Interpretation of Decisions of the International Labour Conference

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)

The German Federal Ministry of Labour and Social Affairs requested from the International Labour Office certain information concerning the interpretation of the term " worker ", as used in this Convention.

In addition, the Ministry of Health and Social Affairs of Sweden requested from the International Labour Office certain information concerning the interpretation of Article 1, paragraph 1 *(a)*, of the said Convention.

With the usual reservation that the Constitution does not give him any special authority to interpret Conventions adopted by the International Labour Conference, the Director-General of the International Labour Office transmitted, on 25 November 1964 to the German Federal Ministry of Labour and Social Affairs, and on 9 December 1965 to the Ministry of Health and Social Affairs of Sweden, the following memoranda prepared by the International Labour Office:

Memorandum Sent by the International Labour Office to the German Federal Ministry of Labour and Social Affairs

1. The German Federal Ministry of Labour and Social Affairs has asked the International Labour Office to throw light on the meaning of the term " worker " as used in the Fee-Charging Employment Agencies Convention (Revised), 1949. In particular, the question is raised whether the term covers only manual workers or refers also to salaried employees.

2. While the term " worker " occurs in several Articles of the instrument, its use in Article 1 is of primary importance for the purpose of the inquiry since it there serves to determine the scope of the instrument. Article 1 reads as follows:

> 1. For the purpose of this Convention the expression " fee-charging employment agency " means—
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> *(a)* employment agencies conducted with a view to profit, that is to say, any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers;
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> *(b)* employment agencies not conducted with a view to profit, that is to say, the placing services of any company, institution, agency or other organisation which, though not conducted with a view to deriving any pecuniary or other material advantage, levies from either employer or worker for the above services an entrance fee, a periodical contribution or any other charge.
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> 2. This Convention does not apply to the placing of seamen.

3. This Article was not changed—or discussed—at the time of the adoption of the revising Convention in 1949 and is accordingly the same as that contained in the Fee-Charging Employment Agencies Convention, 1933 (No. 34).

4. The preparatory work for Convention No. 34 reveals detailed consideration of the scope of the instrument in terms of occupations in which the use of fee-charging employment agencies was to be prohibited. The questionnaire addressed to governments asked whether a list of occupations should be specified, or whether the prohibition contemplated should be laid down in general terms as applicable to all occupations, subject to possible exceptions to be specified for certain occupations. On the basis of the replies of governments it was concluded that " the draft Convention should lay down the prohibition of employment agencies carried on for profit in general terms as applicable for all occupations (excluding seamen) but subject to possible exceptions for certain occupations " (Report I, International Labour Conference, 17th Session, pp. 95-97). It may also be noted that in this connection the report to the Conference emphasised that, subject to the exclusion of seamen, " the item on the agenda comprises within its range all occupations and forms of employment, e.g. industry, agriculture, commerce, domestic service and similar employment, professional occupations, theatrical and similar occupations, etc.".

5. It was on this basis that Article 1 of the instrument was so drafted as to refer to employers and workers in general terms (subject to the exclusion of seafarers in paragraph 2 of the Article) while Article 3 (to which Article 5 of the revising Convention may be compared) made provision for possible exceptions. No question was raised on this aspect of the definition in the discussions at the 17th Session of the Conference.

6. The information received from governments which have ratified one or both of the fee-charging employment agencies Conventions on the manner in which they are applying the provisions in question also suggests that in practice the term " worker " has been regarded as applying to all categories of workers and not only to manual workers.

7. Finally, it may not be irrelevant to note that on 15 November 1932—i.e. at a time when the preparatory work of the Fee-Charging Employment Agencies Convention, 1933, was in progress—the Permanent Court of International Justice gave an Advisory Opinion on the question whether the Night Work (Women) Convention, 1919, applied " to women who hold positions of supervision or management and are not ordinarily engaged in manual work " (see *Official Bulletin*, Vol. XVII, No. 5, pp. 179-191). It had been argued before the Court that general words, such as " persons " or " women ", used in international labour Conventions must be regarded as referring only to manual workers, since it was only with them that the International Labour Organisation was intended to concern itself. The Court found that this was not so. It pointed out that the words used in the preamble and operative articles of the Constitution of the Organisation (then Part XIII of the Treaty of Versailles) to describe the individuals who are the subjects of the Organisation's activities are not words which are confined to manual workers. " The words used are ' *travailleurs* ', ' workers ', ' workpeople ', ' *travailleurs salariés* ', ' wage earners ', words which do not exclude employed persons doing non-manual work, as perhaps might have been held to be the case if the words used had been ' *ouvrier* ' or ' labourer ' " (op. cit., p. 187). By reference to this view, and after examination of the preparatory work for the specific Convention before it, the Court held that the Convention applied to women holding positions of supervision or management and not ordinarily engaged in manual work.