UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/1978/8/Add.28
14 April 1980
ENGLISH
ORIGINAL: SPANISH

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Reports submitted in accordance with Council resolution 1988 (LX) by States parties to the International Covenant on Economic, Social and Cultural Rights concerning rights covered by articles 6 to 9

CHILE 1/

[9 April 1980]

With respect to document E/1978/8/Add.10, it should be stated that the list of documents sent to the International Labour Organisation (ILO), referred to in the aforementioned report, should include, among others, the following:

ORD. (ORLI) No. 57, 27 March 1978	Report requested by the Governing Body of ILO at its sessions held in November 1977 and February 1978 in connexion with the implementation in Chile of the recommendations of the ILO Fact-Finding and Conciliation Mission and with case No. 823.
ORD. (ORLI) No. 253, 31 October 1978	Report on changes in the situation with respect to the recommendations of the ILO Fact-Finding and Conciliation Commission on Freedom of Association
ORD. (ORLI) No. 11, 19 January 1979	Report on the implementation in Chile of the recommendations of the ILO Fact-Finding and Conciliation Commission on Freedom of Association
Note No. 137, 7 February 1979	Information supplementing that provided by the Government of Chile in its report of 19 January 1979
11 May 1979	Report of the Government of Chile on the exercise of trade union freedom in Chile
Note No. 147, 20 February 1980	Report of the Government of Chile on Chilean legislation regarding unionization and collective bargaining rights

1/ The present document contains supplementary information submitted by the Government of Chile with reference to its report (E/1978/8/Add.10) under the first stage of the programme established by Council resolution 1988 (LX) concerning rights covered by articles 6 to 9 of the Covenant.

NEW LABOUR LAWS IN FORCE IN CHILE

(Trade union freedom and voluntary collective bargaining)

INTRODUCTION

The new provisions ensuring full trade union freedom and reopening collective bargaining in the labour sector became effective in the first week of July 1979.

The legislation was announced by Mr. José Piñera, the Minister of Labour, on 2 January 1979, shortly after he assumed office. At the time, the Minister stated that the Government was seeking to institute, within the short space of six months, a body of legislative provisions that would promote a better understanding between labour and management by means of a harmonious and just consideration of their respective rights and by fostering the free exercise of trade union rights and a sustained improvement in the conditions of workers and the Chilean economy.

The purpose of the new scheme is to create a free, democratic and autonomous trade union movement and a collective bargaining system that is effective, fair, technically sound and responsible.

There follows a brief review of the essential features of this new legislation in which reference is made to the former provisions, dating from the early decades of this century and now obsolete. In each case, comments will be made on the characteristics of Chilean labour to which the new legal provisions are directed.

ESSENTIAL FEATURES OF THE LEGISLATION ON TRADE UNION ORGANIZATIONS

(Decree-Law No. 2756, published in the Official Gazette, 3 July 1979)

A. Strengthening of the trade union movement

One of the most important components of the new labour scheme in force is a series of provisions whose purpose is to enable an increasing number of workers to enjoy the exercise of trade union rights.

The aim of encouraging and promoting the trade union movement can be seen in five key areas.

1. Formation of trade union organizations and acquisition of legal personality by means of an "automatic" procedure

Forming a trade union organization no longer requires authorization from a public authority.

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Legal personality is acquired merely by filing the rules and constitution of the organization concerned with the relevant labour inspection office. The inspector cannot withhold his consent.

Amendments to the rules are governed by the same provision and do not require the approval of a public authority.

This 'automatic' and autonomous mechanism for establishing and reforming trade union organizations is being applied for the first time in Chile because, while provided for in the political Constitution and in a special law, it had not come into use owing to the fact that previous Governments had not issued the requisite regulations. Thus, all the procedures for forming trade union organizations depended to a large extent on the discretion of the Executive Branch, and that meant a bureaucratic delay of three or more years before legal personality could be acquired. The former concept of granting legal personality is now replaced by that of 'automatic acquisition' of such status.

Shortly following adoption of the law, the effectiveness of the new system was evidenced by the establishment of the Confederation of Nitrate Workers, which came to the attention of the authorities when the workers' council filed the constitution and rules. Other examples could be cited of unions of companies in the private and public sectors, many of which had been attempting to acquire legal personality for years.

Trade unions will also benefit from the provision empowering them to invite a notary public to attest their most important acts, instead of the labour inspector, as was compulsorily required before. Whereas under the former system such an act had to be witnessed by a labour inspector, today this is no longer necessary.

2. Possibility of forming trade unions in companies employing fewer than 25 workers

Generally speaking, the formation of a trade union requires at least 25 persons, as was the case before.

However, the new legislation allows persons working in small companies, namely, those employing fewer than 25 workers, to form a trade union, provided that at least eight of the workers join it.

This possibility, which was non-existent before, should not be construed as a device to promote the formation of small trade unions. The workers in these companies are able to choose between this type of union and a larger one formed in association with workers of other companies (inter-company trade union).

Furthermore, like other trade unions, the union of a small company may join a federation or confederation.

3. Elimination of the age requirement with respect to union membership

The law provides that minors and married women need no authorization whatsoever to join a union.

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This provision supersedes the former rule restricting union membership to persons 18 years of age and over.

Under Chilean law, young persons are permitted to contract their services at 15 years of age, and thus union membership is now open to all minors, who before had to await their eighteenth birthday. (Minors between 15 and 18 years of age require parental authorization in order to work but not in order to join a trade union).

4. Penalties for discrimination against trade unions

The legislation categorically stipulates that employment of a worker must not be linked with membership or non-membership of a trade union organization, and it prohibits attempts to prevent or impede membership in a union or to dismiss a person or prejudice him in any way on the ground of trade union membership or participation in union activities.

Furthermore, this legislation incorporates the concept of "unfair practices", by which is meant the use of pressure, dismissal, threats, etc. to prevent the formation of a trade union or the granting of special benefits or discriminatory action to discourage the formation of a union or membership in it or interference by the employer in union activities.

Unfair practices are penalized with fines which, in the more serious cases, may be as much as the equivalent of $9 534.

5. Formation of unions in both private and State enterprises

The text of article 1 of Decree-Law No. 2756 reads as follows:

> Workers in the private sector and workers in State enterprises, regardless of the legal status of such enterprises, shall be entitled to form, without prior authorization, any trade union organization they deem appropriate, subject only to the law and the rules of the organization concerned.

B. Trade union freedom

1. Full right to, not imposition of, trade union membership

In accordance with the principle of freedom of association the law establishes the right of workers to form, join and withdraw from trade unions, federations and confederations. It prohibits any discrimination, pressure, coercion, restriction or impediment affecting the right of a person to engage in trade union activities.

This rule has resulted, at long last, in the recognition of the fact that all workers have the right to equal treatment under the law. The former Code discriminated between intellectual workers ("employees", such as office workers, supervisors, drivers, foremen, etc.) and manual workers ("labourers", such as

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stevedores and blue-collar workers in general) by recognizing the "right" of the former to join a trade union, while "compelling" the latter to do so, inasmuch as workers, upon being employed by a company, were automatically registered as members of, and were obliged to participate in, the only trade union.

The above rule was in clear conflict with ILO Convention No. 87, which safeguards the right to organize and form trade union organizations. That right is impaired and even non-existent whenever the law imposes participation in only one union. To a great extent this explains why Chile did not ratify the aforementioned Convention adopted by ILO 31 years ago. Since that time five Governments have held power prior to the existing one.

In 1978, the present Government enacted Decree-Law No. 2200, on individual labour contracts, which eliminated all distinctions between intellectual and manual workers and gave the latter rights on a par with the former. The Decree-Law designated all simply as "workers", with identical rights, thus following the guidelines of ILO.

Nevertheless, two matters remain pending: the separate social security system, a question which will be solved when the contemplated reforms, now at an advanced stage of study, are enacted into law early next year; and the different treatment accorded in the area of trade union rights.

2. Every type of trade union structure is provided for

Article 5 of Decree-Law No. 2756 states: "Trade union organizations shall be formed and shall be designated, having regard to the workers concerned, as follows:

"(a) Company trade union, being a union restricted to workers of a single company;

"(b) Intercompany trade union, being a union of workers of at least three separate companies;

"(c) Independent workers' trade union, being a union of self-employed workers; and

"(d) Construction workers' trade union, being a union of workers in the construction sector, the special objective of which shall be to provide jobs for its present and future members on terms perviously agreed upon with the respective employers."

Article 2 provides that: "Trade union organizations shall have the right to establish or join federations and confederations and to affiliate with international workers' organizations in accordance with the law and their internal rules".

Furthermore, articles 57 and 58 state: "A federation is a coalition of more than three and fewer than 20 trade unions, organized in accordance with this law for the purpose of co-operating in the activities of the grass-roots associations,

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especially through: (a) technical assistance for the attainment of union goals; (b) promotion of workers' education in trade union and technical matters; and (c) development of objectives of a mutual and social security nature" and "a confederation is a coalition of 20 or more trade unions or federations, without distinction, organized in accordance with the law to achieve the objectives set forth in the preceding article".

C. Democracy and trade union autonomy

Trade unions are free to draw up their own rules, to administer themselves and to decide on their own activities.

Adoption of the rules and amendments to the rules requires the affirmative vote of more than half the members.

Administration of the organization is the responsibility of the Council, whose members enjoy immunity from jurisdiction (fuero). The number of trade union officials on the councils of unions with 1,000 or more has increased from five (as was permitted under the former Code) to seven; these officials enjoy immunity from jurisdiction.

The law now permits officials to perform their duties during working hours, which was not the case under the former Code.

Members of the council are appointed by secret ballot in the assembly and must be voted for by more than half the members. The officials hold office for two years and may be re-elected. They may be censured by a majority of the members, in which case a new election is held after due notice has been given to the workers.

Trade unions are financed by dues agreed upon by the members. If the members so agree, the dues are withheld from their pay.

In order to increase trade union autonomy and to avoid bureaucratic procedures, certain important innovations have been introduced. For example, the obligation to main union funds on deposit in the State Bank has been replaced by the right to deposit funds in a current account in any local bank; (the President, together with the Treasurer, is authorized to draw on such accounts). In addition, the obligation to draw up and submit annual balance-sheets in the case of trade unions with fewer than 250 members has been eliminated and instead such unions are merely required to keep an income and expenditure ledger and an inventory record.

The system for dissolving trade union organizations has undergone radical change. The main difference is that the role formerly played by the Executive Branch has now been transferred to the law courts.

The grounds for dissolution provided for by law are: (a) a decision of the members; (b) a provision to that effect drawn up by the members in the internal rules; (c) when the number of members falls below the minimum required for forming the organization and stays at that level for a period of six months; (d) cessation

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of functions for more than one year; (e) in the case of company unions, the extinction of the company to which the union belonged; and (f) serious breach of legal or statutory provisions.

In the last of these cases, a decision on the outcome rests with a judge of the law court with jurisdiction in the locality in which the union is domiciled; the judge must hold a hearing with the trade union officials of the organization concerned.

The above safeguard, which entrusts the authority to decide on a dissolution to the courts, instead of the Government, constitutes an important adjustment of Chilean law to international labour norms (ILO Convention No. 87). In the earlier Code, dissolution was decided upon and enforced by the President of the Republic.

In the case of dissolution, the assets of the union are disposed of as prescribed in the internal rules. Should no provision have been made to this end, the assets go to a non-profit legal entity and, if possible, benefit the workers or inhabitants of the place in which the union was located.

ESSENTIAL FEATURES OF THE PROVISIONS ON COLLECTIVE BARGAINING

(Decree-Law No. 2758, published in the Official Gazette, 6 July 1979)

1. Initiation of the bargaining

The law acknowledges that collective bargaining is the right of all workers, whether they are organized or not. Thus, if there are workers who have still not formed a union or do not belong to the existing union or unions, they should form a bargaining group. To do so requires no major formalities.

The new provisions established 16 August 1979 as the date on which trade unions and groups of workers in each company should start to submit their draft collective contracts.

In order to establish an organizational mechanism, a provisional time-table was drawn up. It contains different dates for the submission of draft collective contracts during the period 16 August 1979-6 May 1980, the sequence depending on the letter with which the company's name begins.

As soon as they became acquainted with the details of the new provisions, the workers and employers of the thousands of companies in Chile began to expedite the studies under way and intensified preparations for submitting the new draft collective contracts and thereby recovering free bargaining.

The provisional time-table for the first round of bargaining ends on 6 May 1980 and from that date onwards the permanent procedure will apply. This procedure consists in submitting the draft collective contract no more than 45 days and no fewer than 40 days prior to the date on which the current collective contract expires.

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However, the time-table referred to above does not prevent the parties from entering into collective bargaining by mutual consent on dates other than those established in the time-table.

2. Companies in which bargaining is feasible

Bargaining is a right held by workers of companies in the private sector and workers of companies in which the State has interests, participation or representation.

Collective bargaining may not take place in public or private institutions which have been financed in the last two calendar years by the State or through taxes. As a rule, State enterprises in Chile are self-supporting and have been earning profits since 1978; thus they are now shouldering the heavy burden which in the past was borne by consumers, who had to absorb their heavy losses by payment of taxes.

3. Matters subject to collective bargaining

The law fully acknowledges the right to deal in collective bargaining with all matters relating to remuneration and other monetary benefits and any conditions normally deriving from labour contracts.

4. Procedure for collective bargaining

(a) Collective bargaining is initiated when a "draft collective contract" is submitted to the employer. A copy of the draft collective contract, duly signed by the employer, is sent to the relevant labour inspection office.

If the negotiating party is a trade union, the bargaining committee consists of the union officials. If a negotiation is being conducted by workers who are not members of a union, they are required to designate, by secret ballot, a bargaining committee consisting of at least three members.

The employer must respond in writing, within 10 days, to the workers' proposal. If he fails to reply within the time-limit, the workers' proposal is to be regarded as accepted.

(b) At least the same purchasing power is guaranteed. In any event, the employer's reply must not contain proposals which, taken as a whole, would result in remuneration and allowances - expressed in currency of the same purchasing power as that of the latest legal wage increase - lower than those stipulated in current labour contracts.

The law thus guarantees that regardless of the particular situation of the company, the workers may not be offered remuneration at lower than the prevailing rates, duly adjusted by 100 per cent of the rise in the cost of living during the period since the last adjustment.

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This is a great improvement inasmuch as Chilean legislation has never before provided this guarantee to workers. Moreover, often in the past, even after a prolonged strike, workers were unable to obtain an increase corresponding to the loss in purchasing power of their wages.

Furthermore, the employer's reply should, as a minimum, provide for an annual adjustment system, applicable throughout the term of the collective contract, whereby the wages agreed upon will be adjusted in exact proportion to variations in the cost-of-living index. This rule is another major improvement: up to now automatic increases were not compulsory and existed in only a few large companies, under collective contracts agreed upon after many years of striving.

(c) The parties bargain directly. It was decided to eliminate the permanent boards of conciliation and arbitration, which were State organizations, since they proved to be clumsy and bureaucratic and compounded problems rather than solving them. Arbitration was never resorted to owing to deficiencies in the legislation.

Should the parties so desire, they may, by mutual consent, appoint a mediator, who has 10 days in which to discharge his mandate.

If the mediator fails to achieve his goal, the parties may freely and voluntarily submit their differences to arbitration.

All of the above is without prejudice to the power of the workers' bargaining committee to demand, at any time, that a new collective contract be drawn up and signed, incorporating their current conditions, adjusted by 100 per cent of the change in the cost-of-living index; the employer cannot refuse their demand.

The right to adjustments equivalent to 100 per cent of the change in the cost-of-living index deserves emphasis, since it means that the workers bargain on the basis of what they are currently receiving, adjusted by 100 per cent of any change in the cost-of-living index. This new system represents a benefit for the workers which is not granted under other legislations.

If, when the current collective contract expires, the parties have not reached an agreement as to the new conditions which will apply, and if they have not agreed to submit the bargaining to voluntary arbitration, the workers may declare a strike, that is to say, they may exercise their right to stop working. The strike must be agreed to by a majority of the workers involved in the bargaining (more than 50 per cent of those negotiating). The workers enjoy immunity during the first 60 days of the actual strike, which means that they can strike for two months without being dismissed. It should be stated that the historical average duration of strikes in Chile is 21 days.

Only after the strike has begun may the employer declare a lock-out or, in effect, an employer's strike or temporary close-down of the company: that is, the right of the employer to temporarily prevent access to the company of all workers involved in the strike. This right may be exercised only if more than 50 per cent of all the workers in the establishment are on strike, or if the strike should result in the paralysation of activities essential to the functioning of the

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establishment. The lock-out cannot extend beyond 30 days from the initiation of the strike.

5. The idea of compulsory arbitration as a rule of general application was rejected

It is worth noting that proposals to institute compulsory arbitration as a general means of solving bargaining problems were rejected in favour of direct agreement, including the possibility of strike and voluntary arbitration agreed upon by the parties.

The reasons leading to this decision include the fact that compulsory arbitration sometimes pleases neither the workers nor the employers. It is difficult to reach an agreement on the appointment of an arbitrator (and this holds up a settlement). Besides, arbitration not agreed upon by the parties concerned means the intervention of a person unconnected with the conflicting interests, who, by favouring the position of one of the parties, will displease the other, and, consequently, his decision may give rise to further serious difficulties after the ruling has been given. The adoption of the voluntary arbitration system is in keeping with the standards established by the international instruments of ILO, especially Recommendation No. 92, of 1951, concerning Voluntary Conciliation and Arbitration.

At the same time, ILO recognizes that the right to strike may be restricted or even prohibited when it would affect essential services or companies which constitute a vital sector of a country's activities. The ILO Committee on Freedom of Association has made it clear, however, that there should be no confusion when determining which are the authentically vital State services or agencies, the paralysation of which could cause a public nuisance, and those which are not vital according to that criterion. 2/

In such situations care must be taken not to impair the right to bargain collectively.

Chilean legislation, with due regard for these international principles, recognizes that, in certain exceptional cases, arbitration is the most appropriate procedure when services vital to the country's population and economy are at stake. For this reason, it has established compulsory arbitration in respect of bargaining in companies: (a) "that render services of public utility", or (b) "the paralysation of which would cause grave damage to the health or supply of the population, or to the country's economy or national security". The law further establishes that "for subparagraph (b) to be effective, it is necessary that the company in question should represent a significant part of the respective activity of the country, or that its paralysation would mean that there was absolutely no possibility of a segment of the population receiving a service'. The classification of companies falling into this category must be made in July every

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2/ Freedom of association. Digest of Decisions of the Freedom of Association Committee of the Governing Body of the ILO (Geneva, International Labour Office, 1976).

year by a joint resolution of the Ministries of the Economy, Defence and Labour. This resolution has already been adopted for the period July 1979-July 1980, and it includes only one of the four copper mining fields, three telephone companies, the telecommunications company, the National Explosives Company, the State Mass Transport Company, the Railway Company, the National Airline, the State Bank, two sanitation companies (Santiago and Valparaíso), the National Electricity Company and 10 other electricity-producing companies. the National Petroleum Company, the gas companies of Santiago, Valparaíso and Concepción and the Lo Castillo Drinking-Water Company.

In all the aforementioned companies, the bargaining must be done directly. The parties may appoint mediators and, as a last resort, may submit their differences to an arbitrator, whose ruling may be appealed before an arbitration tribunal composed of three members. The arbitrators must be appointed by an arbitration body, whose members are appointed in the same way as the judges of the judiciary.

In issuing their ruling, the arbitrators must take into account, inter alia, the following:

(a) The existing wage levels for the various posts or jobs submitted to negotiation;

(b) The degree of specialization and experience of the workers, which may enable the company to achieve greater productivity in relation to other companies in the same sector or a similar one;

(c) The increases in productivity achieved by different groups of workers;

(d) The level of employment in the company activity subject to arbitration.

6. Duration of contracts

The duration of collective contracts should be that agreed upon by the parties; however, in no case may it be less than two years. Collective contracts must provide for a system for adjusting wages at least once a year during the life of the contract on the basis of the cost-of-living index.

7. New collective bargaining

Collective bargaining in this new stage will no longer be able to resort to the types of pressure that were common until September 1973. Such pressure included: interference of outsiders in purely labour matters, indiscriminate intervention of the State, and irresponsible charging of the cost of the bargaining to sectors not connected with it, such as unemployed persons and consumers, thereby directly affecting the national economy.
