup> (1), s. 131(2)(g).

<sup>103</sup> (2), s. 487(2).

the employer may deduct the amount of the wages corresponding to the period of notice.

**233.** In certain countries, such as the *Republic of Moldova*<sup>104</sup> and *Ukraine*,<sup>105</sup> the law regulates deductions in the case of unaccounted advances for official travel or removal expenses, or for any other economic expenses that have not been spent or returned in due time.

**234.** In other countries, such as *Botswana*,<sup>106</sup> *Malta*<sup>107</sup> and *Norway*,<sup>108</sup> the law provides for deductions in the case of non-performance of work because of unauthorized absence or stoppage.

**235.** Finally, in certain countries, such as *Botswana*,<sup>109</sup> *Kenya*<sup>110</sup> and *Zambia*,<sup>111</sup> the law authorizes deductions from wages for any other purpose and of such other amounts as may be approved by the Minister.

#### *1.2.2.2. Deductions for loss or damage to products, goods or installations*

**236.** Under the terms of Paragraph 2 of the Recommendation, deductions from wages for the reimbursement of loss of or damage to the products, goods or installations of the employer should be authorized only on condition that: (a) the worker concerned can be clearly shown to be responsible for the loss or damage caused; (b) the amount of such deductions is fair and does not exceed the actual amount of the loss or damage; and (c) the worker concerned is given a reasonable opportunity, before a decision is taken, to show cause why the deduction should not be made. This clause, as the preparatory work shows,

<sup>104</sup> (1), s. 132(1). This is also the case in *Azerbaijan* (1), s. 175(2)(e); *Belarus* (1), s. 107; *Canada: Newfoundland and Labrador* (9), s. 36(3)(f); *Czech Republic* (1), s. 121(1)(e); (2), s. 12(1)(g); (4), s. 18(1)(f); *Kyrgyzstan* (1), s. 242(3)(i); *Russian Federation* (1), s. 137(2)(ii); *Slovakia* (1), s. 131(2)(e), (f); *Tajikistan* (1), s. 109(3).

<sup>105</sup> (1), s. 127(2)(i).

<sup>106</sup> (1), s. 81(1)(d)(i). This is also the case in *Cape Verde* (1), s. 107(1), *Myanmar* (1), s. 7(2)(b), and *Oman* (1), s. 59. In *Egypt* (1), s. 36(2), workers who turn up at the workplace, but are prevented from working by *force majeure* or factors not attributable to the employer are entitled to only half their wage. In the *United Kingdom* (1), s. 14(5), and the *Isle of Man* (14), s. 13(5)(e), the law authorizes wage deductions on account of the worker's participation in a strike or other industrial action.

<sup>107</sup> (1), s. 26(2).

<sup>108</sup> (1), s. 55(3)(f).

<sup>109</sup> (1), s. 81(1)(d)(vii).

<sup>110</sup> (1), s. 6(1)(i).

<sup>111</sup> (1), s. 45(1)(f).

generally elicited wide acceptance, although the point regarding the worker's responsibility gave rise to some debate.<sup>112</sup>

**237.** A certain number of countries, such as *Guinea*,<sup>113</sup> *Mexico*<sup>114</sup> and *Turkey*,<sup>115</sup> have enacted legislation regulating wage deductions for defective work or damage to property or materials belonging to the employer. According to the law and practice of several countries, such as *Argentina*,<sup>116</sup> *Brazil*,<sup>117</sup> *Lebanon*,<sup>118</sup> *Paraguay*,<sup>119</sup> *Sri Lanka*<sup>120</sup> and *Tajikistan*,<sup>121</sup> such deductions are only permitted in cases in which the damage or loss has been caused by the wilful misconduct or negligence of the worker. In several cases, for instance, in *Libyan Arab Jamahiriya*,<sup>122</sup> *Russian Federation*<sup>123</sup> and *Swaziland*,<sup>124</sup> the law also requires a fair and reasonable evaluation of the damage or loss. Furthermore, under the laws of certain countries, such as *Kyrgyzstan*,<sup>125</sup>

<sup>112</sup> Reference was originally made to loss or damage caused "intentionally or through grave negligence", but it was later suggested that a more suitable form of words such as "bad or negligent work" might avoid difficulties of interpretation. The reference to loss or damage "for which the worker concerned can be clearly shown to be responsible" was finally adopted with a view to sidestepping all controversial wording; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 464, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 512.

<sup>113</sup> (1), s. 231(4). See also *Azerbaijan* (1), s. 175(2)(c); *Bolivia* (1), s. 35; *Bulgaria* (1), ss. 210(4), 272(1)(v); *Colombia* (1), s. 149(1); *Democratic Republic of the Congo* (1), s. 93(2); *Ukraine* (1), s. 127(2)(iii).

<sup>114</sup> (2), s. 110(I).

<sup>115</sup> (1), s. 31.

<sup>116</sup> (1), ss. 131, 135. See also *Bahrain* (1), s. 76; *Barbados* (1), s. 8; *China* (1), s. 16; *Dominica* (1), s. 8; *Kenya* (1), s. 6(1)(b); *Luxembourg* (1), s. 6(2); *Myanmar* (1), s. 7(2)(c); *Nigeria* (1), s. 5(1); *Saudi Arabia* (1), s. 81; *Syrian Arab Republic* (1), s. 54(2); *Yemen* (1), ss. 64, 99; *United Kingdom: Montserrat* (21), s. 8; *Virgin Islands* (22), s. C32(d); *Zambia* (1), s. 45(1)(b). Similarly, in the United States, deductions for loss of property or faulty workmanship are in principle prohibited unless it can be shown that such loss was caused by wilful act of the employee; see, for instance, *Hawaii* (16), s. 388-6; *Iowa* (20), s. 91A.5(2)(c); *Kentucky* (22), s. 337.060(2)(e), *Minnesota* (29), s. 181.79 and (30), s. 5200.0090; *Washington* (56), s. 296-126-025.

<sup>117</sup> (2), s. 462(1).

<sup>118</sup> (1), s. 69.

<sup>119</sup> (1), ss. 63(a), 240(a), 242.

<sup>120</sup> (5), s. 2(1)(i) and Schedule, list B; (4), s. 18(7)(c).

<sup>121</sup> (1), s. 109(4).

<sup>122</sup> (1), s. 36(1). See also *Hungary* (1), s. 172; *Kyrgyzstan* (1), s. 397(2).

<sup>123</sup> (1), s. 244.

<sup>124</sup> (1), s. 57(3).

<sup>125</sup> (1), s. 399(3), (4). See also the *Republic of Moldova* (1), s. 129(1). In *Viet Nam* (1), ss. 87(2), (3), 89, 90, the worker concerned and a representative of the executive committee of the trade union of the enterprise must be allowed to participate in the procedure to establish the facts

*Norway*<sup>126</sup> and *Philippines*,<sup>127</sup> before any decision concerning a wage deduction is made, a worker must be given a reasonable opportunity to show cause why such a deduction should not be made.

**238.** In contrast, certain countries, such as *Canada*<sup>128</sup> and *Mauritius*,<sup>129</sup> explicitly prohibit employers from making deductions in respect of bad or negligent work or damage to the materials, equipment or other property belonging to them.

*1.2.2.3. Deductions for the supply of tools,  
materials or equipment*

**239.** According to Paragraph 3 of the Recommendation, appropriate measures should be taken to limit deductions from wages in respect of tools, materials or equipment supplied by the employer to cases in which such deductions: are a recognized custom of the trade or occupation concerned; are provided for by collective agreement; or are otherwise authorized by a procedure recognized by national laws or regulations. This clause was adopted with practically no discussion, except on the question of the exact cost that the wage deductions were meant to cover, which was finally left unanswered.<sup>130</sup>

or determine the amount of compensation. In *Paraguay* (1), ss. 63(a), 240(a), 242, deductions for damage to employer's equipment, instruments or products may be made only when confirmed by judicial decision.

<sup>126</sup> (1), s. 55(3)(e).

<sup>127</sup> (1), s. 115.

<sup>128</sup> (1), s. 254.1(3); Alberta (4), s. 12(3); Northwest Territories (11), s. 3(b); Ontario (14), s. 13(5).

<sup>129</sup> (1), s. 13(1)(b).

<sup>130</sup> A proposal to the effect that deductions made for the cost of tools, materials and equipment supplied by the employer should not exceed the cost price of those tools, materials or equipment was countered by another proposal opting for some reference to the cost of replacement for the employer; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 513.

**240.** Only a few countries, such as *Bahamas*,<sup>131</sup> *Colombia*,<sup>132</sup> *Guyana*<sup>133</sup> and *Swaziland*,<sup>134</sup> authorize wage deductions in respect of the actual or estimated cost of any tools, materials or equipment supplied by the employer to the worker as well as the use or hire of premises. In most other countries the deductions of this nature are not permissible, apparently on the understanding that the goods supplied form part of the normal cost to be borne by the employer in setting up and equipping a business.

*1.2.2.4. Deductions in the form of fines for breaches of discipline*

**241.** The text originally proposed by the Office on disciplinary fines provided that such deductions should be subject to the following conditions: (a) that the worker has committed a breach of the provisions of works regulations previously established in conformity with a procedure approved by the competent authority; (b) that the worker concerned or representatives of the staff have been given an opportunity to be heard; and (c) that the proceeds from disciplinary fines do not accrue to the financial profit of the employer.<sup>135</sup> This provision was the subject of considerable criticism at the first Conference discussion and was finally deleted from the draft text of the Recommendation.<sup>136</sup>

<sup>131</sup> (1), s. 62(2). Deductions in respect of goods supplied to employees are generally prohibited, except for tools or implements supplied to employees, or goods not exceeding a certain value supplied to employees at their request when there is no store within five miles of the place of employment where the employees could have purchased such goods. See also *Barbados* (1), s. 9(1)(a); *Dominica* (1), s. 9(1)(a); Luxembourg (1), ss. 2, 6(4); United Kingdom: *Montserrat* (21), s. 9(a); *Virgin Islands* (22), s. C32(c).

<sup>132</sup> (1), s. 149(1).

<sup>133</sup> (1), s. 23.

<sup>134</sup> (1), s. 56(1)(c).

<sup>135</sup> It was explained that the intention was to cover legally authorized works regulations dealing with such aspects of labour discipline as the observance of safety regulations, and also to ensure that governments were left free to decide exactly how the proceeds from disciplinary fines would be used; see ILC, 31st Session, 1948, Report VI(c)(2), pp. 77-78.

<sup>136</sup> Some governments indicated that deductions in the form of disciplinary fines were simply prohibited at the national level, and that such deductions would amount to summary punishment imposed by the injured party. The Worker members firmly opposed the adoption of international regulations concerning deductions of this nature; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 465.

**242.** In many countries, such as *Argentina*,<sup>137</sup> *Barbados*,<sup>138</sup> *Cameroon*,<sup>139</sup> *Guatemala*,<sup>140</sup> *Nigeria*<sup>141</sup> and Viet Nam,<sup>142</sup> the imposition of disciplinary fines by way of wage deductions is formally prohibited. Similarly, in *Mexico*,<sup>143</sup> the national legislation stipulates that any contractual clause providing for deductions from wages in the form of disciplinary fines is null and void and not binding on the contracting parties and also that the imposition of fines is unlawful irrespective of the reasons or nature of such fines.

**243.** In contrast, deductions in the form of fines for breaches of discipline, acts of negligence or offences against works rules are authorized in certain countries, such as *Chile*,<sup>144</sup> *Iraq*,<sup>145</sup> *Morocco*<sup>146</sup> and *Romania*.<sup>147</sup> In Kuwait,<sup>148</sup> Oman<sup>149</sup> and the United Arab Emirates,<sup>150</sup> fines may be imposed for disciplinary offences relating to hours of work, workplace regulations or personal conduct. Employers who employ ten or more employees are obliged to post in a conspicuous place a list of disciplinary penalties and the conditions under which each of these penalties may be imposed, on the understanding that no more than one punishment may be imposed for a single contravention and that a worker may not be punished after the expiry of 15 days from the date any act was proven to have been committed or from the usual pay day. Fines may be

<sup>137</sup> (1), s. 131. This is also the case in *Benin* (1), s. 215; *Burkina Faso* (1), s. 127; *Democratic Republic of the Congo* (1), s. 92; *Dominica* (1), s. 8; *Mauritania* (1), s. 104; *Mauritius* (1), s. 13(1); *Senegal* (1), s. L.129; *Togo* (1), s. 32; United Kingdom: *Montserrat* (21), s. 8, and Virgin Islands (22), s. C32(d); United States: *Hawaii* (16), s. 388-6, *Indiana* (19), s. 22-2-8-1, *Kentucky* (22), s. 337.060(2)(a), *Louisiana* (24), s. 635, *Minnesota* (30), s. 5200.0090.

<sup>138</sup> (1), s. 8.

<sup>139</sup> (1), s. 30(1).

<sup>140</sup> (2), s. 60(e).

<sup>141</sup> (1), s. 5(1).

<sup>142</sup> (1), s. 60(2).

<sup>143</sup> (1), s. 123A-XXVII(f); (2), s.107.

<sup>144</sup> (1), s. 58. This is also the case in *Cape Verde* (1), s. 121(2)(d); *Colombia* (1), s. 150; *Ecuador* (2), s. 44(b); *Guinea-Bissau* (1), s. 106(2)(d); *Israel* (1), s. 25(4); *Lebanon* (1), s. 68(1); *Libyan Arab Jamahiriya* (1), s. 78(1); *Luxembourg* (1), s. 6(1); *Myanmar* (1), s. 7(2)(a); *Syrian Arab Republic* (1), s. 66; United Kingdom (1), s. 14(2), and *Isle of Man* (14), s. 13(5)(b).

<sup>145</sup> (1), ss. 126(2), 128, 129.

<sup>146</sup> (1), s. 14. However, the Government has reported that under the new draft Labour Code which is currently before the Parliament, the right to impose fines as a disciplinary measure has been repealed.

<sup>147</sup> (1), ss. 100(1)(d), 101(2).

<sup>148</sup> (1), ss. 50, 51(5). This is also the case in *Bahrain* (1), ss. 101, 102(5), 103; (2), s. 1 and Schedule; (3), ss. 1, 5; *Qatar* (1), s. 72; *Saudi Arabia* (1), ss. 125, 126, 127.

<sup>149</sup> (1), ss. 33, 35.

<sup>150</sup> (1), ss. 102, 104, 105.

in the form of a specified amount or an amount equivalent to the wages due for a specified period. In *Turkey*,<sup>151</sup> fines may only be imposed for reasons set out in a collective agreement or contract of employment. In *Sri Lanka*,<sup>152</sup> the acts or omissions in respect of which fines may be imposed on workers are specifically enumerated in labour regulations. These include absence from work without reasonable excuse, late attendance, negligence at work, sleeping on duty, wilful failure to comply with orders, theft of goods, fraud or dishonesty, wilful insubordination, interference with safety devices and violation of instructions concerning the maintenance and cleanliness of the premises.

**244.** In most of the countries which authorize such deductions from wages, the national legislation also contains provisions guaranteeing the procedural fairness of the disciplinary action, for instance by requiring written notification of the worker or recognizing the right to lodge an appeal. In many countries, no fine may be imposed after 15 to 30 days have elapsed since the offence was committed or discovered. In other cases, the law requires employers to keep a special register showing every such deduction and to make the register available at all reasonable times to labour inspectors. In *Saudi Arabia*,<sup>153</sup> for instance, no disciplinary sanctions may be imposed on employees until they have been notified in writing of the charges against them, their statements have been heard, they have been allowed to defend themselves and all of the above has been entered into a report placed in their personal file.

**245.** In certain countries, legal provisions exist to ensure that the employer may not benefit financially from fines imposed for disciplinary reasons. In *Egypt*<sup>154</sup> and *Lebanon*,<sup>155</sup> for instance, the law provides that the proceeds derived from any fines inflicted on workers shall accrue to a special account and shall be used in the workers' interests in accordance with regulations to be issued by the competent government authority. In *Bahrain*<sup>156</sup> and the United

<sup>151</sup> (1), s. 32. Similarly, in *Malta* (1), s. 26(1), (3) the grounds on which fines may be imposed have to be specified in a written contract of service and the terms of any such contract must have been previously approved by the Director of Labour and Emigration.

<sup>152</sup> (4), s. 18(7); (5), s. 2(1)(i). Similarly, in *Poland* (1), s. 108(2), workers are liable to fines mainly for unauthorized absence, failure to observe works rules on safety and hygiene or fire protection, and the consumption of alcohol during working hours.

<sup>153</sup> (1), s. 126. See also *Bahrain* (3), ss. 5, 7, 8, and *United Arab Emirates* (1), s. 110.

<sup>154</sup> (1), s. 70. See also *Libyan Arab Jamahiriya* (1), s. 80, and *Syrian Arab Republic* (1), s. 70.

<sup>155</sup> (1), s. 71; (4), ss. 1 to 5. The special account is administered by a joint committee and its primary function is to provide financial assistance to workers in case of unforeseen expenses or needs, in particular in the event of sickness, accident, death or a wedding.

<sup>156</sup> (1), s. 103; (4), ss. 1, 3, 4.

Arab Emirates,<sup>157</sup> a joint committee established within the enterprise is entrusted with reviewing possible social welfare activities and deciding on the use of the sums collected, which may include purposes such as the establishment of a sports club, leisure facility, mosque, library, cooperative, the supply of medical care or other similar projects. The funds may not be invested in any manner, nor can they be used for food or clothing. Similarly, in *Turkey*,<sup>158</sup> deductions in respect of fines are credited within one month to the account of the Ministry of Labour and the proceeds may only be used to provide educational and social services to the workers, in conformity with the decisions of a committee chaired by the Minister of Labour, which includes workers' representatives.

**246.** Mention may also be made, in passing, of the problem of deductions from pay for strike days. The Committee wishes to recall in this connection that, although such deductions in principle give rise to no objection, deductions which are higher than the amount corresponding to the period of the strike may be deemed punitive in character, and as such should be avoided.<sup>159</sup>

### 1.2.3. Limitations applicable to wage deductions

**247.** Under the terms of Article 10, paragraph 2, of the Convention, wages must be protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his family. In contrast, Article 8, while calling for the determination of the extent of permitted deductions, contains no explicit provision that wages shall be protected to the extent deemed necessary for the maintenance of the worker and his family. However, a similar principle that an upper limit should be placed on deductions, so as to ensure that they are not so heavy as to deprive the workers of the basic minimum income needed for the maintenance of themselves and their families, is found in Paragraph 1 of the Recommendation. This provision, which was not foreseen in the original Office report prior to the drafting of the instrument and which was adopted at both Conference sessions without discussion,<sup>160</sup> stipulates that "all necessary measures should be taken to limit deductions from wages to the extent

<sup>157</sup> (1), s. 105; (2), ss. 1, 4.

<sup>158</sup> (1), s. 32. Similarly, in *Poland* (1), s. 108(4), the proceeds from any fines imposed by the employer have to be dedicated to social purposes.

<sup>159</sup> It may be recalled that the Committee on Freedom of Association, in referring to this question, has considered that the imposition of sanctions for strike action in the form of wage deductions in excess of the amount corresponding to the period of the strike was not conducive to harmonious labour relations; see *Digest of decisions and principles of the Freedom of Association Committee*, 4th (revised) edition, 1996, pp. 120-121.

<sup>160</sup> See ILC, 31st Session, 1948, Report VI(c)(2), p. 76; ILC, 31st Session, 1948, *Record of Proceedings*, p. 464; ILC, 32nd Session, 1949, *Record of Proceedings*, p. 512.

deemed to be necessary to safeguard the maintenance of the worker and his family”.

**248.** Despite the fact that there seems to be no convincing explanation as to why the principle of seeking to protect workers’ earnings from excessive deductions was not incorporated into the text of the Convention, as is the case for attachment and assignment, the Committee considers that this seeming incongruity should not be overemphasized. The Committee is satisfied that Article 8, paragraph 1, imposes an obligation to set limits for deductions from wages which in itself reveals an underlying concern that deductions should not become arbitrary or unreasonable. On a number of occasions, the Committee’s comments concerning the application of Article 8 are based on the understanding that limits should be placed on the aggregate of authorized deductions to the extent necessary for the maintenance of workers and their families.<sup>161</sup> The Committee therefore considers that Article 8, paragraph 1, of the Convention incorporates the idea of applying a limitation to deductions so as to ensure the maintenance of workers and their families, even though this idea is explicitly expressed only in Paragraph 1 of the Recommendation.

#### *1.2.3.1. General limits for maximum deductible amounts*

**249.** The labour laws in several countries apply progressive ceilings for deductions to fixed portions of wages. These rates often vary from one-twentieth or one-tenth for the lowest wage portion, to one-third or one-half, and even two-thirds, for the highest portion, while there are no limits to deductions from wages above a prescribed amount. This is the case, for instance, in *Cameroon*,<sup>162</sup> *Côte d’Ivoire*,<sup>163</sup> *Gabon*<sup>164</sup> and *Senegal*.<sup>165</sup> In these countries, when calculating the amount to be stopped, all wage supplements have to be included, except unattachable allowances, sums payable by way of reimbursement for expenses incurred by the worker and family allowances. Similarly, in *Bulgaria*,<sup>166</sup> limits on wage deductions depend on monthly income levels, and vary from one-fifth of the wages of workers if they earn up to 60 levas, to one-half if they earn more than 300 levas.

<sup>161</sup> See, for instance, RCE 1984, 173 (*Libyan Arab Jamahiriya*). The Committee has addressed a direct request in this sense to *Belize* and *Kyrgyzstan* in 1995.

<sup>162</sup> (1), ss. 75, 76; (5), s. 2(1). This is also the case in *Burkina Faso* (1), ss. 128(1), 129; (3), s. 1; *Central African Republic* (1), ss. 112, 113; (4), s. 1; *Chad* (1), ss. 276(1), 277; (4), s. 1; *Congo* (1), ss. 100(1), 101; (3), s. 1; *Djibouti* (1), ss. 107, 108; (3), s. 1; *Mauritania* (1), ss. 105(1), 106; *Niger* (1), ss. 170(1), 171; (3), s. 218; *Togo* (1), ss. 103(1), 104; (2), s. 1.

<sup>163</sup> (1), ss. L.34.1, 34.2; (2), ss. 2D-68(1), (3).

<sup>164</sup> (1), ss. 161, 162; (2), s. 1.

<sup>165</sup> (1), ss. L.130(3), L.131(1), (2); (4), s. 1.

<sup>166</sup> (1), s. 272(2); (3), s. 341(1).

**250.** Many countries establish the maximum deductible amount in terms of a specific percentage of wages. The limit so fixed varies considerably from one country to another and is set at one-fifth of the wages earned in *Bahamas*<sup>167</sup> and Thailand,<sup>168</sup> one-fourth in Seychelles<sup>169</sup> and *Zambia*,<sup>170</sup> and one-third in *Cuba*,<sup>171</sup> *Hungary*<sup>172</sup> and *Swaziland*.<sup>173</sup> In contrast, in Indonesia,<sup>174</sup> *Panama*<sup>175</sup> and *Romania*,<sup>176</sup> the law provides that the total of any amounts deducted from the wages of an employee in respect of any one month may not exceed 50 per cent of the wages earned by the employee during that month, while in *Poland*,<sup>177</sup> all authorized deductions, including deductions for maintenance payments, income tax payments, cash advances and fines, may not amount to more than three-fifths of the remuneration.

**251.** In other countries, the maximum percentage of wages which may be deducted varies depending on the type of deductions involved. For example, in the *Russian Federation*<sup>178</sup> and *Ukraine*,<sup>179</sup> the total amount of deductions may not exceed 20 per cent of the worker's remuneration, or 50 per cent in specific cases stipulated by the legislation. In the case of multiple deductions under several judicial orders, workers should in all cases retain not less than 50 per cent of their earnings, except when serving a prison sentence or recovering alimony for under-age children. Similarly, in *India*,<sup>180</sup> the total amount of

<sup>167</sup> (1), s. 64(1). Similarly, in Estonia (2), s. 36(3), the amount payable to an employee after deductions must equal at least 80 per cent of the statutory minimum wage rate.

<sup>168</sup> (1), s. 76.

<sup>169</sup> (1), s. 33(2).

<sup>170</sup> (1), ss. 45(4), 46(2), 46A(1).

<sup>171</sup> (1), s. 125. This is also the case in Cape Verde (1), s. 121(3); *Guyana* (1), s. 23; *Nigeria* (1), s. 5(7); United Kingdom: *Montserrat* (21), s. 9, and Virgin Islands (22), s. C32. Similarly, in Viet Nam (1), s. 60(1), the aggregate amount deducted may not exceed 30 per cent of the monthly wage.

<sup>172</sup> (1), s. 161(3); (3), s. 65.

<sup>173</sup> (1), ss. 56(4), 57(4). However, in case of loss or damage to tools, materials or other property belonging to the employer, the total amount of authorized deductions may not exceed one-half of the employee's wages.

<sup>174</sup> (2), s. 24(2). This is also the case in Guinea-Bissau (1), s. 106(3); Kenya (1), s. 6(3); *Malaysia* (1), s. 24(8); *Mauritius* (1), s. 13(3).

<sup>175</sup> (1), s. 161.

<sup>176</sup> (1), s. 109(2).

<sup>177</sup> (1), s. 87(4).

<sup>178</sup> (1), s. 138. This is also the case in *Azerbaijan* (1), s. 176; *Belarus* (1), s. 108; *Republic of Moldova* (1), s. 133(1), (2).

<sup>179</sup> (1), s. 128; (2), s. 26.

<sup>180</sup> (1), s. 7(3); (3), s. 21(2A).

deductions which may be made in any wage period from the wages of any employed person must not exceed 50 per cent of such wages, or 75 per cent in cases where such deductions are wholly or partly made for payments to cooperative societies. In *Sri Lanka*,<sup>181</sup> the aggregate of authorized deductions varies from 50 to 75 per cent of the wages due depending on the trade in which the worker is employed. In *Croatia*,<sup>182</sup> the Labour Act provides that not more than one-half of the worker's salary may be deducted by force of law to fulfil the legal obligation of supporting another person and not more than one-third of the salary to fulfil other obligations. In *Singapore*,<sup>183</sup> the total amount of deductions made from the salary of an employee in any one salary period may not exceed 50 per cent of the salary payable, although this does not include deductions made for absence from work, payment of income tax, recovery of advances or loans and payments with the consent of the employee to registered cooperative societies.

**252.** In some countries, the law seeks to protect the worker from excessive deductions not only by prescribing the maximum proportion of earnings which may be deducted, but also by providing that the minimum wage should remain immune from deductions. In *Kyrgyzstan*,<sup>184</sup> for instance, the total amount of authorized deductions may not exceed 20 per cent of the wages due to the employee, and in any case the wage after deduction may not be less than the minimum wage established by law. In the *Islamic Republic of Iran*,<sup>185</sup> only the amount in excess of the minimum wage may, by judicial decision, be withheld to cover workers' debts to their employer, and in any event such an amount may not exceed one-quarter of the total wage. Similarly, in *Colombia*<sup>186</sup> and *Mexico*,<sup>187</sup> the legislation provides that no deduction may be made from wages if the said deduction would bring the worker's remuneration below the minimum wage level.

**253.** In the case of the *Czech Republic*<sup>188</sup> and *Slovakia*,<sup>189</sup> the law prescribes a fixed cash amount which is free from deductions, while authorizing deductions without any limitation in respect of any sums exceeding that amount.

<sup>181</sup> (2), s. 2(a).

<sup>182</sup> (1), s. 88.

<sup>183</sup> (1), s. 32(1).

<sup>184</sup> (1), s. 243(1). Similarly, in *Tajikistan* (1), s. 109, deductions are limited to 50 per cent of wages, and may in no case affect the minimum wage.

<sup>185</sup> (1), s. 44.

<sup>186</sup> (1), ss. 149(2), 151.

<sup>187</sup> (1), s. 123A-VIII; (2), s. 110.

<sup>188</sup> (6), ss. 1, 2.

<sup>189</sup> (5), ss. 1(1), 2(1).

**254.** Finally, mention should be made of some countries, such as *Bolivia, Costa Rica, Democratic Republic of the Congo, Ecuador, Honduras, Japan, Republic of Korea, Nicaragua, Paraguay, Spain, Uganda, Uruguay* and *Venezuela*, where the legislation gives no indication as to the permissible extent of wage deductions. The Committee has on a number of occasions emphasized the importance of establishing an overall limit to the deductions that can be made from the wages of workers since, although in practice no difficulties exist when the deductions are small fractions of the wages, problems arise or can arise when the total amount of the various deductions is such as could either completely or virtually wipe out the wage.<sup>190</sup>

*1.2.3.2. Specific limits for particular forms  
of wage deductions*

**255.** In many countries, specific limits are prescribed for deductions in the form of fines for faults committed by a worker. In *Iraq*<sup>191</sup> and *Turkey*,<sup>192</sup> for instance, the fine may not amount to more than three days' wages in any one month, while in Kuwait,<sup>193</sup> *Libyan Arab Jamahiriya*<sup>194</sup> and Saudi Arabia,<sup>195</sup> the deduction in one month may not exceed the equivalent of five days' pay. In *Sri Lanka*,<sup>196</sup> the sum deducted for any fine imposed on the worker by the employer in respect of any act or omission may not exceed 5 per cent of the wages earned, while in *Romania*,<sup>197</sup> disciplinary action in the case of a wilful breach of obligations on the part of an employee may take the form of a wage reduction of 5 to 10 per cent for a period of from one to three months. In *Ecuador*,<sup>198</sup> no employer may deduct more than 10 per cent from the worker's wage by way of fine.

<sup>190</sup> For instance, the Committee has addressed direct requests in this sense to *Libyan Arab Jamahiriya* and *Uruguay* in 2001, to *Belize* in 1995, and to *Venezuela* in 1987.

<sup>191</sup> (1), s. 126(2). The amount deducted, however, may not exceed 20 per cent of the worker's monthly wage. In *Kenya* (1), s. 6(1)(c), an employer may deduct an amount not exceeding one day's wages in respect of each working day for the whole of which the employee, without leave or lawful cause, absents himself from the place of employment. See also *Lebanon* (1), ss. 68(1), 70.

<sup>192</sup> (1), s. 32.

<sup>193</sup> (1), s. 51(5). This is also the case in *Bahrain* (1), s. 102(5); *Oman* (1), s. 35; *Qatar* (1), s. 72(b)(iv); *Syrian Arab Republic* (1), ss. 51, 54(2), 66; *United Arab Emirates* (1), s. 104.

<sup>194</sup> (1), ss. 35, 36(3), 78(1).

<sup>195</sup> (1), s. 125.

<sup>196</sup> (5), s. 2(1)(i).

<sup>197</sup> (1), s. 100(1)(c), (d). In *Japan* (2), s. 91, and the *Republic of Korea* (1), s. 98, a punitive reduction in wages may not exceed one-tenth of the total amount of wages at any pay period.

<sup>198</sup> (2), s. 44(b). This is also the case in *Luxembourg* (1), s. 6.

**256.** With regard to deductions for negligent work or for loss or damage to the employer's property, the limits prescribed in national laws and regulations vary considerably. In *Lebanon*,<sup>199</sup> deductions for the loss, damage or total destruction of machinery, tools, materials or products caused by the worker may not exceed five days' wages in any one month, while in *Turkey*,<sup>200</sup> the sum which the employer is entitled to retain temporarily out of wages for the purpose of covering possible damage claims may not exceed ten days' pay, and any damage eventually caused by workers is only deducted from the sum of money retained as a deposit. In *Mexico*,<sup>201</sup> the total amount of deduction may in no case exceed one month's wages, and each payment may not exceed 30 per cent of the amount by which the wage exceeds the minimum wage. In Viet Nam,<sup>202</sup> in cases where the damage to tools, equipment or other enterprise assets is not serious in nature and is due to carelessness, the maximum amount of compensation must be limited to three months' wages and has to be deducted gradually from wages within the overall 30 per cent limit of permissible monthly deductions. In *Bolivia*<sup>203</sup> and the *Philippines*,<sup>204</sup> deductions for loss or damage to tools, materials or equipment supplied by the employer to the employee may not exceed 20 per cent of the employee's wages in a week. In *Paraguay*,<sup>205</sup> any debt arising out of the loss or damage is to be paid off on successive pay days, while the amount to be deducted may not exceed 30 per cent of the worker's monthly remuneration. In contrast, the legislation of *Norway*<sup>206</sup> sets up a general standard providing that deductions in respect of compensation for damage or loss suffered by the establishment and caused wilfully or by gross negligence on the part of the employee has to be limited to that part of the claim which exceeds the amount reasonably needed by the employee to support himself and his household.

**257.** A certain number of countries regulate by law the extent of deductions that can be made to reimburse pay advances by the employer. For

<sup>199</sup> (1), ss. 69, 70. This is also the case in *Libyan Arab Jamahiriya* (1), s. 36(3) and *Syrian Arab Republic* (1), ss. 54(2), 66.

<sup>200</sup> (1), s. 31.

<sup>201</sup> (2), s. 110(I).

<sup>202</sup> (1), ss. 60, 89. Similarly, in *Romania* (1), s. 109(1), (2), deductions for the recovery of damages may be made by monthly instalments not exceeding one-third of the worker's net monthly wage, whereas in *China* (1), s. 16, the monthly deductions for compensation of economic losses may not exceed 20 per cent of the worker's monthly wage.

<sup>203</sup> (1), s. 35.

<sup>204</sup> (2), Bk. III, Rule VIII, s. 11(d).

<sup>205</sup> (1), s. 242.

<sup>206</sup> (1), s. 55(3).

example, in *Ecuador*<sup>207</sup> and *Tunisia*,<sup>208</sup> an employer may not deduct more than 10 per cent of a worker's wages in settlement of advances of pay. Similarly, in *Sudan*,<sup>209</sup> deductions to repay a salary advance may be made in sums not exceeding 15 per cent of the basic salary, while in *Argentina*<sup>210</sup> and *Mauritius*,<sup>211</sup> deductions for the purpose of recovering any advances of remuneration may not exceed one-fifth of the remuneration. In *Israel*,<sup>212</sup> no more than one-fourth of the wage may be deducted on account of a worker's debts to the employer for wage advances exceeding three months' wages. In *Barbados*<sup>213</sup> and *Dominica*,<sup>214</sup> the total amount which may be stopped or deducted from the wages of a worker in any pay period in respect of materials and tools supplied by the employer or any money advanced by way of loan by the employer may not exceed one-third of the wages earned in that period. In *Poland*,<sup>215</sup> deductions for cash advances given to employees are permissible up to one-half of their remuneration. Finally, in *Sri Lanka*,<sup>216</sup> the law provides that deductions of any sum constituting an advance of wages are to be made from the wages of a worker in equal instalments spread over a period of not less than six months.

**258.** In some countries, the law prescribes specific limits for deductions in respect of repayment of loans, personal credit and other debts, which may vary from 17 per cent in the case of *Dominican Republic*,<sup>217</sup> 20 per cent in *Panama*,<sup>218</sup> while in *Honduras*,<sup>219</sup> only 25 per cent of the sum in excess of 100 lempiras may be deducted.

<sup>207</sup> (2), s. 90. In some other countries, such as *Egypt* (1), s. 40, *Libyan Arab Jamahiriya* (1), s. 35, *Oman* (1), s. 58, and *Syrian Arab Republic* (1), s. 51, the same limit applies to deductions for the reimbursement of loans.

<sup>208</sup> (1), s. 150.

<sup>209</sup> (1), s. 37(1)(b). Similarly, in *Panama* (1), s. 161(3), the amount of deduction may not exceed 15 per cent of the wage payable for the pay period concerned.

<sup>210</sup> (1), ss. 130, 133.

<sup>211</sup> (1), s. 12(3).

<sup>212</sup> (1), s. 25(6), (7).

<sup>213</sup> (2), s. 5.

<sup>214</sup> (1), s. 9(1).

<sup>215</sup> (1), s. 87(3).

<sup>216</sup> (5), s. 3.

<sup>217</sup> (1), s. 201(4).

<sup>218</sup> (1), s. 161(11). This is also the case in *El Salvador* (2), s. 136.

<sup>219</sup> (2), ss. 371, 372.

### 1.3. The duty to furnish information concerning deductions from wages

**259.** Article 8, paragraph 2, of the Convention requires workers to be notified, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which deductions from their wages may be made. The text of this provision met with general acceptance at both Conference discussions and was adopted in the form originally suggested by the Office.<sup>220</sup> The general principle underlying this provision is the necessity to obtain the express or implied acceptance by workers of the conditions under which their earnings may be diminished by way of deduction. Under the clear terms of Article 8, paragraph 2, it is for national authorities to prescribe the exact manner in which effect may be given to the requirement of information.

**260.** This raises the question, however, as to what this provision of the Convention was really meant to cover. In the Committee's view, the drafters' real intention seems to have been to ensure that workers had full, and if possible advanced knowledge of the nature and extent of all possible deductions to which their wages might be subject so that they would not be caught by surprise or otherwise left open to arbitrary deductions. In this sense, while informing workers of the relevant legislation in their contracts of employment or by posted notices of internal work regulations is clearly sufficient to meet the requirements of the Convention, it is questionable whether wage records or wage slips showing deductions for specific pay periods may be deemed adequate. Moreover, Article 8, paragraph 2, of the Convention refers to deductions that "may be made", which implies that workers should receive information on the conditions and limits of deductions in general, separately and over and above the specific information received at the time of each payment.

**261.** The Committee further considers that Article 8, paragraph 2, of the Convention should be read in conjunction with Article 14(a) of the Convention and taking into consideration Paragraph 6 of the Recommendation, which provide that workers should be informed before they enter employment and when any changes take place of the wage conditions under which they are employed, including the conditions under which deductions may be made. The Committee therefore refers to Chapter VII below for more detailed information on the national law and practice regarding this aspect of wage deductions.

**262.** The legislation in a number of countries specifically provides that, at the time of the conclusion of a contract of employment, an employer is under the obligation to provide the worker with clear information regarding the conditions

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<sup>220</sup> See ILC, 31st Session, 1948, *Record of Proceedings*, p. 462, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 507.

governing the payment of wages. This is the case, for instance, in *Lebanon*,<sup>221</sup> *Ukraine*<sup>222</sup> and *Zambia*.<sup>223</sup> In *Bahamas*,<sup>224</sup> and *Uganda*,<sup>225</sup> an employment contract must in all cases include certain particulars, including the advances of wages and the manner of repayment of such advances. In *Malta*,<sup>226</sup> an employer must explain to the worker upon engagement the provisions of any recognized conditions of employment that are applicable.

**263.** In a number of countries, the law provides for the provision of wage details or wage statements at the time of payment showing the amount and reasons for any deductions made from gross wages. This is the case, for instance, in *Democratic Republic of the Congo*,<sup>227</sup> *Hungary*,<sup>228</sup> *Mauritius*,<sup>229</sup> *Norway*,<sup>230</sup> *Spain*,<sup>231</sup> *Swaziland*,<sup>232</sup> *Turkey*,<sup>233</sup> *United Kingdom*,<sup>234</sup> *Uruguay*<sup>235</sup> and *Venezuela*.<sup>236</sup> In the *Czech Republic*,<sup>237</sup> wage statements are required, but only in respect of salaried employees whose remuneration is calculated by the month.

<sup>221</sup> (2), s. 4. This is also the case in *Estonia* (2), s. 3(2); *Guyana* (1), s. 17(1); *Republic of Korea* (1), s. 24; *Lithuania* (1), s. 17.

<sup>222</sup> (2), s. 29(1).

<sup>223</sup> (1), ss. 51, 52.

<sup>224</sup> (1), s. 5(1).

<sup>225</sup> (1), s. 11(e).

<sup>226</sup> (1), s. 15(2). Similarly, in *Slovakia* (1), ss. 41(1), 43(1), prior to the conclusion of an employment contract, an employer must acquaint recruited employees with rights and obligations pertaining to working conditions and wage conditions under which they are expected to perform their work.

<sup>227</sup> (1), s. 84. This is also the case in *Chile* (1), s. 54; *Estonia* (2), s. 8(2); *Finland* (1), Ch. 2, s. 16; *Morocco* (1), s. 10; *Rwanda* (4), s. 2; *Slovenia* (1), s. 135(3). Similarly, in *Azerbaijan* (1), s. 173(2), payment documents showing all accounting statements relating to the calculation of salaries and deductions must be issued to employees at the time of each payment. In the *Republic of Moldova* (2), s. 19(2), (3), the law provides in general terms that the employer is obliged to inform the workers about their wage conditions, including the method of calculation and deductions, without specifying when and how such information should be given.

<sup>228</sup> (1), s. 160.

<sup>229</sup> (1), s. 49(2)(b), (c); (2), s. 7 and Schedule C.

<sup>230</sup> (1), s. 55(5).

<sup>231</sup> (1), s. 29(1); (6), Annex.

<sup>232</sup> (1), s. 61(1)(h).

<sup>233</sup> (1), ss. 30, 32.

<sup>234</sup> (1), ss. 8, 9.

<sup>235</sup> (5), s. 2.

<sup>236</sup> (1), s. 133(5).

<sup>237</sup> (1), s. 120(4).

**264.** In other cases, the law provides for the maintenance of a wage register in which all particulars of the worker's wages, including wage deductions and net wages, must be noted. This is the situation, for example, in *Egypt*,<sup>238</sup> *Iraq*<sup>239</sup> and the Republic of Korea.<sup>240</sup> In El Salvador,<sup>241</sup> *Sri Lanka*<sup>242</sup> and *Sudan*,<sup>243</sup> a detailed record must be established for any deductions made from the worker's wages, although the employer has no obligation to provide the worker with a copy of such record, unless the latter specifically requests it.

**265.** In certain countries, such as *Benin*,<sup>244</sup> *Colombia*<sup>245</sup> and *Togo*,<sup>246</sup> the national legislation requires the conditions of remuneration, including authorized deductions, to be posted at the employer's office or at the places where workers are paid. In the *Libyan Arab Jamahiriya*,<sup>247</sup> the law requires every employer to have posted in a conspicuous place in the establishment only the rules concerning disciplinary sanctions, types of penalties and conditions for their application.

**266.** A point which calls for some clarification is whether there can be a presumption of knowledge concerning the conditions and limits applicable to deductions regulated by law. The Committee takes the view that the publication of the conditions and limits relating to deductions in a Labour Code, which is known to all workers, may be considered sufficient for the purposes of this Article of the Convention.<sup>248</sup> Bearing in mind that Article 8, paragraph 2, leaves it to the competent authority to determine the most appropriate manner of bringing the provisions regulating deductions to the knowledge of the worker, this may be deemed a legitimate exercise of the discretionary power accorded by the Convention. Similarly, in the case that wage deductions are regulated by

<sup>238</sup> (1), s. 35. In the *Syrian Arab Republic* (1), s. 69, provision is made for a special file on each worker showing the wage and any subsequent changes therein.

<sup>239</sup> (1), s. 52(1)(a). In *Kyrgyzstan* (1), s. 241(1), (2), every employee must be provided with a pay-book within five days from recruitment containing details about the working conditions and payments.

<sup>240</sup> (1), s. 47. See also *Japan* (2), s. 108, and *Peru* (5), s. 14.

<sup>241</sup> (2), s. 138.

<sup>242</sup> (4), s. 21(2).

<sup>243</sup> (1), ss. 35(8), 65.

<sup>244</sup> (1), s. 213. See also *Burkina Faso* (1), s. 110; *Cameroon* (1), s. 64; *Congo* (1), s. 85; *Japan* (2), s. 106(1); (5), s. 113; *Kenya* (2), s. 20(2).

<sup>245</sup> (1), ss. 5, 9, 105, 108(15).

<sup>246</sup> (1), s. 93.

<sup>247</sup> (1), s. 77. See also *Oman* (1), s. 33.

<sup>248</sup> In this connection, the Governments of *Mexico* and *Panama* report that the provisions of the Labour Code relating to the conditions and limits of authorized deductions are well known to all workers.

collective agreement, it may be presumed that the trade unions concerned disseminate the contents of the collective agreement adequately so that there is generally no need for special measures for this purpose. The Committee therefore considers that the official publication of laws and regulations, in addition to the publicity provided by the press, and the dissemination of the relevant information by employers' and workers' organizations can be regarded as an appropriate method, within the meaning of Article 8, paragraph 2, of the Convention, of informing workers of the conditions and limits of deductions to which they are subject.

#### **1.4. Prohibition of deductions for obtaining or retaining employment**

**267.** Article 9 of the Convention provides that any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter) must be prohibited. As the record shows, this provision gave rise to very lively debate among the drafters of the Convention. Discussions focused mainly on whether fees for employment agencies fell within the scope of this provision, and whether they should therefore be treated as prohibited deductions representing payments for the purpose of securing or retaining employment.<sup>249</sup> Even though the difference of opinion persisted throughout the preparatory work on the Convention, it would seem clear to the Committee that, as finally worded, Article 9 prohibits deductions from wages for payments to fee-charging agencies for the purpose of obtaining or retaining employment, but has no effect on any such payment as may be made directly by the worker to the placement agency (without involving any deduction from wages) in those countries where the

<sup>249</sup> The Office originally proposed the prohibition of deductions in the form of payments for the purpose of obtaining or retaining employment, with the exception of fees for employment agencies authorized by national laws or regulations to charge such fees; see ILC, 31st Session, 1948, Report VI(c)(2), pp. 35-38, 76. During the first Conference discussion, the Worker members proposed the deletion of the exception concerning fee-charging employment agencies, since in their opinion payments made to employment services should be treated as civil debts and should not create charges against wages. The Employer members opposed the amendment, arguing that account should be taken of countries which permitted the operation of fee-charging employment agencies under legal regulation. The amendment was finally adopted and the reference to employment agencies was accordingly deleted from the draft instrument; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 462. At the second Conference discussion, the Employer members proposed to insert, at the beginning of the draft Article, the words "except as otherwise authorized by the competent authority" so as to render the prohibition more flexible and practicable. The Worker members opposed the amendment, which was rejected by a narrow majority; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 507.

operation of fee-charging employment agencies is permitted under national laws or regulations.<sup>250</sup>

**268.** In many countries, the national legislation expressly prohibits any deductions representing payment by the worker to the employer or to an agent of the employer for the purpose of securing or retaining employment. This is the case, for instance, in Bahrain,<sup>251</sup> Hungary,<sup>252</sup> Swaziland<sup>253</sup> and Ukraine.<sup>254</sup> In the United States,<sup>255</sup> federal legislation prohibits “kickbacks” whereby an employee refunds directly or indirectly to the employer or to another person for the employer’s benefit the whole or part of the wage delivered to the employee. Moreover, some state labour laws make it unlawful for an employer, agent or representative of an employer, to demand or receive, directly or indirectly from an employee, a fee, gift, tip, gratuity, or other remuneration or consideration, as a condition of employment or continuation of employment. In Mexico,<sup>256</sup> the law provides that any transfer or assignment of wages in favour of the employer or any third party is null and void, irrespective of the type or form of such operation. In other countries, such as Costa Rica,<sup>257</sup> Guatemala<sup>258</sup> and Nicaragua,<sup>259</sup> the law prohibits employers from demanding or accepting money or payment in kind from workers in return for admitting them to employment or for any other reason. In Namibia,<sup>260</sup> an employer may not require an employee

<sup>250</sup> A similar view was expressed in an informal opinion given by the Office in 1954 at the request of the Government of the Federal Republic of Germany; see *Official Bulletin*, Vol. XXXVII, 1954, p. 388.

<sup>251</sup> (1), ss. 14, 15. This is also the case in *Bulgaria* (4), s. 15; *Czech Republic* (8), s. 5(3); *Japan* (2), s. 6; *Kenya* (1), s. 6(2); *Republic of Korea* (1), s. 8; *Kuwait* (2), s. 10; *Malta* (1), s. 23(4); *Mauritius* (1), s. 13(4); *Republic of Moldova* (2), s. 16(2); *Philippines* (1), s. 117; *United Kingdom: Montserrat* (21), s. 15(b), and *Virgin Islands* (22), s. C32(d); *Zambia* (1), s. 47.

<sup>252</sup> (1), s. 163.

<sup>253</sup> (1), ss. 58, 118(d).

<sup>254</sup> (2), s. 25(2).

<sup>255</sup> (2), s. 531.35. See also *Arizona* (7), s. 23-202; *California* (9), s. 221; *Connecticut* (11), s. 31-73(b); *Hawaii* (16), s. 388-51; *Maine* (25), s. 629; *Michigan* (28), s. 408.478(1); *Minnesota* (29), s. 181.031 and (30), s. 5200.0630; *New York* (39), s. 198-b(2); *Rhode Island* (47), s. 28-6.3-1; *Utah* (52), s. 34-28-3(6); *Washington* (55), s. 49.52.050.

<sup>256</sup> (2), s. 104.

<sup>257</sup> (1), s. 70(b). This is also the case in *Colombia* (1), s. 59(3); *Dominican Republic* (1), s. 47(1); *Ecuador* (2), s. 44(c); *El Salvador* (2), s. 30(2); *Honduras* (2), s. 96(2); *Panama* (1), s. 138(3); *Paraguay* (1), s. 63(b).

<sup>258</sup> (2), s. 62(b).

<sup>259</sup> (2), s. 17(b). The prohibition concerns only payments for the purpose of obtaining employment.

<sup>260</sup> (1), s. 37(a). Similarly, in *New Zealand* (1), s. 12A, under the Wages Protection Act no employer may seek or receive any premium in respect of the employment of any person, whether

to pay or repay any remuneration payable or paid, or to do any act as a direct or indirect result of which the employee is deprived of the benefit of any remuneration so payable or paid.

**269.** In certain countries, such as *Egypt*,<sup>261</sup> *Libyan Arab Jamahiriya*<sup>262</sup> and Saudi Arabia,<sup>263</sup> the national legislation appears to give only partial effect to the requirements of this Article of the Convention, since it prohibits payments made by unemployed persons for the purpose of obtaining employment, but makes no reference to payments for the purpose of retaining employment. In *Brazil*<sup>264</sup> and *Spain*,<sup>265</sup> any provision in an employment contract that obliges the worker to pay a temporary employment agency a sum for recruitment, training or contracting expenses is null and void. In other countries, such as *Barbados*,<sup>266</sup> *Guyana*<sup>267</sup> and *Saint Vincent and the Grenadines*,<sup>268</sup> the scope of the prohibition also appears to be narrower than that required by the Convention, since it applies only to apprentices or learners and makes it unlawful for an employer to receive directly or indirectly from such persons or on their behalf or on their account any payment by way of premium, without excluding, however, the payment of apprenticeship fees made in pursuance of an instrument of apprenticeship duly approved by a wages council. Similarly, in *Bolivia*,<sup>269</sup> deductions from wages for payment to contractors or subcontractors are prohibited only in the case of homeworkers.

**270.** In a number of countries, there are no specific provisions on this point, but the rules governing deductions from wages would appear to exclude the possibility of any wage deduction which in practice represent a direct or indirect payment for the purpose of obtaining or maintaining employment. For

the premium is sought or received from the person employed or proposed to be employed or from any other person. The situation is similar in Canada, in the provinces of Alberta (4), s. 127, British Columbia (6), s. 21, and Saskatchewan (17), s. 76.

<sup>261</sup> (1), s. 23. This is also the case in the *Syrian Arab Republic* (1), s. 19, the United Arab Emirates (1), s. 18, and the United Kingdom (8), s. 6(1).

<sup>262</sup> (1), s. 12.

<sup>263</sup> (1), s. 41.

<sup>264</sup> (3), s. 18; (4), s. 13.

<sup>265</sup> (8), s. 40(1), (2); (9), ss. 11, 12(4).

<sup>266</sup> (4), s. 15(1). See also Kenya (2), s. 19(1), and United Kingdom: Gibraltar (11), s. 19(5)(a).

<sup>267</sup> (4), s. 14(1).

<sup>268</sup> (2), s. 14(1).

<sup>269</sup> (2), s. 26. On several occasions, the Committee has drawn the Government's attention to the absence of a general prohibition covering all workers.

example, in *Argentina*,<sup>270</sup> *Azerbaijan*,<sup>271</sup> *Israel*,<sup>272</sup> *Russian Federation*<sup>273</sup> and *Sri Lanka*,<sup>274</sup> the permissible deductions from wages are exhaustively enumerated in national laws and regulations. Similarly, in *Botswana*,<sup>275</sup> *Iraq*,<sup>276</sup> *Nigeria*<sup>277</sup> and *Romania*,<sup>278</sup> no employer may make any deduction, or make an agreement with any employee for such deduction, or for any payment to the employer by any employee, except where it is expressly permitted under the labour legislation, a collective agreement or an arbitration award. In addition, in *Cameroon*,<sup>279</sup> *Chad*,<sup>280</sup> *Djibouti*,<sup>281</sup> *Gabon*,<sup>282</sup> *Madagascar*,<sup>283</sup> *Niger*,<sup>284</sup> *Senegal*<sup>285</sup> and *Togo*,<sup>286</sup> the law stipulates that any clause in a labour contract or collective agreement authorizing deductions other than those explicitly allowed under the Labour Code is *ipso jure* null and void. Moreover, in most of the above countries, the law makes it a punishable offence for any person to demand or receive from workers any fee or charge whatsoever for acting as an intermediary for the settlement or payment of wages, allowances or costs of any kind. It is further stipulated that any sums withheld from workers in violation of these provisions bear interest at the statutory rate from the date at which they should have been paid, and may be claimed until the right is barred by limitation.

<sup>270</sup> (1), ss. 131, 132. This is also the case in *Belarus* (1), s. 107; *Kyrgyzstan* (1), s. 242(2); *Slovakia* (1), s. 131(1), (2).

<sup>271</sup> (1), s. 175.

<sup>272</sup> (1), s. 25.

<sup>273</sup> (1), s. 137.

<sup>274</sup> (1), s. 19(1)(a); (2), s. 2(a); (4), s. 18; (5), s. 2(1).

<sup>275</sup> (1), s. 80(1). This is also the case in *Dominica* (1), s. 8; *Guyana* (1), s. 23; *Malaysia* (1), s. 24(1); *Uganda* (1), ss. 31, 32.

<sup>276</sup> (1), s. 4(3).

<sup>277</sup> (1), s. 5(1).

<sup>278</sup> (1), s. 87(3).

<sup>279</sup> (1), ss. 75(3), 168(8). This is also the case in *Benin* (1), ss. 227, 303(g); *Burkina Faso* (1), ss. 130, 238(e); *Central African Republic* (1), ss. 112, 114; *Comoros* (1), ss. 114, 237(f); *Congo* (1), ss. 102, 257(g); *Côte d'Ivoire* (1), s. 34.3; *Guinea* (1), s. 233; *Mali* (1), ss. L.121, L.321; *Mauritania* (1), Bk. I, s. 107 and Bk. V, s. 56(g); *Slovenia* (1), s. 136(1).

<sup>280</sup> (1), s. 278.

<sup>281</sup> (1), ss. 109, 228(g).

<sup>282</sup> (1), ss. 162, 195(a).

<sup>283</sup> (1), ss. 80, 200(5).

<sup>284</sup> (1), ss. 172, 333(g).

<sup>285</sup> (1), ss. L.132, L.279(g).

<sup>286</sup> (1), s. 105.

**271.** On various occasions the Committee has addressed comments to governments drawing attention to the need to adopt appropriate legislative provisions effectively and comprehensively banning deductions from wages for obtaining or retaining employment. In particular, the Committee has emphasized that this prohibition should apply not only where the deduction is made directly by the employer, or where the payment or other compensation is ultimately to be received by the employer, but also in respect of deductions retained by a person other than the employer, such as labour contractors or recruiters. Inversely, in a number of cases in which it has been pointed out that the legislation concerning employment services ensures the application of this Article of the Convention as regards payments to intermediaries, the Committee has noted that such provisions do not offer adequate protection to workers against payments to employers or their representatives for the purpose of obtaining or retaining employment.<sup>287</sup> The Committee occasionally receives observations from workers' organizations alleging violations of the provisions of Articles 8 and 9 of the Convention. Recently, for instance, it was reported by a national transport workers' union that workers in public transport enterprises were systematically being subjected to wage deductions to compensate for losses caused by the malfunctioning of the system for the electronic registration of users, the mechanical breakdowns of vehicles and traffic accidents, and that such deductions were practised with a view to the workers being able to keep their jobs.<sup>288</sup>

## **2. Attachment and assignment of wages**

**272.** When workers become indebted, part of their wages may be withheld by the employer in execution of a court order to this effect, known also as an attachment, garnishment or distraint order. Alternatively, workers may choose to agree with the competent judicial or administrative authority upon a voluntary arrangement, or assignment, whereby part of the wages are paid directly to the creditor in settlement of the debts. At the same time, national legislation in most countries protects labour remuneration as the main source of income for workers by establishing a portion of wages which may not be subject to attachment or assignment and which should in theory enable workers and their families to satisfy their basic needs. However, the extent of such protection depends on the nature of the debts, since not all types of debts are subject to the restriction concerning the unattachable portion of wages. Article 10 of the Convention sets

<sup>287</sup> For instance, the Committee has addressed direct requests in this sense to *Bulgaria, Czech Republic, Poland, Tajikistan, Tunisia, Venezuela* and *Yemen* in 2001, to *Bolivia* and *Guinea* in 2000, to *Comoros* in 1998 and to *Sudan* in 1995.

<sup>288</sup> See RCE 2002, 326 (*Costa Rica*).

forth two main principles; first that the attachment or assignment of wages may take place only in a manner and within limits prescribed by national laws or regulations, and secondly that attachment or assignment should be kept within such limits as to ensure a decent standard of living for workers and their families, although the precise conditions and limits in this respect are left to the national authorities.

### **2.1. General observations**

**273.** There is no clear indication in the preparatory work for the instruments under consideration as to why a separate Article was devoted to the attachment and assignment of wages. But the reason could easily have been because these procedures, unlike other deductions, involve a third party outside the employer-employee relationship, while their origin also differs from other deductions on account of their judicial authority. Article 8 was presumably intended to address types of deductions other than those covered by Article 10. The provisions of the Convention dealing with the attachment and assignment of wages, in contrast to those concerning deductions in general, do not mention collective agreements or arbitration awards as means of regulation, since it is generally accepted that these matters depend entirely on legislative authorization. Moreover, as noted above, while the deductions referred to in Article 8 are made from gross wages, the attachment and assignment of wages would appear to concern net remuneration, that is to say the amount of wages remaining after deductions.

**274.** The relationship between Article 10 and Articles 5 and 6 should also be considered in this regard. At the time of the drafting of the provision concerning the direct payment of wages to workers, a question was raised regarding the power of courts to order, even without the consent of the workers concerned, the payment of their wages, or a certain part of their wages, to their family. The position taken at the time was that no problem would arise in this connection, since the competence of the courts is established by law and the point was therefore covered by the reference to national laws or regulations in Article 5. Similarly, the assignment of wages appears to be possible under a legislative provision which requires wages to be paid directly to an employee, but which permits an exception “where the employee concerned agrees to the contrary”. Even though assignment was treated separately in Article 10, it also had a bearing on the discussions concerning Article 5 on the direct payment of wages.

**275.** As regards Article 6, the question arises as to whether it only forbids the unilateral limitation by the employer of the freedom of workers to dispose of their wages, or whether restrictions to which the workers concerned give their contractual consent, such as wage assignment arrangements, are also prohibited

by implication. It should be clear, in this respect, that an assignment arrangement freely agreed upon by the workers concerned may be seen as a manifestation of their freedom to dispose of their wages. In this sense there would seem to be no difficulty in relation to the provisions of Article 6 although there may be some difficulty in relation to Article 10. What would not be permissible under Article 6, however, would be to effect deductions from the wages of workers in execution of an assignment arrangement obtained under duress of any kind, whether the duress is exercised by the employer or by the other party to the agreement authorizing the assignment of wages.

## 2.2. Conditions and limits

**276.** Most countries have established very detailed provisions regarding the attachment and assignment of wages. In general, the attachment of wages is allowed pursuant to court orders for the settlement of personal debts. This is the case, for instance, in *Algeria*,<sup>289</sup> *Azerbaijan*,<sup>290</sup> *Iraq*,<sup>291</sup> *Tajikistan*,<sup>292</sup> and *Yemen*.<sup>293</sup> In other countries, such as the *Czech Republic*<sup>294</sup> and *Slovakia*,<sup>295</sup> the national legislation authorizes the seizure of wages by enforceable decision not only of a court, but also of an administrative authority. In many countries, including *Bulgaria*,<sup>296</sup> *Guinea-Bissau*<sup>297</sup> and *Peru*,<sup>298</sup> the attachment of wages is regulated in accordance with the relevant provisions of the code of civil procedure.

**277.** In most countries, the attachment of workers' earnings is a result of failure to make payments under maintenance orders, i.e. orders for alimony and other maintenance payments. This is the case, for instance, in *Malta*<sup>299</sup> and

<sup>289</sup> (5), ss. 5 to 15.

<sup>290</sup> (1), s. 175(2)(b).

<sup>291</sup> (1), s. 51.

<sup>292</sup> (1), s. 109(2).

<sup>293</sup> (1), s. 63.

<sup>294</sup> (1), s. 121(1)(d); (4), s. 18(1)(c).

<sup>295</sup> (1), s. 131(2)(b).

<sup>296</sup> (1), s. 272(1)(v); (3), s. 341. See also *Poland* (1), s. 87(1); (6), ss. 833, 1083; *Romania* (1), s. 87(3); (5), s. 409; *Sri Lanka* (6), s. 218; *Tunisia* (1), s. 151; (2), s. 354.

<sup>297</sup> (1), s. 107(1).

<sup>298</sup> (10), s. 1.

<sup>299</sup> (2), ss. 381(3), 383(1).

*Zambia*.<sup>300</sup> In *Egypt*<sup>301</sup> and the *Syrian Arab Republic*,<sup>302</sup> while providing for the attachment of wages in settlement of debts in general, the law specifies that alimony payments constitute preferred debts.

**278.** In certain countries, such as *Benin*,<sup>303</sup> *Guinea*<sup>304</sup> and *Madagascar*,<sup>305</sup> wages may be attached for the recovery of cash advances paid by the employer. Similarly, in the *Islamic Republic of Iran*,<sup>306</sup> the attachment is envisaged only in respect of debts owed to the employer. In *Hungary*,<sup>307</sup> the courts may issue distraint orders enabling the employer to recover any sums paid to the employee without legal justification or for the repayment of other debts. In contrast, in *Kyrgyzstan*,<sup>308</sup> *Republic of Moldova*<sup>309</sup> and the *Russian Federation*,<sup>310</sup> an employer is entitled to issue a retention instruction and deduct from wages any sums advanced, or wrongly calculated payments not later than one month from the expiry of the term established for returning the pay advance or the extra amount paid by mistake. If the employer fails to act within this time limit, or if the employee challenges the reasons and amounts retained, the settlement of any debts must be obtained through judicial action.

**279.** Mention should also be made of countries where wages are declared immune from attachment or seizure so that a creditor is not able to obtain payment directly from an employer of any part of the wages of a worker in settlement of debts recognized by court decision. For instance, in *Sri Lanka*,<sup>311</sup> the salary and allowances or wages of public officers, labourers and domestic servants are not liable to seizure or sale in satisfaction of an order for the

<sup>300</sup> (4), ss. 8 to 17.

<sup>301</sup> (1), s. 41.

<sup>302</sup> (1), s. 52.

<sup>303</sup> (1), s. 227(1). This is also the case in *Burkina Faso* (1), s. 128; (3), ss. 7 to 27; *Central African Republic* (1), s. 112; (3), ss. 7 to 32; *Chad* (1), s. 276; (4), ss. 7 to 29; *Comoros* (1), s. 112(2); *Congo* (1), s. 100; (3), ss. 7 to 28; *Côte d'Ivoire* (1), s. L.34.1; (2), ss. 2D-74 to 2D-93; *Democratic Republic of the Congo* (1), s. 95; *Djibouti* (1), s. 107; (3), ss. 7 to 27; *Gabon* (1), s. 161(1); (2), ss. 7 to 27; *Mauritania* (1), s. 105; *Niger* (1), s. 170; *Senegal* (1), s. L.130; (4), ss. 362, 381; *Togo* (1), s. 103(1); (2), ss. 7 to 27.

<sup>304</sup> (1), s. 231.

<sup>305</sup> (1), s. 79.

<sup>306</sup> (1), s. 44.

<sup>307</sup> (1), s. 161(3); (3), ss. 23, 24.

<sup>308</sup> (1), s. 242(3)(i).

<sup>309</sup> (1), s. 132(1).

<sup>310</sup> (1), s. 137.

<sup>311</sup> (6), s. 218(h), (j).

payment of money debts. Similarly, in *Brazil*,<sup>312</sup> *Dominican Republic*,<sup>313</sup> *Ecuador*,<sup>314</sup> *Mexico*<sup>315</sup> and *Uruguay*,<sup>316</sup> as a general rule, wages are not subject to attachment except in the case of alimony and maintenance payments.

**280.** Assignment is often permitted for the reimbursement of a personal debt or any pay advances granted by the employer. It may not exceed the assignable portion of the wages and may be carried out only on the basis of a statement signed by the assignor in person before a magistrate of the local court or an agent of the labour inspectorate. If both such authorities are unavailable within a short distance, the consent of the worker may be recorded in writing before the chief officer of the nearest administrative unit. The details of the assignment agreement, including the assignable limit of the worker's wage and the amount assigned are notified by the registering authority to the employer, who is then empowered to make the corresponding deduction from the worker's wages. The assignee may receive the amounts deducted directly from the person paying the remuneration upon production of a copy of the worker's statement duly registered. Any deductions made from wages pursuant to an assignment arrangement must appear in the worker's wage statement. The assignment arrangement may be cancelled by judicial decision (e.g. by reason of suspected fraud), or terminated by mutual agreement, subject to the same formal conditions, i.e. a declaration filed with a magistrate or labour inspector. Regulations concerning wage assignment along these lines are found, for instance, in *Algeria*,<sup>317</sup> *Chad*,<sup>318</sup> *Gabon*,<sup>319</sup> *Niger*,<sup>320</sup> and *Senegal*.<sup>321</sup> In the United States,<sup>322</sup> state labour laws generally require that all assignments of

<sup>312</sup> (5), s. 649(IV).

<sup>313</sup> (1), s. 200.

<sup>314</sup> (1), s. 35(7); (2), s. 91.

<sup>315</sup> (2), ss. 110(v), 112.

<sup>316</sup> (11), s. 1, 2; (12), s. 381; (13), s. 214. However, in the case of alimony in favour of minors and handicapped, up to 50 per cent of the wages may be attached.

<sup>317</sup> (5), ss. 3, 4. This is also the case in *Benin* (1), s. 227(1); *Burkina Faso* (1), s. 128; (3), s. 6; *Cameroon* (1), s. 75(1); (5), ss. 5, 6; *Central African Republic* (1), s. 112; (4), s. 6; *Comoros* (1), s. 112(2); *Congo* (1), s. 100; (3), s. 6; *Côte d'Ivoire* (1), s. L.34.1; (2), s. 2D-73; *Djibouti* (1), s. 107; (3), s. 6; *Guinea* (1), s. 231; *Madagascar* (1), s. 79; (4), s. 6; *Mauritania* (1), s. 105; *Togo* (1), s. 103(1); (2), s. 6.

<sup>318</sup> (1), s. 276; (4), s. 6.

<sup>319</sup> (1), s. 161(1); (2), s. 6.

<sup>320</sup> (1), s. 170.

<sup>321</sup> (1), s. L.130; (4), ss. 571.1 to 571.6.

<sup>322</sup> See, for instance, *Arkansas* (8), s. 11-4-101; *California* (9), s. 300(b); *Indiana* (19), ss. 22-2-6-2, 22-2-7-4; *Minnesota* (29), s. 181.07; *Rhode Island* (47), ss. 28-15-1 to 28-15-9; *Washington* (55), s. 49.48.090; *Wyoming* (59), ss. 27-4-110, 27-4-111.

wages or salaries due or to become due to any person, in order to be valid, must be acknowledged by the party making the assignment before a notary public or other authorized officer. The assignment must be recorded in the office of the county clerk of the county in which the money is to be paid and a copy served upon the employer or person who is to make payment. In some cases, the express acceptance of the assignment by the employer is also required and such acceptance has to be recorded with the county auditor of the county where the party making the said assignment resides. Moreover, several state laws provide that no assignment may be valid when made by a married person unless the written consent of the person's spouse to the making of the assignment is attached.

**281.** In some countries, the law expressly prohibits the assignment or transfer of wages, in whole or in part, to third parties on any grounds. This is the case, for instance, in *Argentina*,<sup>323</sup> *Colombia*,<sup>324</sup> *Mexico*,<sup>325</sup> *Panama*<sup>326</sup> and *Venezuela*.<sup>327</sup> In other countries, such as *Bolivia*, *Ecuador*, *Nicaragua* and *Paraguay*, the national legislation does not contain any specific provisions regarding the protection of wages from assignment.

**282.** In most countries, a fixed minimum proportion of the wage is declared immune from attachment or assignment, on the clear understanding that workers should in all cases be allowed to retain a certain cash amount essential for the maintenance of themselves and their dependants. In practice, there are various methods for determining the minimum amount which rests immune from attachment or assignment. It may be a fixed sum expressed in national currency. In the *Czech Republic*<sup>328</sup> and *Slovakia*,<sup>329</sup> for instance, the law prescribes a minimum amount of the monthly wage which may not be affected by the execution of court rulings or otherwise be subject to deductions. This amount may be increased by a fixed sum for the spouse and each dependant, but may not exceed a prescribed ceiling above which deductions may be made without restriction. Similarly, in *Luxembourg*,<sup>330</sup> the first 550 euros of a monthly salary may not be assigned or seized. This is also the case in *Malta*,<sup>331</sup> where only

<sup>323</sup> (1), s. 148. In *Switzerland* (2), s. 325, the assignment of wages is generally prohibited except for the payment of maintenance charges and up to the attachable amount.

<sup>324</sup> (1), s. 142.

<sup>325</sup> (2), s. 104.

<sup>326</sup> (1), s. 157.

<sup>327</sup> (1), s. 132.

<sup>328</sup> (7), ss. 1, 2.

<sup>329</sup> (5), ss. 1(1), 2(1).

<sup>330</sup> (3), s. 4; (4), s. 1.

<sup>331</sup> (2), s. 382(1).

salaries exceeding 300 liri per month may be subject to a garnishee order issued by a court in respect of that part of the salary in excess of the above amount, while in *Sri Lanka*,<sup>332</sup> the salary and allowances of an employee in a shop or office, if such salary and allowances in the aggregate do not exceed a prescribed amount, are exempted from seizure for the recovery or payment of money. In *Guatemala*,<sup>333</sup> the legislation provides that a monthly wage not exceeding 100 quetzals may not be assigned, or transferred to third parties other than the spouse and members of the worker's family.

**283.** In other cases, the amount of the monthly wage which is not liable to attachment or assignment is not a fixed sum, but may vary with reference to some other defining legal provision. In *Nicaragua*,<sup>334</sup> for instance, the legislation exempts wages from attachment up to the amount of the minimum wage, while in *Israel*,<sup>335</sup> the portion of the wage which may not be attached, transferred or charged is defined as an amount equal to the benefit under the Assurance of Income Act which would have been payable in the month preceding the payment of the wage to an employee, according to the composition of the family, if she/he were entitled to such benefit.

**284.** Some countries fix a certain amount which cannot be affected by attachment, as well as a maximum attachable percentage of the part of wages exceeding the unattachable amount. In *Austria*,<sup>336</sup> for instance, the undrainable wage amount is fixed at 6,500 shillings, which may be increased by 1,200 shillings for each person for whom the debtor pays maintenance charges, while up to 70 per cent of any part of the wages exceeding 27,000 shillings is liable to seizure. In *Egypt*<sup>337</sup> and the *Syrian Arab Republic*,<sup>338</sup> not more than one-quarter of any wages in excess of a prescribed amount may be attached or assigned in settlement of any debt. In other countries, however, the law prescribes the basic wage amount which is not liable to seizure, while the maximum attachable amount is expressed as a percentage of the overall amount of wages. In *Tajikistan*,<sup>339</sup> up to half the amount of labour remuneration may be subject to seizure by orders for the execution of claims, provided that the net

<sup>332</sup> (6), s. 218(m).

<sup>333</sup> (2), s. 100. This is also the case in *Honduras* (2), s. 373, where wages not exceeding 200 lempiras a month may not be assigned except to the worker's wife or other family members who are financially dependent on the worker.

<sup>334</sup> (1), s. 82(3); (2), ss. 92, 97.

<sup>335</sup> (1), s. 8(a).

<sup>336</sup> (11), s. 291a.

<sup>337</sup> (1), s. 41.

<sup>338</sup> (1), s. 52.

<sup>339</sup> (1), s. 109.

amount of wages to be received by the worker may not be less than the minimum wage established by the State. In *Kyrgyzstan*,<sup>340</sup> the total amount of deductions may not exceed 20 per cent of the wages due to the employee and the amount of wages after deductions may not be less than the minimum wage established by law.

**285.** Similarly, in the *Islamic Republic of Iran*,<sup>341</sup> only the amount in excess of the minimum wage may, by judicial decision, be withheld to cover the worker's debts and, in any event, such amount may not exceed one-quarter of the worker's total wage. In *Colombia*<sup>342</sup> and El Salvador<sup>343</sup> any surplus or amount over and above the minimum wage, which is unattachable, is liable to attachment up to a maximum of 20 per cent of such surplus or amount, while in *Honduras*,<sup>344</sup> only 25 per cent of the sum in excess of the monthly minimum wage (or the first 100 lempiras) is liable to attachment. In *Costa Rica*,<sup>345</sup> the portion of the worker's remuneration that may be attached or assigned is limited to one-eighth of the part which does not exceed three times the monthly minimum wage and up to one-fourth of the remainder. In *Venezuela*,<sup>346</sup> for wage amounts in excess of the unattachable minimum wage, up to one-fifth may be attached, but only when the wage is less than double the amount of the minimum wage, and when the wage exceeds double the minimum wage, up to one-third may be attached. In *Spain*,<sup>347</sup> only the part of the worker's wage which exceeds the minimum interoccupational wage may be attached in proportions ranging from 30 to 90 per cent depending on the number of times the wage exceeds the statutory minimum wage.

**286.** In a large number of countries, the law defines a specified percentage of wages as being immune from seizure; for example, the portion of wages

<sup>340</sup> (1), s. 243(1).

<sup>341</sup> (1), s. 44.

<sup>342</sup> (1), ss. 154, 155. This is also the case in *Panama* (1), ss. 161(6), (7), 162, where the limit is set at 15 per cent of the amount which exceeds the minimum wage. In *Peru* (10), s. 1, up to one-third of any part of the wages exceeding five reference units is liable to attachment.

<sup>343</sup> (2), s. 133.

<sup>344</sup> (1), s. 128(5); (2), s. 371.

<sup>345</sup> (1), s. 172. Similarly, in the *Democratic Republic of the Congo* (1), s. 95(1), the portion of the worker's remuneration that is transferable or attachable is limited to one-fifth of the part which does not exceed five times the monthly minimum interoccupational wage and up to one-third of the remainder.

<sup>346</sup> (1), s. 162; (2) s. 104.

<sup>347</sup> (1), s. 27(2); (18), s. 607. These limits may be reduced by 10 to 15 per cent if the court considers that the family situation of the worker so requires.

subject to seizure in *Bolivia*<sup>348</sup> and *Iraq*<sup>349</sup> is up to 20 per cent, and in *Libyan Arab Jamahiriya*,<sup>350</sup> *Saudi Arabia*,<sup>351</sup> and the United Arab Emirates,<sup>352</sup> up to 25 per cent. In *Belarus*<sup>353</sup> and the *Russian Federation*,<sup>354</sup> up to 20 per cent of wages are, in principle, subject to attachment, and in specific cases defined by law this limit may rise to 50 per cent. In *Hungary*<sup>355</sup> and

<sup>348</sup> (2), ss. 44, 45; (6), s. 179.

<sup>349</sup> (1), s. 51.

<sup>350</sup> (1), s. 34. This is also the case in Bahrain (1), s. 75; Kuwait (1), s. 32; Oman (1), s. 58bis; *Turkey* (1), s. 28. Similarly, in the United States (3), s. 303(a); (2), s. 531.39(b), under the federal Wage Garnishment Law, the maximum part of the aggregate disposable earnings of an individual for any workweek which may be subject to garnishment should not exceed 25 per cent of his disposable earnings for that week or the amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage, whichever is less. Similar provisions are contained in certain state laws; for instance, in Nebraska (34), s. 25-1558, wages for any workweek subject to garnishment may not exceed the lesser of 25 per cent of the employee's disposable earnings for that week, or the amount by which the employee's earnings exceed 30 times the federal minimum hourly wage, or 15 per cent of the employee's earnings for that week, if the individual is a head of a family. With respect to assignment, state laws provide for different limits; for instance, in New Mexico (38), s. 14-13-11(B), any assignment of wages or salary is void if it provides for an assignment of more than 25 per cent of the assignor's disposable earnings for any pay period, while in West Virginia (57), s. 21-5-3, the three-fourths of the periodical earnings or wages of the assignor must at all times remain exempt from such assignment. In addition, in California (9), s. 300(c), a sum not exceeding 50 per cent of the assignor's wages may be withheld by the assignor's employer at the time of each payment of such wages. In other cases, state legislation allows for the assignment of wages without setting any specific limits; see, for instance, Maine (25), s. 627; Mississippi (31), s. 71-1-45; Tennessee (50), s. 50-2-105; Texas (51), s. 63.001; Virginia (54), s. 40.1-31. In Japan, according to the Government's report, under s. 152 of the Civil Execution Act, an amount corresponding to three-quarters of the worker's wages, or if this amount exceeds the amount prescribed by a cabinet order the amount so prescribed (currently set at ¥210,000 a month), may not be attached.

<sup>351</sup> (1), ss. 119(f), 120. However, the overall percentage of the amounts deducted, whether in execution of a judgement or in respect of pay advances, fines and social insurance contributions, may not exceed one-half of the worker's wages, unless a labour disputes board considers that one-half of the worker's remuneration is not sufficient to cover his needs. In this latter case, the worker may in no circumstances be paid more than three-fifths of his wages.

<sup>352</sup> (1), s. 60(f). However, where two or more debts are payable, the maximum deductible sum is half the employee's remuneration.

<sup>353</sup> (5), ss. 496, 523. See also *Azerbaijan* (1), s. 176 and the *Republic of Moldova* (1), s. 133(1). According to information supplied by the Government of Lithuania, s. 140 of the Code of Labour Laws provides for the same attachment limits.

<sup>354</sup> (1), s. 138(1).

<sup>355</sup> (3), s. 65. See also *Barbados* (1), s. 9(3)(c) and *Swaziland* (1), s. 56(4). Similarly, the Government of *Mauritius* has indicated that a rule of practice has developed in law courts not to attach more than one-third of the worker's salary for the purpose of securing the payment of an alimony. In Finland, according to the Government's report, under the terms of the Execution Act two-thirds of the employee's net salary is always excluded from distraint, or alternatively, it must

*Nigeria*,<sup>356</sup> the total amount which may be attached or assigned in any pay period may not exceed one-third of the wages due to the employee in respect of that pay period. In *Qatar*,<sup>357</sup> in the case of attachment in execution of judicial rulings, the attached amounts may not represent more than 35 per cent of the indebted worker's wage. In *Cuba*,<sup>358</sup> *Paraguay*<sup>359</sup> and *Poland*,<sup>360</sup> up to 50 per cent of the wages may be attached.

**287.** In several countries, the amount of the wage which can be attached rises in proportion to the total until it reaches a maximum, above which the entire amount of the wage may be attached or seized. The attachable percentage depends on the portion of the wage to which it applies and often varies between 5 or 10 per cent for the lowest wage segment to 50 or 100 per cent for the highest. This is the case, for instance, in *Cameroon*,<sup>361</sup> *Côte d'Ivoire*,<sup>362</sup> *Gabon*,<sup>363</sup> *Luxembourg*,<sup>364</sup> *Madagascar*,<sup>365</sup> *Niger*<sup>366</sup> and *Senegal*.<sup>367</sup> Similarly, in *Algeria*,<sup>368</sup> the net remuneration due to a worker may be attached or assigned in proportions ranging from 5 to 50 per cent, depending on the number of times the net remuneration exceeds the national guaranteed minimum wage. In *Guatemala*,<sup>369</sup> the attachment limit increases from 10 to 35 per cent in direct

be ensured that the employee is left with at least what is known as the debtor's protected amount and one-fourth of the net income in excess of that protected amount. The employer is obliged to calculate which of these options is more advantageous to the employee and follow that option. The debtor's protected amount is set by decree every year and is currently €18 per day for a single debtor and €6.56 per day for each supported family member.

<sup>356</sup> (1), s. 5(7).

<sup>357</sup> (1), s. 33(b).

<sup>358</sup> (1), s. 125. Similarly, the Government of the Republic of Korea has reported that under s. 579 of the Civil Procedure Act, an amount equivalent to half or more of a person's wages, pension, salary, bonus, retirement benefit or other earnings may not be subject to garnishment.

<sup>359</sup> (1), s. 245.

<sup>360</sup> (1), s. 87(3).

<sup>361</sup> (1), s. 76(1); (5), s. 2(1). This is also the case in *Burkina Faso* (1), s. 129; (3), s. 1; *Central African Republic* (1), s. 113; (4), s. 1; *Chad* (1), s. 277; (4), s. 1; *Congo* (1), s. 101(1); (3), s. 1; *Djibouti* (3), s. 1; *Mali* (1), s. L.123; (2), s. D.123-2; *Mauritania* (1), s. 106; (2), s. 1; (3), s. 362; *Morocco* (3), ss. 1 to 3; *Rwanda* (2), ss. 2, 3; *Togo* (1), s. 104; (2), s. 1.

<sup>362</sup> (1), s. L.34.2; (2), ss. 2D-68, 2D-71.

<sup>363</sup> (2), s. 1.

<sup>364</sup> (3), s. 4; (4), s. 1.

<sup>365</sup> (1), s. 79; (4), s. 1.

<sup>366</sup> (1), s. 171; (3), s. 218.

<sup>367</sup> (1), s. L.131; (4), s. 381.

<sup>368</sup> (5), s. 1.

<sup>369</sup> (1), s. 102(e); (2), ss. 96, 97.

proportion to the amount of the wage received, whereas in *Bulgaria*,<sup>370</sup> the attachable portion of the wage varies from one-fifth to one-half depending on the wage level and the family situation.

**288.** In certain countries, the courts determine the limits of attachment in each individual case. In *Botswana*,<sup>371</sup> no court may make an order for the attachment of the wages or any other payments which may be due to employees such as to seriously jeopardize their well-being or that of the dependant members of their families. According to the information provided by the Government of New Zealand,<sup>372</sup> there are no prescribed national limits for the attachment or assignment of wages, but the processes whereby wages can be attached or assigned through court orders or by the Inland Revenue Department are operated to ensure that any deductions made under statutory authority are reasonable. By way of example, wage deductions made under a deduction notice issued in conformity with the Child Support Act, 1991, may not reduce the net earnings of the person liable below a protected rate after deduction of income tax. In Switzerland,<sup>373</sup> labour remuneration or earnings are liable to seizure except for the amount that the judicial authorities may consider indispensable for the debtor and his/her family. In the United Kingdom<sup>374</sup> and *Zambia*,<sup>375</sup> a court may, on the application of a person entitled to receive payments under a maintenance order, make an “attachment of earnings order” for the purpose of clearing any unpaid amount. In determining the amount of the deduction, the court is obliged to specify the protected earnings rate, that is to say the rate below which, having regard to the resources and needs of the defendant and the needs of persons whom the latter must or may reasonably provide for, the court thinks it reasonable that the relevant earnings should not be reduced.

**289.** However, the general principle of guaranteeing the right of workers to retain the proportion of their wages which is considered necessary to provide for the maintenance of themselves and their families is not without exception. In other words, restrictions concerning the unattachable portion of wages do not apply to certain debts. Under the legislation of many countries, regulations respecting the attachment and seizure of wages may not therefore be relied on to avoid payment of maintenance allowances or other charges to meet the obligation of workers to provide for the needs of their family and dependants. In

<sup>370</sup> (1), s. 272(2); (3), s. 341.

<sup>371</sup> (1), s. 82.

<sup>372</sup> (6), ss. 154, 165.

<sup>373</sup> (3), s. 93.

<sup>374</sup> (2), s. 6(5)(b).

<sup>375</sup> (4), s. 8(3)(b).

*Azerbaijan*,<sup>376</sup> *Israel*,<sup>377</sup> and *Turkey*,<sup>378</sup> for example, the wage amounts declared immune from seizure and the relevant attachment limits established by law are not applicable to any attachment for the payment of family support, alimony debts or maintenance allowances, as the case may be. In *Malta*,<sup>379</sup> where wages may not, in principle, be attached or assigned, the attachment or assignment of any salary or wages (including bonuses, allowances, overtime and other emoluments) may exceptionally be ordered by a court if it is intended to ensure the payment of maintenance due to the wife, a minor or incapacitated child or an ascendant of the employee. Similarly, in *Brazil*,<sup>380</sup> *Dominican Republic*<sup>381</sup> and *Uruguay*,<sup>382</sup> as a general rule, wages are not subject to attachment except for the purpose of recovering alimony and maintenance payments, in which case up to one-third of wages may be seized.

**290.** In certain countries, the law provides that where attachment or assignment is operated for the payment of maintenance allowances, the current monthly amount of such allowance may be deducted in full from that portion of the remuneration which is not liable to attachment, while deductions may also be made from the portion of the remuneration which is liable to attachment, where necessary, as security for overdue maintenance payments. Furthermore, family allowances, which in principle are not liable to attachment or assignment, may exceptionally be attached for the payment of alimony debts. This is the position, for instance, in *Algeria*,<sup>383</sup> *Burkina Faso*,<sup>384</sup> *Congo*,<sup>385</sup> *Luxembourg*,<sup>386</sup> *Mauritania*<sup>387</sup> and *Togo*.<sup>388</sup>

<sup>376</sup> (1), s. 176(3). This is also the case in *Belarus* (1), s. 108; *Islamic Republic of Iran* (1), s. 44; *Kyrgyzstan* (1), s. 243(2); *Republic of Moldova* (1), s. 133(3).

<sup>377</sup> (1), s. 8(b).

<sup>378</sup> (1), s. 28.

<sup>379</sup> (1), s. 21(3); (2), s. 381(3).

<sup>380</sup> (5), s. 649(IV).

<sup>381</sup> (1), s. 200.

<sup>382</sup> (11), ss. 1, 2; (12), s. 381; (13), s. 214. However, in the case of alimony in favour of minors and the handicapped, up to 50 per cent of the wages may be attached.

<sup>383</sup> (5), s. 2. This is also the case in *Cameroon* (5), s. 2(3); *Central African Republic* (4), s. 2(1), (3); *Chad* (4), s. 2(1), (3); *Côte d'Ivoire* (2), s. 2D-69(1), (3); *Djibouti* (1), s. 108(2); (3), s. 2(1), (3); *Gabon* (2), s. 2(1), (3); *Niger* (3), s. 219.

<sup>384</sup> (3), s. 2(1), (3).

<sup>385</sup> (3), s. 2(1), (3).

<sup>386</sup> (3), s. 8.

<sup>387</sup> (2), s. 1; (3), s. 363.

<sup>388</sup> (2), s. 2(1), (3).

**291.** In other countries, the national legislation prescribes special limits for attachments for the recovery of alimony debts which are significantly higher than the limits applicable to attachments for all other purposes. For example, in *Hungary*,<sup>389</sup> up to one-half of the wages may be distrained for child maintenance, as compared with one-third in all other cases, while in *Poland*,<sup>390</sup> up to three-fifths of the remuneration may be attached in the case of maintenance payments, compared with the limit of one-half applied in the case of attachment for other outstanding payments. Similar regulations are found in *Romania*,<sup>391</sup> where up to one-half, instead of the normal limit of one-fifth of the net monthly salary may be attached for the payment of maintenance charges, and in the *Russian Federation*,<sup>392</sup> where up to 70 per cent of the wages may exceptionally be attached, as compared to the ordinary limits of 20 and 50 per cent, for wage deductions of a labour corrective camp inmate or for alimony for minors, and also to compensate the damage caused by a crime. In the *Democratic Republic of the Congo*,<sup>393</sup> by way of exception to the generally applicable attachment limit, up to two-fifths of the worker's remuneration may be attached or assigned where the debt arises out of a legal alimony or maintenance order. In *Austria*,<sup>394</sup> the unattachable wage income is reduced by 25 per cent in respect of the judicial enforcement of maintenance claims. Similarly, in *Egypt*<sup>395</sup> and the *Syrian Arab Republic*,<sup>396</sup> up to one-fourth of the otherwise unseizable portion of the worker's monthly wage may be attached or assigned in settlement of alimony debts. In *Guatemala*<sup>397</sup> and *Honduras*,<sup>398</sup> wages may exceptionally be attached up to 50 per cent in respect of alimony payments.

**292.** In some other cases, the law does not apply special limits to attachment, but merely provides that alimony charges shall have priority over the payment of all other debts. In *Bahrain*,<sup>399</sup> for instance, alimony is granted first priority within the limit of one-eighth of all the amounts deducted, with the

<sup>389</sup> (3), s. 65.

<sup>390</sup> (1), ss. 87(3), 90; (6), ss. 833, 1083.

<sup>391</sup> (5), s. 409.

<sup>392</sup> (1), s. 138(3).

<sup>393</sup> (1), s. 95.

<sup>394</sup> (11), s. 291b(2).

<sup>395</sup> (1), s. 41.

<sup>396</sup> (1), s. 52.

<sup>397</sup> (1), s. 102(e); (2), ss. 96, 97. This is also the case in *Colombia* (1), s. 156; *Costa Rica* (1), s. 172; *Paraguay* (1), s. 245; *Rwanda* (2), s. 3. In *Peru* (10), s. 1, up to 60 per cent of the wages may be attached for alimony purposes.

<sup>398</sup> (2), s. 371.

<sup>399</sup> (1), s. 75. See also *Kuwait* (1), s. 32; *Qatar* (1), s. 33(b); *Saudi Arabia* (1), s. 119(f).

remainder being available for the other debts. In the United Arab Emirates,<sup>400</sup> all sums deductible are to be divided pro rata among the beneficiaries after the payment of any legal alimony at the rate of one-quarter of the employee's remuneration.

**293.** In certain countries, such as *Dominica, Saint Vincent and the Grenadines* and *Sudan*, the labour legislation does not specify the manner and limits within which wages may be attached or assigned, nor does it contain any provision protecting wages from attachment or assignment to the extent necessary for the maintenance of workers and their families. The Committee has emphasized, in this respect, the importance of regulating these matters by enacting appropriate legislative provisions so as to comply fully with the requirements of this provision of the Convention.<sup>401</sup>

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**294.** The provisions of the Convention and Recommendation reviewed above seek to protect the right of workers to receive their wages in full, and as such they go to the very heart of the standards concerning the protection of wages. Deductions from wages are often allowed for various purposes, such as the payment of income tax, social security contributions and trade union dues as well as the settlement of personal debts and maintenance obligations, and the list of authorized deductions is tending to expand, which is resulting in the need being increasingly felt for appropriate rules to protect workers' income from being squeezed beyond socially acceptable levels.

**295.** To this effect, the instruments under consideration establish three main principles: first, deductions, to be lawful, need an appropriate legal basis, and in this respect the Convention recognizes only national laws or regulations, collective agreements and arbitration awards. Consequently, deductions from wages effected on any bases other than those prescribed in Article 8, paragraph 1, of the Convention, such as deductions by virtue of individual agreement or merely with the consent of the worker, are not in conformity with the requirements of the Convention. As regards the specific case of deductions for loss or damage, which presuppose that the responsibility of the worker is clearly established, the instruments under consideration require certain guarantees of fairness and due process. In this respect, the Committee considers that the conditions set out in Paragraph 2(3) of the Recommendation should be

<sup>400</sup> (1), s. 60(f).

<sup>401</sup> For instance, the Committee has addressed direct requests in this sense to *Botswana* in 2001 and *Uganda* in 1995.

read in the light of evolving human rights law principles concerning access to justice and a fair hearing.

**296.** Secondly, all authorized deductions must be limited. Under the terms of the Convention, member States are free to adopt the system of limitation which they consider appropriate, such as a fixed amount, a percentage of the worker's wage or using the minimum wage as a reference. In setting the respective limits, however, they should be guided by two interrelated objectives: in the first place, as suggested in Paragraph 1 of the Recommendation, the net amount of wages received by workers should in all cases be sufficient to ensure a decent living income for themselves and their families; in the second place, such net remuneration should not be diminished by deductions to such an extent as to render meaningless the principle set out in Article 6 of the Convention concerning the freedom of workers to dispose of their wages. In the Committee's view, in addition to setting specific limits for each type of deduction, it is therefore also important to establish an overall limit beyond which wages cannot be further reduced, in order to protect the income of workers in the case of multiple deductions.

**297.** Thirdly, all relevant information regarding the grounds on which and the extent to which wages may be subject to deductions must be communicated in advance to the workers concerned so as to avoid any unexpected decrease in their remuneration which would compromise their ability to support themselves and their household. While Article 8, paragraph 2, of the Convention leaves it to national authorities to decide the means by which such information should be provided, it is clearly preferable to inform workers by means of appropriate references in their contracts of employment or the permanent display of the relevant laws, regulations and/or internal regulations at the workplace, and in any event by means which ensure that workers have advance notice of the nature and extent of all possible deductions.