

## CHAPTER VIII

### ENFORCEMENT OF WAGE PROTECTION LEGISLATION

**461.** One of the essential obligations arising out of the Convention is that the national legislation giving effect to its principles must provide for effective enforcement measures: (a) by defining the persons or institutions responsible for compliance; and (b) by prescribing appropriate sanctions or other remedies for any violations of the respective provisions.<sup>1</sup> Article 15 further provides that the laws and regulations giving effect to the provisions of the Convention must be made available for the information of persons concerned,<sup>2</sup> and also that they must provide for the maintenance, in all appropriate cases, of adequate records in an approved form and manner. This latter requirement has been analysed in Chapter VII above and will not be discussed in the present chapter.

<sup>1</sup> Throughout the preparatory work on the instruments under consideration the need was repeatedly expressed to define the measures necessary to ensure the effective enforcement of national laws and regulations concerning the protection of wages. The only difficulty with the list of measures originally suggested by the Office arose in connection with the proposed “maintenance of a system of inspection adequate to ensure effective enforcement”. The reference to inspection was finally left out of the draft instrument, as it was considered desirable to leave to governments a measure of latitude in deciding which aspects of the wage protection system were of such a nature as to require specific action in the form of legislation enforceable by a labour inspectorate; see ILC, 31st Session, 1948, Report VI(c)(2), p. 87. With the exception of a reference to “other appropriate remedies” so that the term “penalties” might not be interpreted to mean only penal sanctions, the draft Article on enforcement measures was adopted in the form proposed by the Office; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 510. It may be recalled, in this regard, that the text of Article 15 of the Convention is that of the “model clause” adopted at the 29th Session of the Conference as part of the proposed conclusions relating to a Convention concerning social policy in non-self-governing territories; see ILC, 29th Session, 1946, *Record of Proceedings*, p. 489.

<sup>2</sup> The text originally proposed by the Office on this point was that the laws and regulations giving effect to the Convention should be “brought to the notice of all persons concerned”. This was considered by some governments as imposing an unreasonable obligation on the competent authority, and at the second Conference discussion it was changed to its present form; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 509. The intention is therefore not to require that the relevant legislation be brought to the notice of all persons concerned, but merely that the texts should be given sufficient publicity, for instance, through publication of the relevant provisions in an official gazette.

**462.** Judges and courts have a vital role to play in the implementation of national legislation giving effect to the provisions of the Convention, by stating and enforcing where necessary the right of a worker to receive wages owed in the event that the employer fails to pay all or part of the wages. The efficacy with which the principles derived from the Convention are put into practice depends to a considerable extent on the existence of an accessible and effective judicial system. However, the judicial system would not in itself alone be sufficient to ensure the effective application of legislation without the existence of officials or institutions distinct from the courts and responsible for the supervision and monitoring of national legislation.

**463.** It is no coincidence that whenever the Committee has had to recommend that governments take specific measures with a view to ensuring full compliance with the provisions of the Convention, it has invariably made reference to the need to strengthen the supervision and inspection machinery, and to impose effective sanctions in the event of infringements. A graphic illustration of this point is the ongoing dialogue with the governments of certain countries that are confronted with serious problems of income insecurity and wage arrears, when the Committee has persistently called for effective supervision, notably through the reinforcement of the activities of the labour inspectorate, and the strict application of appropriate penalties in order to prevent and punish future violations.<sup>3</sup>

### **1. Supervising the enforcement of wage protection rules and regulations**

**464.** According to the information available, in the large majority of countries the application of legal provisions respecting remuneration, conditions of work and health and safety is monitored by the labour inspection service, which is in most cases a specialized body of public officials placed under the authority of the Minister of Labour. Labour inspectors are entrusted with considerable powers of enforcement and prerogatives and must therefore satisfy the highest standards of integrity, impartiality and confidentiality. Given the particular nature of their function, in some cases the law confers upon labour inspectors the status of judicial officers. Indeed, labour inspectors are given the duty of supervising, at the workplaces under their control, the application of the laws and regulations in force concerning labour conditions, including the form, place and time of the payment of wages, the provision of wage statements, the keeping of wage records, and the calculation of the amounts of earnings paid and

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<sup>3</sup> See, for instance, RCE 2002, 322 (*Central African Republic*), 337 (*Russian Federation*), 343 (*Ukraine*), 347 (*Zambia*); RCE 2001, 365 (*Ukraine*); RCE 2000, 215 (*Russian Federation*); RCE 1999, 319 (*Ukraine*); RCE 1998, 209 (*Russian Federation*).

the deductions made. Provisions on the establishment and mandate of the labour inspectorate are laid down in the general labour legislation in a large number of countries, such as *Côte d'Ivoire*,<sup>4</sup> *Ecuador*,<sup>5</sup> *Guatemala*,<sup>6</sup> *Lebanon*,<sup>7</sup> *Madagascar*,<sup>8</sup> *Mexico*,<sup>9</sup> *Poland*,<sup>10</sup> *Sri Lanka*<sup>11</sup> and Thailand.<sup>12</sup> It should be recalled, in this connection, that under Article 3, paragraph 1(a), of the Labour Inspection Convention, 1947 (No. 81), and Article 6, paragraph 1(a), of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the labour inspection system is responsible in particular for securing the enforcement of the legal provisions relating to wages.

**465.** National legislation frequently contains detailed provisions on the powers granted to inspectors to carry out their functions. As a general rule, inspectors are empowered to: enter freely without prior warning at any time of the day or night any establishment subject to inspection; undertake any investigations, examinations or inquiries which they deem necessary in order to

<sup>4</sup> (1), ss. 91.1 to 91.10. This is also the case in *Algeria* (6), ss. 2 to 16; *Bahrain* (1), ss. 147 to 152; (5), ss. 2, 6, 7, 14; *Benin* (1), ss. 266 to 277; *Brazil* (2), s. 626; *Bulgaria* (1), ss. 399 to 404; *Burkina Faso* (1), ss. 218 to 229; *Central African Republic* (1), ss. 153 to 160; *China* (1), s. 18; (2), ss. 85 to 88; *Colombia* (1), ss. 485 to 487; *Comoros* (1), ss.s.154 to 177; *Congo* (1), ss. 151 to 161; *Costa Rica* (3), ss. 88 to 102; *Democratic Republic of the Congo* (1), ss. 155 to 168; *Djibouti* (1), ss. 145 to 160; *Dominica* (4), ss.s.28, 29; *Egypt* (1), ss. 160 to 164; *Estonia* (1), s. 145; *Gabon* (1), ss. 231 to 249; *Guinea* (1), ss. 352 to 366; *Islamic Republic of Iran* (1), ss. 96 to 106; *Israel* (3), ss. 1 to 3; *Japan* (2), ss. 97 to 105; *Kenya* (1), s. 50; (2), s. 23; *Republic of Korea* (1), ss. 104 to 108; *Mali* (1), ss. L.290 to L.300; *Malta* (1), s. 39; *Mauritania* (1), Bk. V, ss. 21 to 36; *Namibia* (1), ss. 104, 105; *Niger* (1), ss. 248 to 264; *Paraguay* (1), s. 408; *Saudi Arabia* (1), ss. 23 to 38; *Senegal* (1), ss. L.188 to L.204; *Slovakia* (6), ss. 2(1), 5(3), 6(3), 13(2); *Slovenia* (1), s. 227; *Spain* (16), ss. 1 to 21; *Swaziland* (1), ss. 8 to 12; *Syrian Arab Republic* (1), ss. 212 to 214; *Togo* (1), ss. 143 to 157; *Tunisia* (1), ss. 170 to 182; *Turkey* (1), ss. 88 to 90, 95; *United Arab Emirates* (1), ss. 166 to 180; *Venezuela* (1), ss. 588 to 596. In the *Russian Federation* (1), ss. 353 to 369, according to the Government's report, under Order No. 1035 of 9 September 1999, the various agencies of the Ministry of Labour and the Federal Labour Inspectorate were united and a new Department of State Supervision and Monitoring of the Implementation of Labour and Safety and Health Legislation has been set up in the Ministry of Labour and Social Development. In *Ukraine* (2), s. 35, according to the information supplied by the Government, by decisions of the Cabinet of Ministers No. 1351 of 30 August 2000 and No. 1771 of 29 November 2000, the State Department for the Supervision of the Observance of Labour Legislation was established in the Ministry of Labour and Social Policy.

<sup>5</sup> (2), ss. 551 to 556.

<sup>6</sup> (2), ss. 278 to 282.

<sup>7</sup> (2), s. 5; (3), ss. 2 to 12.

<sup>8</sup> (1), ss. 131 to 141.

<sup>9</sup> (2), ss. 540 to 550.

<sup>10</sup> (1), ss. 284 to 289.

<sup>11</sup> (2), ss. 52 to 55.

<sup>12</sup> (1), ss. 139 to 142.

satisfy themselves that the provisions of the labour legislation in force, including all collective agreements, are being duly observed, and in particular to question the employer and employees of an enterprise on any matters concerning the application of these provisions; demand the production of any books, registers or documents prescribed by the labour legislation and to copy such documents; and also demand the posting of notices which are required to be displayed by the statutory provisions. In the discharge of their duties, labour inspectors or other labour supervision officers are entitled to: formulate suggestions to the employer and to the workers; address warnings to the employer; report in writing any failure to comply with statutory requirements or refer cases directly to the competent judicial authorities; and even order that immediate executory measures be adopted in the case of imminent and serious risk to the health or safety of workers. These powers are generally in accordance with the provisions of the ILO Conventions and Recommendations respecting labour inspection.<sup>13</sup> The Committee recalls that it has referred in detail to these powers in its 1985 General Survey, which covers the instruments on labour inspection.<sup>14</sup>

**466.** In some countries, the national legislation requires the labour inspectorate to publish an annual report containing, among other information, detailed statistical data concerning the organization and staffing of the labour inspection service, the number of enterprises subject to inspection and the number of workers concerned, the number of inspection visits, the infringements reported and the sanctions imposed.<sup>15</sup>

**467.** In many countries, the labour authorities are responsible for supervising the provisions respecting the payment of wages. These authorities are vested with much broader powers than labour inspectors and are entitled to perform a wide range of duties in ensuring compliance with the labour legislation. They often enjoy considerable discretion in granting exemptions, extending time limits and authorizing practices in derogation of existing rules and regulations. They may also be seized of individual complaints and decide any dispute referred to them, examine all kinds of applications submitted for their approval, make orders and impose sanctions within the limits of their competence. Specific instances in which such controlling authority is exercised

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<sup>13</sup> See Labour Inspection Convention (No. 81) and Recommendation (No. 81), 1947, Labour Inspection (Mining and Transport) Recommendation (No. 82), 1947, and Labour Inspection (Agriculture) Convention (No. 129) and Recommendation (No. 133), 1969.

<sup>14</sup> See *General Survey of the Reports on the Labour Inspection Convention (No. 81) and Recommendation (No. 81), the Labour Inspection (Mining and Transport) Recommendation (No. 82), and the Labour Inspection (Agriculture) Convention (No. 129) and Recommendation (No. 133)*, ILC, 71st Session, 1985, Report III (Part 4B).

<sup>15</sup> This is, for instance, the case in *Gabon* (1), s. 247; *Russian Federation* (1), s. 356; *Saudi Arabia* (1), s. 35; *Swaziland* (1), s. 12; *United Arab Emirates* (1), s. 176.

over the application and enforcement of general labour legislation, including the standards concerning the protection of wages, include the Permanent Secretary of Labour in *Mauritius*,<sup>16</sup> the Labour Commissioner in *Uganda*<sup>17</sup> and *Zambia*,<sup>18</sup> the Chief Labour Officer in Ghana,<sup>19</sup> the Director-General of Labour in *Malaysia*,<sup>20</sup> and the Secretary of Labor in the *Philippines*.<sup>21</sup>

**468.** In the United States,<sup>22</sup> at the federal level, it is the responsibility of the Wage and Hour Division of the Department of Labor's Employment Standards Administration to exercise all powers and perform all functions, duties and services relating to the enforcement of the wage protection legislation. At the state level,<sup>23</sup> it is normally the Department of Labor under the direction and supervision of a commissioner that has the charge of the administration and enforcement of all laws, rules and regulations concerning the payment of wages. State authorities, such as the Commissioner of Labor or the Director of the Department of Labor or an authorized representative, are entitled to perform a wide range of duties, including the following: entering the place of business or employment at reasonable times; inspecting payroll records that relate to the question of wages paid or hours worked; questioning employees during work hours with respect to the wages paid and the hours worked; requiring from an employer full and correct statements in writing with respect to the payment of wages; investigating such facts, conditions, or matters as they may deem

<sup>16</sup> (1), ss. 51 to 53.

<sup>17</sup> (1), s. 1.

<sup>18</sup> (1), ss. 4 to 11.

<sup>19</sup> (1), ss. 48 to 57, 73.

<sup>20</sup> (1), ss. 3(1), 65 to 69.

<sup>21</sup> (1), ss. 5, 128, 129.

<sup>22</sup> (1), s. 4.

<sup>23</sup> See, for instance, Alaska (5), ss. 23.10.080, 23.10.100(b); Arizona (7), ss. 23-926, 23-927; Arkansas (8), ss. 11-2-115(b), 11-2-116(a); California (9), s. 1195.5; Connecticut (11), s. 31-59; Delaware (13), s. 1111; Georgia (15), s. 34-2-3; Hawaii (16), s. 388-9; Idaho (17), s. 45-616; Illinois (18), s. 115/11; Indiana (19), s. 22-2-9-4; Iowa (20), s. 91A.9; Kansas (21), s. 44-322; Kentucky (23), s. 1:035; Louisiana (24), ss. 1 to 11; Maine (25), s. 665; Maryland (26), s. 3-425(a); Michigan (28), ss. 408.479, 408.481; Minnesota (29), s. 181.9641; Missouri (32), s. 291.060; Montana (33), ss. 39-3-209, 39-3-210; Nebraska (34), s. 48-1206(1); Nevada (35), s. 608.180; New Hampshire (36), s. 275:51; New Jersey (37), s. 34:11-4.9; New Mexico (38), ss. 50-4-8, 50-4-9; New York (39), s. 196(1); North Carolina (40), ss. 95-25.15 to 95-25.19; North Dakota (42), ss. 34-06-02, 34-06-03; Ohio (43), s. 4111.04; Oklahoma (44), s. 40-165.7; Oregon (45) s. 653.040; Rhode Island (47), ss. 28-14-13, 28-14-19; South Carolina (48), s. 41-3-50; South Dakota (49), s. 60-5-4; Tennessee (50), s. 50-2-103(i); Utah (52), s. 34-28-9; Vermont (53), s. 393; Washington (55), s. 49.46.040; West Virginia (57), s. 21-5C-6. In contrast, in Massachusetts (27), ss. 2, 3, the Attorney-General is responsible for the enforcement of state laws concerning the protection of wages, while in the District of Columbia (14), s. 32-1306, it is the duty of the Mayor to ensure compliance with the labour legislation.

appropriate to determine whether any person has violated any rule or regulation; compelling the attendance of witnesses and the production of books, papers and documents by subpoena when necessary for the purpose of an investigation; holding hearings, taking depositions and affidavits in any proceedings before them; instituting court actions for penalties for any violation; promulgating rules and regulations for the proper administration and enforcement of state labour legislation. In some countries, such as *Iraq*,<sup>24</sup> the law does not contain any detailed provisions on enforcement, but merely vests the responsibility for its implementation with the Ministry of Labour.

**469.** Reference should also be made to the case of countries where trade unions exercise supervisory duties in respect of the application of labour legislation. For example, in *Belarus*,<sup>25</sup> *China*,<sup>26</sup> *Kyrgyzstan*<sup>27</sup> and *Tajikistan*,<sup>28</sup> the Labour Code provides that public control over the observance of the labour legislation is implemented by trade unions, as well as public inspectors and the commissions of the corresponding elective bodies of the trade union or of another representative body of the employees of an enterprise, agency, or organization. Similarly, in the *Republic of Moldova*<sup>29</sup> and *Ukraine*,<sup>30</sup> the Wages Act stipulates that supervision of the application of the legislation on wages is entrusted to the state labour administration, financial bodies and the bodies representing the interests of workers and employers. In the *Russian Federation*,<sup>31</sup> trade unions are authorized to conduct labour inspections in cooperation with state bodies and to submit for mandatory consideration reports and proposals on the elimination of any violations of labour protection requirements that are revealed. In *Bulgaria*,<sup>32</sup> workers' organizations are entitled to notify controlling bodies of violations of labour legislation and to demand the imposition of administrative sanctions against the offenders, while in *Slovakia*,<sup>33</sup> the law authorizes trade unions to carry out inspections only in matters of occupational safety and health in the workplace.

**470.** The Committee has regularly requested governments to continue to supply up-to-date and concrete information in their annual reports on all aspects

<sup>24</sup> (1), s. 152.

<sup>25</sup> (1), s. 463.

<sup>26</sup> (2), s. 88.

<sup>27</sup> (1), s. 462.

<sup>28</sup> (1), ss. 225, 227.

<sup>29</sup> (2), s. 23.

<sup>30</sup> (2), s. 35.

<sup>31</sup> (1), s. 370.

<sup>32</sup> (1), s. 406.

<sup>33</sup> (1), s. 149.

of the enforcement of the laws giving effect to the provisions of the Convention, including supervisory bodies and methods, the number of complaints filed with the labour inspectorate, the results of inspection visits, the total amount of wages paid following the intervention of labour inspectors, the number and nature of the violations reported and the amount of fines or the other dissuasive penalties imposed.

## 2. Sanctions and remedies for violation of wage protection rules and regulations

**471.** The legislation in practically all States includes provisions laying down sanctions, in the form of monetary fines or prison sentences, to be imposed in the event of the infringement of the provisions governing the terms or manner of payment of wages.

**472.** In some countries, labour laws provide only for pecuniary fines in the case of offences relating to the payment of wages. This is the case, for instance, in *Guinea*,<sup>34</sup> where any person who commits an infringement of the provisions concerning the payment of wages in legal tender, the periodicity and place of payment or the issue of a pay slip may be subject to a fine, the amount of which varies according to the seriousness of the offence. In *Venezuela*,<sup>35</sup> the law

<sup>34</sup> (1), s. 236. See also *Malaysia* (1), ss. 91, 92, 99A, and United Kingdom: Jersey (17), s. 12, *Montserrat* (21), ss. 15, 16(3), Virgin Islands (22), ss. C36, C39(3), where provision is made for a fine not exceeding a prescribed amount for failure to pay wages in legal tender or on time, for unauthorized deductions, and for supply of intoxicating liquor or other unlawful amenities or services as part of the terms of the employment contract. In the *Islamic Republic of Iran* (1), s. 174, a fine which may vary from 50 to 100 times the minimum daily wage of a worker is stipulated only for offences relating to unlawful deductions from wages. In Luxembourg (1), s. 9; (2), s. 40(4), all wage-related offences are punished with fines ranging from 5,000 to 200,000 francs, with the exception of violations concerning wage statements which carry fines from 2,500 to 50,000 francs. In *Malta* (1), s. 41(3), any person contravening the provisions on the protection of wages is liable to a fine of not less than five liri and not exceeding 50 liri. In *Mexico* (2), ss. 1000, 1001, infringements of the provisions on wages are punishable with fines ranging from 15 to 315 times the general minimum wage. In Morocco (1), s. 22; (5), s. 9, any violation relating to pay intervals, the time and place of wage payment or the issue of wage statements carries a fine of from 600 to 1,800 francs, whereas infringements in respect of works stores are punishable with fines ranging from 6,000 to 240,000 francs. Similarly, in *Nicaragua* (1), s. 86; (7), ss. 5, 22, wage-related offences are punished with fines of from 2,000 to 10,000 cordobas, while in *Panama* (1), s. 171, the fines may vary from 25 to 500 balboas.

<sup>35</sup> (1), s. 627. In *Ecuador* (2), ss. 42(6), 94, the failure of the employer to establish a works store carries a fine of from 100 to 500 sucres, while the non-regular payment of wages may be punished with a fine of up to three times the amount owed to the worker. In *Paraguay* (1), s. 390(b), the payment of wages by means of coupons or vouchers may be punished with a fine of 30 times the minimum daily wage rate. In *Uruguay* (17), s. 289; (2), s. 33; (5), s. 5; (18), s. 10, the failure to provide the worker with a pay slip may be punished with a fine of up to five times the worker's wage.

prescribes financial sanctions to the amount of not less than one-quarter of the minimum wage or more than one-and-a-half minimum wages for failure to pay workers in legal tender or at regular intervals, paying wages in forbidden places or making unjustified deductions. In other countries, such as *Argentina*<sup>36</sup> and *Spain*,<sup>37</sup> wage-related offences are listed according to their seriousness and the amount of the respective fines is graduated accordingly.

**473.** In the *Bahamas*,<sup>38</sup> any employer who contravenes any of the provisions of the Employment Act referring to wages is guilty of an offence and liable to a fine of a fixed amount. The situation is similar in *Ghana*,<sup>39</sup> where any employer who contravenes any of the provisions of the Labour Decree with respect to the protection of remuneration is subject to a fine not exceeding a prescribed amount. In *New Zealand*,<sup>40</sup> any breach of an employment agreement is punishable with a maximum penalty of \$5,000 for an individual and \$10,000 for a company or other corporation. In *Egypt*<sup>41</sup> and *Lebanon*,<sup>42</sup> an employer violating any of the provisions respecting wages is liable to a fine that is doubled in case of repetition. Similarly, in *Slovakia*,<sup>43</sup> the labour inspectorate is

<sup>36</sup> (3), Annex II, ss. 2, 3, 5. The non-regular payment of wages is deemed to be a minor offence, whereas contraventions concerning the place, time and form of payment or the amount of the wage carry higher fines or the closure of the enterprise for up to ten days. Similarly, in *El Salvador* (2), s. 627, the amount of the fine depends on the seriousness of the violation and the financial situation of the offender.

<sup>37</sup> (17), ss. 6(2), (3), 7(3), (4), 8(1), 18(2)(e), 39, 40(1). The law makes a distinction between minor offences (e.g. failure to issue a pay slip), serious offences (e.g. falsification of information contained in the pay slip) and the most serious offences (e.g. payment of wages in arrears), with the amount of fines rising in direct proportion to these categories.

<sup>38</sup> (1), s. 66. See also *Barbados* (1), ss. 15, 17(2), and *Dominica* (1), ss. 15, 17(2); (2), s. 9. In *Israel* (1), s. 26, the Wage Protection Act provides for a fine of a fixed amount only in the case that deducted amounts are not transmitted to the person to whom they are intended within 30 days. In *Croatia* (1), s. 228(1.2), (1.8), and *Japan* (2), s. 120(1), a fine within certain limits is provided for failure to duly inform the worker about the organization of the work before the commencement of employment or failure to include in a contract of employment all the information required by law.

<sup>39</sup> (1), s. 57(1). See also *Bahrain* (1), ss. 162, 165, and *Saudi Arabia* (1), ss. 121, 200, where a specific fine applies to any violation of the provisions on the protection of wages, with the exception of unjustifiable deductions or delayed payment, which carry a fine not exceeding double the amount deducted or double the outstanding wages.

<sup>40</sup> (5), s. 135(2); (1), s. 13.

<sup>41</sup> (1), s. 170.

<sup>42</sup> (1), s. 107. The situation is similar in the *Syrian Arab Republic* (1), s. 221, where the prescribed fine may be imposed as many times as there are workers in respect of whom the contravention was committed. See also *Tunisia* (1), ss. 234, 235, 237.

<sup>43</sup> (6), s. 17(1)(a). Such a penalty may be imposed within one year of the date on which the violation was committed and may be doubled in case of failure to take remedial action. See also *Poland* (1), ss. 282(1), 284(1), where labour inspectors are authorized to impose fines of an



authorized to impose fines up to a specified limit for violations of the provisions on wages. In *Turkey*,<sup>44</sup> an employer who deliberately fails to pay wages in full is liable to a fine of a specified amount, while increased fines are stipulated in case the employer fails to deliver the wage slip, or fines the worker for reasons other than those prescribed by law, or makes prohibited deductions. In *Sri Lanka*,<sup>45</sup> the legislation provides for a specific fine to be imposed in the case of first and second offences regarding the payment of wages, while sentences of imprisonment may also be pronounced for subsequent offences.

**474.** In other countries, the legislation prescribes penal sanctions. In *Mauritius*,<sup>46</sup> for instance, any person who fails or neglects to pay remuneration or to pay remuneration within the prescribed time, makes a false entry in a record required to be kept by an employer, produces a false remuneration sheet or record, or in any other manner contravenes the legislation regarding workers' remuneration, is liable to imprisonment for a term not exceeding one year and to a fine.

**475.** In many countries, pecuniary fines are provided for in the case of infringements of such legal requirements as the timely payment of wages, the prompt settlement of any outstanding payments in case of termination of employment, the regular provision of a wage statement at the time of each payment, the lawful operation of a company store or the proper keeping of a wage register, whereas violations regarding the means of payment, payment in kind and wage deductions are punished by heavier fines and/or imprisonment in case of repetition. This is the situation, for instance, in *Benin*,<sup>47</sup> *Burkina*

unspecified amount upon any person who fails to pay remuneration to an employee in due time, improperly reduces the amount of such remuneration or makes improper deductions.

<sup>44</sup> (1), s. 99. In *Algeria* (1), ss. 148, 150, 154, the heaviest fines are provided for those in breach of the requirement to keep books and registers, while lighter fines are stipulated for failure to pay remuneration on time or provide the worker with a pay slip. In *Viet Nam* (3), ss. 7(1), 8(3), the lowest pecuniary sanction is prescribed for breaches of provisions on the payment of wages directly, fully, in a timely manner and at the workplace, while a heavier fine is applied for failure to inform the worker about the reason for making a wage deduction or where wage deductions exceed the authorized limits.

<sup>45</sup> (1), ss. 52(1), 55; (2), ss. 4(1), 44(2), 58(d). However, any person who makes a false entry, or wilfully omits an entry, in any register, wage record or notice is liable to a fine or imprisonment or to both.

<sup>46</sup> (1), s. 55.

<sup>47</sup> (1), ss. 298, 300, 302, 303(g), 304. Financial sanctions are also prescribed in the event of an infringement of the provisions in respect of works stores, whereas financial sanctions and/or prison sentences are established for any person who asks workers for or accepts from them any remuneration whatsoever in order to act as an intermediary for the payment of wages, indemnities, allowances and expenses of any nature. This is also the case in *Chad* (1), ss. 288, 291; *Congo* (2), ss. 251(a), 255(a), (b), 257(a), (e), (g); *Gabon* (1), s. 195; *Madagascar* (1), ss. 189, 200(4), (5); *Mali* (1), ss. L.319, L.321, L.322; *Mauritania* (1), Bk. V, ss. 56(a), (g), 57, 64(a); *Niger* (1),

*Faso*,<sup>48</sup> *Cameroon*,<sup>49</sup> *Comoros*,<sup>50</sup> *Democratic Republic of the Congo*,<sup>51</sup> *Djibouti*,<sup>52</sup> and *Rwanda*.<sup>53</sup> In some cases, a prison sentence is obligatory in the event of a second recurrence of the offence. In this regard, repetition of the offence is deemed to occur if the person charged is sentenced for a similar offence at any time during a prescribed period, normally between 12 months and three years, preceding the offence giving rise to the current prosecution. Whenever a fine is imposed under the national laws and regulations referred to above, it is multiplied by the number of individual cases involved, provided that the total amount of the fines so imposed may not exceed a certain limit, which is often 50 times the maximum rates prescribed in the relevant provisions. In the *Dominican Republic*,<sup>54</sup> all offences relating to the protection of wages carry punishment in the form of fines, except for the non-payment or delayed payment of wages, which may be punished with imprisonment.

**476.** Furthermore, in Thailand,<sup>55</sup> an employer who fails to pay wages at the workplace is liable to a fine, whereas violations concerning untimely payment or unauthorized deductions may be punished with imprisonment of not more than six months, or a fine not exceeding a certain amount, or both. In *Botswana*,<sup>56</sup> the infringement of most provisions concerning the protection of

ss. 330(a), 331(a), 333(a), (g), 334; *Senegal* (1), s. L.279(a), (g); *Togo* (1), ss. 223(a), 227(a), 229(d), (f).

<sup>48</sup> (1), ss. 237(a), 238(a), (d), (e). In particular, persons infringing the legal prohibition against the sale of alcoholic drinks in company stores and in the workplace are liable to a fine and/or a prison sentence, which may be of up to three years.

<sup>49</sup> (1), ss. 168(1), (8), 170(1). Economic penalties are also provided for an employer who knowingly enters in the employer's register or other documents false statements concerning the workers' employment, and any worker who knowingly makes use of such false statements. See also *Kenya* (2), s. 25, and *United Kingdom: Isle of Man* (15), s. 26(2), (4).

<sup>50</sup> (1), ss. 230(a), 235(a), 237(a), (e), (f), 238. Among the most severely punished infringements are those related to the payment of wages, in whole or in part, in the form of alcohol or alcoholic drinks and the acceptance of any payment made by a worker to an employer or an intermediary for the settlement or payment of wages, benefits and costs of all kinds.

<sup>51</sup> (1), ss. 293(a), 294(a). Specific fines are laid down for contravening the maximum limits for the attachment of wages and for non-observance of the authorization procedure for the opening of a company store.

<sup>52</sup> (1), ss. 221(a), 226(a), 228(a), (e), (g). Persons infringing the formal prohibition upon paying wages in the form of alcohol, contravening the provisions on authorized wage deductions or receiving unlawful payments from the worker for acting as intermediaries in the settlement or payment of wages are subject to the highest fines and/or prison sentences.

<sup>53</sup> (1), ss. 179, 180.

<sup>54</sup> (1), ss. 211, 720(2), 721(2); (5), s. 401.

<sup>55</sup> (1), ss. 144, 149.

<sup>56</sup> (1), ss. 77(2), 78(2), 79(2), 80(2), 84(2), 86(2), 87(2), 93(2), 172(c), (d). A stricter penalty is only provided for unauthorized deductions from workers' wages, while lighter penalties are

wages is punishable with a fine not exceeding a specific amount, or by imprisonment for a term not exceeding 12 months, or both. Similarly, in *Swaziland*,<sup>57</sup> all violations of the legislative requirements with regard to the protection of wages are punishable with the same penalty, which may be a fine not exceeding a fixed amount, or a prison sentence not exceeding three years, or both.

477. Mention should be made of those States which, when faced with extraordinary problems of accumulated wage arrears, enacted specific legislation to address the issue of the penal liability of those contravening the legal provisions on the regular payment of wages. For example, in the *Russian Federation*,<sup>58</sup> a new provision was inserted into the Penal Code stipulating that the non-payment for more than two months of wages, grants, allowances and other payments established by law by the head of an enterprise is punishable by a fine to the amount of 100 to 200 minimum monthly wages, or by deprivation of the right to occupy certain positions or to conduct certain activities for a period of up to five years, or by imprisonment for a period of up to two years. Similar amendments were recently introduced in the Penal Code of *Ukraine*,<sup>59</sup> which now provides that the intentional non-observance by a manager of an enterprise of the periods fixed for the payment of labour remuneration, or the misuse of resources earmarked for the payment of such remuneration carries a sentence of from one to three years' imprisonment or a fine of up to 300 times the non-taxable minimum income, which may be combined with deprivation of the right to hold certain posts or to engage in certain types of activity for up to three years. In contrast, in other countries, this type of offence gives rise to only pecuniary and administrative sanctions. In the *Republic of Moldova*,<sup>60</sup> for instance, the deliberate violation of the time limits fixed for the payment of wages carries a fine of up to 15 times the minimum wage, while senior officials of the administration, enterprise or institution who are found guilty of violations of the legislation in respect of the payment of wages incur administrative liability and may be relieved of their duties.

envisaged for the payment of wages in unauthorized places and infringements relating to the keeping of records, books and accounts.

<sup>57</sup> (1), s. 64; (2), s. 8. See also *Uganda* (1), s. 62(1), (2), where the prison sentence may not exceed three months, and *Zambia* (1), s. 77. In the *Philippines* (1), s. 288, any violation of the provisions regarding the payment of wages is punished with a fine within specific limits or imprisonment of not less than three months or more than three years, or both at the discretion of the court.

<sup>58</sup> (4), s. 1; (1), s. 142.

<sup>59</sup> (5), s. 1; (2), s. 36.

<sup>60</sup> (5), s. 41-2; (1), s. 102-1.

**478.** Many States establish sanctions in the event of infringements of the labour legislation in general, without specific reference to the provisions concerning the protection of wages, although it is understood that they cover the latter. This is the case, for instance, in *Azerbaijan*,<sup>61</sup> *Belarus*<sup>62</sup> and *Kyrgyzstan*<sup>63</sup> where, according to national legislation, employers and employees are subject to disciplinary, administrative and criminal sanctions for violating legal rights as defined by the Labour Code, for abusing these rights or for failure to meet any commitments or obligations under an employment contract. Similarly, in *Bulgaria*,<sup>64</sup> an employer who violates provisions of the labour legislation, unless otherwise liable to a heavier sanction, is subject to a fine of from 250 to 1,000 levas, while in *Sudan*<sup>65</sup> the violation or refusal to apply any provision of the Labour Code is punishable with imprisonment for a period not exceeding six months or a fine, or both. In *Bolivia*,<sup>66</sup> *Colombia*,<sup>67</sup> *Costa Rica*,<sup>68</sup> *Guatemala*<sup>69</sup> and *Honduras*,<sup>70</sup> infringements of any provision of the Labour Code are punishable with fines. Similarly, in Qatar,<sup>71</sup> the law prescribes the minimum fine which may be imposed upon any person violating its provisions.

**479.** On various occasions, the Committee has addressed comments to governments drawing their attention to the need to adopt the necessary measures to establish appropriate sanctions for violations of the legislation on wage protection and to provide all relevant information. In the light of the information reviewed above, the Committee wishes to recall that, under the terms of the Convention, national laws or regulations must stipulate effective sanctions or

<sup>61</sup> (1), ss. 311, 312, 313.

<sup>62</sup> (1), s. 465; (6), s. 4.

<sup>63</sup> (1), s. 460.

<sup>64</sup> (1), s. 414(1).

<sup>65</sup> (1), s. 126(2).

<sup>66</sup> (1), s. 121; (2), s. 165.

<sup>67</sup> (1), s. 486(2).

<sup>68</sup> (1), ss. 165, 608 to 617.

<sup>69</sup> (2), ss. 269 to 271.

<sup>70</sup> (2), s. 625.

<sup>71</sup> (1), s. 75. Any violation of the provisions of the Labour Code and its implementing regulations is also punishable by a fine in Kuwait (1), s. 97.

other appropriate remedies for any violation of the provisions giving effect to the Convention, and not only for specific offences concerning the payment of wages.

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**480.** By way of conclusion, the Committee wishes to emphasize the importance of proper enforcement action in ensuring the application of the Convention in practice. In accordance with Article 15 of the Convention, there are two main parameters in addressing the question of enforcement: first, there is a need for institutional machinery, whether the labour inspectorate or otherwise, to exercise oversight and control, investigate and report on cases of non-compliance, as well as order and monitor the application of corrective measures. Secondly, each and every infringement of binding rules and regulations dealing with the protection of wages must be sanctioned in a manner that is proportionate to the seriousness of the violation, and sufficiently strict to prevent repetition. While the Convention leaves it to national authorities to decide whether wage-related offences should incur civil rather than penal liability, or both, and also to determine the scale of the prescribed sanctions, strict enforcement remains of the essence since it would be extremely prejudicial for any system of labour relations to allow abuses in respect of workers' wages to be committed with impunity. In this respect, the Committee notes that national laws often provide for penalties for selected offences respecting the payment of wages, probably those considered as the most reprehensible, but rarely for every infringement of the laws giving effect to all the relevant provisions of the Convention. The Committee therefore urges member States to adopt such enforcement measures as may be appropriate and are consistent with the requirements of Article 15 of the Convention, to ensure that any contravention of the substantive rules laid down in the Convention, whether they relate to the means of payment, the payment at regular intervals, the amount of deductions effected, the conditions of operation of a works store, or to the mere delivery of a pay slip, bear concrete legal consequences.

**481.** On another point, the Committee expresses its great disappointment that a large number of countries fail quasi-systematically from providing any information on the application of the Convention in practice. The Committee recalls in this connection that, according to established procedures, governments of ratifying States are requested to provide a regular account of the methods of supervision and enforcement of the national legislation and administrative regulations, including information on the organization and working of inspection, and also to furnish a general appreciation of the manner in which the Convention is applied in practice, along the lines suggested in Parts III and V of the report form on the application of the Convention. This report form, which has been approved by the ILO Governing Body, is the main channel through

which the Committee receives official information enabling it to follow the evolution of national laws and practice in the matters covered by the Convention. The Committee therefore reminds ratifying States that they are obliged to supply up-to-date information regularly on all aspects of the enforcement of the laws and regulations giving effect to the Convention, including, for instance, extracts from official reports, the results of inspection visits, and statistics on penalties imposed for breach of wage protection standards.