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

Second periodic reports submitted by States parties to the Covenant concerning rights covered by articles 6 to 9, in accordance with the first stage of the programme established by the Economic and Social Council in its resolution 1988 (LX)

CHILE*

[19 August 1983]

INTRODUCTION

1. In accordance with the corresponding reporting guidelines (Economic and Social Council resolution 1988 (LX)), the Government of Chile hereby submits its report on articles 6 to 9 of the International Covenant on Economic, Social and Political Rights.

A. Historical background and basic conditions prevailing in the country with regard to matters covered by articles 6 to 9 of the Covenant

2. It should first be said that, although concern for labour, health and social insurance matters dates back a long time in Chile - to the birth of the Republic at the beginning of the nineteenth century - and gave rise to an abundance of laws and regulations, it was marred by such serious defects as inaccuracies, lacunae and,

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* The initial report submitted by the Government of Chile concerning the rights covered by articles 6 to 9 of the Covenant (E/1978/8/Add.10 and Add.28) was considered by the Sessional Working Group of Governmental Experts at its 1980 session (see E/1980/WG.1/SR.8-9).

in particular, lack of co-ordination and unjustifiable discrepancies attributable to the amount of political pressure that certain sectors could exert in favour of their interests.

3. This situation gave rise to a body of laws that was as abundant as it was confused and contained such irritating discrepancies as the differentiation between wage-earners and salaried employees, a virtual trade union monopoly, etc.

4. The problem was even more pronounced in the area of social security.

5. Thus, for instance, the tremendous proliferation of social insurance schemes (23 in 1973) resulting from the imposition of the interests of the labour sectors with the most economic power or political weight steadily increased the discrepancies in rights and benefits.

6. The Labour Code itself laid the bases for discrimination between salaried employees and wage-earners, a discrimination which manifested itself in all manner of areas (bonuses, holidays, family allowances, etc.), quite apart from making an almost total separation between the two groups, to the total detriment of the latter. (The justification given for the privileged position of salaried employees was that intellectual effort was worth more than purely physical effort.)

7. In addition, the absence of a fair, comprehensive and genuinely egalitarian social security system created a basically unjust situation in which sectors enjoying very advantageous treatment existed alongside others which had virtually no social insurance protection at all.

8. It must, however, be acknowledged that the 1931 Labour Code represented a significant advance for its time, remoulding and partially improving as it did the various laws then in existence, although it was marred by numerous lacunae and imperfections which required that it be constantly amended.

9. As we have seen, the main reform that was needed in labour legislation was an end to the discrimination between manual and non-manual workers, which was the main source of the differences in treatment which affected virtually all areas of activity. As a result of this distinction, Chilean workers were subject to different systems with regard to contracts of employment, trade union membership, collective bargaining and social security, the systems for salaried employees generally being more advantageous: for instance, a higher minimum wage, considerably higher family allowances, a greater share in undertakings' profits, longer holidays and, of course, substantially greater social insurance benefits.

10. The above circumstances prompted wage-earning sectors to fight increasingly for salaried status. Thus it was that different sectors such as hairdressers, mechanics, electricians, boilermakers, etc. pressed successfully for special laws granting them salaried status. Since this was done without any kind of planning, it only added to the confusion that already reigned.

11. Very gradually, there began to be a reaction against this state of affairs and a number of laws were enacted concerning termination of contracts of employment, agricultural trade unions, social insurance for industrial accidents, etc., which made no distinction between wage-earners and salaried employees, although they were still conceived in a disjointed and unconnected manner.

12. Chile's present Government set as one of its priorities the task of amplifying and refining the still diffuse concept of equality of rights among workers, putting an end to any discrimination between them. To achieve this massive objective, it began by unifying all the minimum income schemes, making the living wage for salaried employees tne same as the minimum wage for wage-earners, and created a single system of family benefits, a single system of unemployment benefits, etc. Finally, on 15 July 1978, it promulgated Decree-Law No. 2200, which replaced the first two volumes of the 1931 Labour Code dealing essentially with contracts of employment and individual relations and ended the differentiation between wage-earners and salaried employees, introducing the single term "workers" for the purposes of contracts of employment, holidays, hours of work, profit-sharing, etc.

13. In conformity with the Declaration of Principles of the Government of Chile, the following are the guiding principles of Chile's present labour order, which were first enunciated in the above-mentioned Decree-Law No. 2200:

(a) Complete equality of rights among workers;

(b) Restoration of the dignity of work;

(c) Broad recognition of the right to organize;

(d) A broad conception of all the intermediate groups between the individual and the State, in terms which recognize the legitimate independence of each group to fulfil its own ends.

14. The following were established as a necessary consequence of the above:

(a) Workers' freedom to join or withdraw from a trade union;

(b) The constitution of trade union organizations and the automatic granting of legal personality to them;

(c) Freedom to pay union dues and genuine administrative and financial democracy and autonomy for trade unions;

(d) Freedom to form trade union federations and confederations;

(e) Free, voluntary, informed and tecnnical collective bargaining at the level of the undertaking.

15. Since there is room for improvement in every human endeavour, the Government of Chile, through the Ministry of Labour, set a period of time for all labour and employers' organizations and, in general, any individual to make comments and

suggestions on the present legislation, in particular Decree-Law No. 2200, after it had been in force for three years. This was done as scheduled and the Government is now collating and analysing the responses.

16. As will be seen from the body of the report, the right of self-determination is amply recognized by Chilean legislation.

17. The aforesaid legislation does not discriminate in any way as to race, colour, sex, language, religion, political or other persuasion, national or social origin, property, birth or other status. Such discrimination would be in violation of Chilean law (the Constitution and the Penal Code) and would be punished in accordance with the instruments mentioned.

18. Non-nationals enjoy the same rights as are recognized for Chilean workers, provided that they comply with the universal norms applicable to them in conformity with international instruments incorporated into Chilean legislation. No case of discrimination on grounds that an individual was not a Chilean national has ever arisen, however.

19. Women workers likewise generally enjoy the same rights and benefits as men, but as women they also enjoy a number of additional benefits such as maternity leave, etc.

B. Information furnished to the International Labour Organisation by means of communications to which article 17, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights applies

20. The following information has been furnished to the International Labour Organisation:

(a) Comments on the implementation of employment policy, Convention No. 122 (Note 070 of 16 March 1983);

(b) Report on the implementation of employment policy, Convention No. 122 (Note 076 of 23 March 1983);

(c) Report on discrimination (in respect of employment and occupation), Convention No. 111 (Note 046 of 23 February 1983);

(d) Report on sickness insurance (in industry and agriculture), Conventions Nos. 24 and 25 (Note 019 of 26 January 1983);

(e) Reports on unemployment indemnities, Convention No. 8, and the right of association in agriculture, Convention No. 11 (Note 1858 of 10 December 1982);

(f) Comments on observations made by the Committee of Experts on the Application of Conventions Nos. 111, 122 and 127 (Note 167 of 19 May 1983);

(g) Background to Case No. 1170 submitted to the Committee on Freedom of Association (Note 168 of 19 May 1983);

(h) Information provided to the Committee on Freedom of Association in connection with Cases Nos. 823, 1117, 1184, 1170 and 1186 (Notes 195, 136, 139, 140 and 141 respectively of 5 May 1983);

(i) Information provided to the Committee on Freedom of Information in connection with Case No. 823 (Note 038 of 9 February 1983);

(j) Information provided to the Committee on Freedom of Association in connection with Cases Nos. 1028, 1183, 1191 and 1194 (Notes 152, 153, 154 and 155 respectively of 11 May 1983);

(k) Information provided to the Committee on Freedom of Association in connection with Cases Nos. 1136 and 1144 (Notes 1411 and 1412 respectively of 22 September 1982);

(l) Reports on the application of ratified Conventions Nos. 12, 17, 18, 24, 25, 35, 36, 37, 38 and 127 (Note 114 of 20 January 1982);

(m) Report on the application of Conventions Nos. 29 and 111 (Note 366 of 9 March 1982);

(n) Report on freedom of association, Conventions Nos. 87, 98 and 141 (Note 1089 of 27 July 1982).

I. ARTICLE 6. THE RIGHT TO WORK

21. The principle per se of the right to work, as enshrined in article 6 of the Covenant, is recognized in the Constitution of the Republic of Chile and in Decree-Law No. 2200 of 1978.

22. The first and second paragraphs of article 19, section 16, of the Constitution provide that:

> "The Constitution guarantees to all persons:
>
> "...
>
> "16. Freedom to work and protection of that freedom.
>
> "Every person has the right to freely undertake and freely choose his work and to receive fair remuneration."

23. The first and third paragraphs of article 2 of Decree-Law No. 2200, for its part, established that:

"Work has a social function and each person is free to become a party to a contract and dedicate his efforts to such lawful employment as he chooses.

"The State shall protect a worker's right to choose his employment freely and shall ensure compliance with the provisions governing the performance of services."

24. The right of everyone to gain his living by work which he freely chooses or accepts is, as indicated above, enshrined in the above-mentioned constitutional and legal provisions reproduced in the preceding paragraphs.

Guarantees

25. Guarantees against discrimination in regard to access to employment are likewise provided in the Constitution of the Republic of Chile, Decree-Law No. 2200 of 1978 and also Decree-Law No. 2756 and Decree-Law No. 2758 of 1979.

26. The third and fourth paragraphs of article 19, section 16, of the Constitution provide that:

"Any discrimination which is not based on personal competence or fitness is prohibited, without prejudice to the fact that the law may require Chilean nationality or age limits in certain cases.

"No type of work may be prohibited, unless it conflicts with public morals, safety or health, or unless the national interest so demands and the law so provides. No law or provision of a public authority may require membership of any organization or entity as a prerequisite for engaging in certain activities or work, or withdrawal from such membership as a condition for engaging in such activities or keeping such work. The law shall determine which professions require a university degree or qualification and the conditions to be met in order to engage in them."

27. The second paragraph of article 2 of Decree-Law No. 2200, for its part, provides that:

"Any discrimination, exclusion or preference based on race, colour, sex, religion, political opinion, nationality or social origin shall be contrary to the principles of labour law. No employer may consequently make the engagement of a worker conditional on any such factor."

28. The third paragraph of article 3 of Decree-Law No. 2756 of 1979, laying down rules for the organization of trade unions, provides for its part that:

"Membership shall be voluntary. No one shall be obliged to join a trade union organization in order to do a job or engage in an activity. No person shall likewise be prevented from withdrawing from membership."

29. Article 4 of the same Decree-Law states that:

"It shall not be lawful to make the employment of a worker conditional upon his membership or withdrawal from membership of a trade union organization. It shall similarly be unlawful to prevent or impede his membership or dismiss or prejudice him in any manner on account of his trade union membership or participation in trade union activities."

30. The first paragraph of article 7 of Decree-Law No. 2756 provides that:

"No trade union organization shall pursue objectives other than those described in the preceding article or in its rules. More generally, it shall not be lawful for any such organization to engage in activities likely to undermine the rights guaranteed by the Constitution and the law, in particular the right to individual freedom and the right to work."

31. Article 12, paragraph 4, of Decree-Law No. 2758 of 1979, laying down rules for collective bargaining, provides that:

"The following matters shall not be the subject of collective bargaining or of any kind of collective agreement or contract:

"...

"4. Matters which may imply restrictions on the use of manpower or resources, such as restrictions on the recruitment of non-unionized workers or workers serving an apprenticeship, the size of the staff, the pace of production, the system of promotion or the use of machinery."

32. With regard to protection against arbitrary dismissal, it should first be stated that, under Chilean law, the only circumstances in which a contract of employment can be terminated are those listed in articles 13, 14 and 15 of Decree-Law No. 2200, which provide as follows:

"Termination of a contract of employment

"13. A contract of employment shall be terminated in the following cases:

"(a) by mutual agreement between the parties;

"(b) on expiry of the agreed period. However, the period covered by a fixed-term contract shall not exceed two years. If the worker continues to perform services with the employer's knowledge after the period in question has elapsed, his contract shall be converted into a contract of indefinite duration. The second renewal of a fixed-term contract shall have the same effect;

"(c) on completion of the work or service for which the contract was concluded;

"(d) on the worker's death;

"(e) on account of an act of God or force majeure;

"(f) on at least 30 days' written notice being given by either of the parties to the other, with a copy for the appropriate labour inspection service. However, this notice shall not be required if the employer pays the worker compensation in cash equal to his last monthly remuneration; and

"(g) on the lapsing of the contract in cases covered by articles 14 and 15.

"14. A contract of employment shall lapse immediately and without any right to compensation if the employer terminates it on the grounds that the worker has been guilty of any of the following acts, in which case he shall give notice of the fact in writing to the appropriate labour inspection service within three working days, reckoned from the worker's dismissal:

"1. dishonesty, acts of violence, insults or highly immoral conduct that has been duly established;

"2. business carried on by the worker within the undertaking's range of activities, if it has been prohibited by the employer in writing in the worker's contract;

"3. the worker's failure to report for work, without a valid reason, for two consecutive days, two Mondays in any month or a total of three days in any month, and likewise the absence, without a valid reason or without previous notice, of a worker who is responsible for any activity, piece of work or machine the neglect or stoppage of which seriously disrupts the conduct of operations;

"4. the worker's desertion of his job, which shall be taken to mean (a) his premature and unjustified departure from his place of work during working hours without permission from the employer or the latter's representative; and (b) the worker's refusal, without a vlid reason, to do the work specified in his contract; and

"5. any serious failure to discharge the obligations implicit in the contract.

"The provisions of the first paragraph of this article shall also apply to cases where an employer terminates a contract on grounds attributable to the operating requirements of the undertaking, establishment or service.

"15. A contract shall also lapse immediately and without any right to compensation if the employer terminates it on the grounds that the worker has been guilty of any of the following acts, in which case he shall notify the labour inspection service in writing within three working days and also the appropriate authority so that the latter can take such steps and submit such reports as may be necessary:

"1. unlawful acts preventing the worker from being present at his work or discharging his obligations as a worker;

"2. intentional damage to property within the undertaking;

"3. acts resulting in the destruction, depreciation or deterioration of materials, equipment, products or goods;

"4. the direction of or active participation in any unlawful interruption or stoppage of work, whether total or partial, in the undertaking or workplace or the unlawful seizure of persons or property;

"5. incitement to destroy, interrupt or put out of operation any public or private installations, or participation in action causing damage to such installations; and

"6. the commission of any offence covered by Act No. 12927 on the security of the State or Act No. 17798 on the control of arms, as amended."

33. Now, as a measure of protection against arbitrary dismissal, the legislature has granted certain rights to the worker whose contract is terminated for one of the reasons given in the preceding paragraphs. These rights are set forth in article 19 of Decree-Law No. 2200, the first, second and third paragraphs of which stipulate that:

"19. A worker whose contract is terminated for one or more of the reasons given in articles 13, 14 and 15 of this Decree-Law may, if he thinks that there is no justification or grounds for invoking those reasons, apply to the appropriate court for a declaration to that effect and for an order to pay the compensation provided for in article 13, paragraph (f), and article 16. If the court so decides, the contract shall be deemed to have been terminated by notice given by the employer on the date on which the reason was invoked.

"If the contract of employment is terminated by virtue of the final paragraph of article 14, the court shall still settle the claim, after hearing a report by experts whose fees shall be payable by the person who invoked the reason for dismissal.

"If the contract of employment is terminated as provided in paragraph (f) of article 13 and the worker is not paid the appropriate compensation, the worker may apply to the same court for an order to pay and for payment to be made through judicial channels."

34. Finally, article 16 of Decree-Law No. 2200 provides in this connection that:

"16. Where, as provided in paragraph (f) of article 13, an employer terminates a contract that has been in force for a year or more, he shall pay the worker compensation equal to his last monthly remuneration in respect of every year or fraction of a year in excess of six months spent continuously in his service. Such compensation shall be additional to any compensation payable to the worker under paragraph (f) of article 13."

35. In connection with article 6 of the Covenant, we provide the following background information on the National Training and Employment Service (SENCE).

Organization of an employment service

36. Since 1977, municipal employment offices have been operating in Chile absolutely free of charge. Their main function is to serve as intermediaries between the supply of and demand for work. In 1981, private employment offices also came into operation, performing functions similar to those of the municipal offices and supervised by SENCE.

37. The aim of the municipal and the private employment offices is to provide a service to both unemployed persons and potential employers, keeping them as well informed as possible about the labour market by finding out about job openings and available manpower.

Technical and vocational guidance and training programmes

38. The National Training and Employment Service, a State body set up by Decree-Law No. 1446 of 1976, is responsible for supervising the implementation of the provisions of the Statute on Training and Employment.

39. The Service's main functions, as established by the Statute, are as follows:

(a) To administer a national programme of vocational training fellowships for individuals with limited resources who are either unemployed or self-employed, in order to give them a means of improving their standard of living;

(b) To channel such resources to meet the training needs of the country's various regions and communes and the objectives of development plans and programmes, so as to ensure that trainees are subsequently able to find work. (Applications to provide such courses are made by public tender in which training agencies authorized or recognized by SENCE and responsible for providing training may participate. Such agencies can also show that a percentage of the students registered in the course subsequently became employed or self-employed. A system of incentives is provided for this purpose. The total number of people trained under the fellowship programme between the date on which the Service was set up and 1982 was approximately 219,000);

(c) To encourage, approve and supervise vocational training schemes run by undertakings.

40. All undertakings operating in the country and paying Class 1 income tax are eligible for a tax exemption whereby they can deduct from their income tax payments up to 1 per cent of the annual taxable remuneration paid to their staff to offset training costs incurred in respect of their workers.

41. Both the overall direction and the actual subject matter of training programmes are determined on the basis of the analysis which each undertaking makes of its own situation in order to determine its training needs.

42. As a result, the type of scheme adopted depends mainly on the individual characteristics of each undertaking, in particular its normal production process, its development potential and the part it plays in the national and international economy.

43. The total number of workers trained under this programme between 1977 and 1982 was approximately 425,000.

II. ARTICLE 7. THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

A. Remuneration

44. With regard to principal laws, etc., the right to fair remuneration is recognized in our legislation in the second paragraph of article 19, section 16, of the Constitution of the Republic of Chile, which provides that every person has the right to freely undertake and freely choose his work and to receive fair remuneration.

45. As for the principal methods used for fixing wages, under Chilean law remuneration is fixed by mutual consent between the parties through either individual or collective bargaining, bearing in mind that such remuneration cannot be less than the legal minimum income.

46. The third paragraph of article 52 of Decree-Law No. 2200 establishes that:

> "The monthly rate of remuneration shall not be less than the monthly minimum income. Where agreement is reached on part-time working, the remuneration shall not be less than the current minimum, calculated in proportion to the normal hours of work."

47. The above-mentioned minimum income is, however, subject to exceptions relating to the age of the worker. Thus, the fourth paragraph of article 52 provides that:

> "The minimum remuneration established in the preceding paragraph shall not apply to workers under 21 years of age until they reach that age, or to those over 65 years of age. In such cases, the remuneration shall be that agreed upon freely between the parties."

48. The minimum income in question is fixed periodically by law, taking into account the basic needs of the worker and his family.

49. Remuneration is also subject to adjustments, which may be made by law or contractually, through individual or collective bargaining.

50. For statistical purposes we mignt mention that, in 1982, 44,021 workers in the metropolitan area and 35,890 elsewhere in the country fixed their remuneration by means of collective agreements.

Further information on the concept of remuneration

51. Regarding components of workers' remuneration other than regular wages, according to article 50 of Degree-Law No. 2200 the expression "remuneration" means the counterpart in cash and the fringe benefits in kind that can be expressed in terms of cash that the worker is entitled to receive from his employer in recognition of his services.

52. By virtue of article 5 of the same Decree-Law, the following, inter alia, are deemed to constitute remuneration:

> "(a) the wage or salary, i.e. the fixed payment in cash made at such regular intervals as are specified in the contract to a worker in return for the performance of his services, without prejudice to the provisions of the second paragraph of article 10 of this Decree-Law;
>
> "(b) overtime pay, i.e. the remuneration for overtime;
>
> "(c) commission, i.e. the percentage on sales or purchases, or the value of other operations, that the employer effects with the worker's collaboration;
>
> "(d) shares in profits, i.e. the proportion of the profits of a specified business or undertaking or of one or more of its departments or branches; and
>
> "(e) bonuses, i.e. the share of the profits which the employer grants as a supplement to the worker's wage or salary."

53. Now, in addition to the remuneration mentioned above, there are in practice other benefits which may be added to those already mentioned by virtue of an agreement between the employer and the worker. These include production bonuses, piece rates, attendance and seniority bonuses, birth and marriage bonuses, bonuses for national holidays or Christmas, etc.

54. With regard to methods to guarantee women conditions of work not inferior to those enjoyed by men, the principle of equality of treatment for men and women is enshrined in our Constitution. We would therefore refer to the provisions cited earlier in this report, in particular those of the third paragraph of article 19, section 16, of the Constitution of the Republic of Chile and the second paragraph of article 2 of Decree-Law No. 2200 prohibiting, in labour matters, any discrimination which is not based on personal competence or fitness, for instance discrimination on grounds of sex, nationality, social origin, etc.

B. Benefits: rest, leisure, reasonable limitation of working hours, and holidays with pay

Legislation

55. Legislation on these matters is to be found in Decree-Law No. 2200 of 1978 and, with regard to weekly rest, also in Supreme Decree No. 101 of 1918.

Analysis

(a) Weekly rest

56. This benefit is provided for in article 46 of Decree-Law No. 2200, as amended by Act No. 18018, which provides as follows:

> "Sundays and such days as are declared by law to be public holidays shall be observed as rest days, except in such activities as are recognized by law as days on which work may be performed.
>
> "The first day of May each year is hereby declared to be National Labour Day and a public holiday."

57. The rule set forth in the above article is supplemented by articles 47 and 48 of the same Decree-Law, which provide as follows:

> "47. The rest period and the concomitant obligations and prohibitions specified in the foregoing articles shall take effect not later than 9 p.m. on the day preceding the relevant Sunday or public holiday and shall end at 6 a.m. on the day following that Sunday or public holiday, except where alterations are made to the timetable on account of a change of shifts.
>
> "48. Undertakings or jobs for which no exception to the weekly rest has been permitted shall not distribute the normal daily hours of work in such a way as to include a Sunday or public holiday, except in cases of force majeure recognized by the Department of Labour. Should they do so without such recognition, the hours worked on such days shall invariably be paid as overtime and the fine provided for in article 165 shall be payable."

58. It should be noted that article 49 of Decree-Law No. 2200 provides exceptions to the right to rest on Sundays and public holidays for workers employed on the kinds of work listed in that article, but at the same time grants them a day of rest in the course of the week in compensation for the work done on the Sunday and a day of rest for every public holiday on which the workers have been required to perform services.

59. The above-mentioned article 49, as amended by Act No. 18011 of 1 July 1981 and Act No. 18032 of 25 September 1981 establishes that:

> "Exceptions to the provisions of the foregoing articles as to rest on Sundays and public holidays shall be made in the case of workers employed on:

"1. Work connected with the repair of damage caused by force majeure or an act of God, on condition that the repairs cannot be postponed;

"2. Operations, work or services that have to be continuous owing to their nature, for technical reasons, on account of the requirements that they meet or in order to avoid appreciable harm to the public interest or to industry;

"3. Work which by its nature can only be done at certain times or seasons of the year;

"4. Urgent work required for the proper operation of the undertaking;

"5. Work on board ship;

"6. Dock work;

"7. Work in commercial establishments and establishments in the services sector that cater directly for the public, but only as regards workers as catering for the public in this way and depending on the arrangements made within the establishment concerned; and

"8. Activities the performance of which has been the subject of agreement with the employer by virtue of a collective contract or agreement or is covered by an arbitration award.

"Undertakings which are not required to observe this rest may distribute the normal hours of work for the jobs excepted from it in such a way as to include Sundays and public holidays, but the hours worked on such days shall be paid as overtime if they exceed the normal weekly hours of work.

"Undertakings which are not required to observe a rest on Sundays as provided in article 46 shall grant a day of rest in the course of the week in compensation for the work done on the Sunday and a day of rest for every public holiday on which the workers have been required to perform services. Such days of rest may be granted collectively for all the workers or for individual shifts in order not to disrupt the normal course of work.

"Where by virtue of the preceding paragraph, a worker is entitled to more than one day of rest in the course of the week, the parties may agree on a special procedure for the distribution or remuneration of any days of rest in excess of one per week.

"In cases where a worker is required to perform services in places remote from urban areas, agreement may be reached on hours of work that represent up to two continuous weeks' work, at the end of which the worker must be granted rest days in compensation for the Sundays or public holidays falling within that two week period, plus one additional day of rest. The provisions of the preceding paragraph shall also apply in such cases. The whole of the foregoing shall be without prejudice to any other systems provided for in this connection by collective contract or agreement."

(b) Normal hours of work and overtime

60. In this connection, the duration of the working week may not exceed the 48 hours established in the first paragraph of article 34 of Decree-Law No. 2200.

61. The above-mentioned paragraph provides that:

"Normal hours of work shall not exceed 48 a week."

62. The above provision constitutes the general rule with regard to hours of work, but exceptions are made to it in the second and third paragraphs of article 34 and in article 37 of Decree-Law No. 2200.

63. These provisions stipulate as follows:

"34. ...

"The limit fixed for hours of work shall not apply to workers performing services for two or more employers, managers, administrators, agents and all those who work without immediate supervision, commission and insurance agents, commercial travellers, persons employed to collect payments and other similar persons not performing their duties on the premises of the establishment.

"The limit fixed for hours of work shall likewise not apply to workers serving on board fishing vessels.

"37. The provisions of article 34 shall not apply to persons engaged in caretaking duties or performing duties which are of an intermittent nature or require their mere physical presence, or any other duties which are declared to be of a similar nature by the Department of Labour.

"The provisions of article 34 shall likewise not apply to workers in telegraph, telephone, electricity and water supply undertakings, theatres and other similar establishments if, in the opinion of the Department of Labour, the business done during the day is obviously not great and the workers are obliged to be constantly at the disposal of the public.

"The provisions of article 34 shall likewise not apply to the staff of hotels, restaurants and clubs. However, the administrative, laundry, linen-room and kitchen staff of such establishments shall be subject to the provisions of the first paragraph of that article.

"Notwithstanding the foregoing, workers covered by this article shall not remain at the workplace for more than 12 hours a day and shall have a rest period of at least one hour in the course of such working day."

64. Article 39 of the same Decree-Law provides that:

"Without prejudice to the provisions of article 36, the maximum weekly hours of work specified in article 34 may not be distributed over more than six days or exceed 12 hours a day."

65. With regard to overtime, article 41 of Decree-Law No. 2200 provides that:

"The expression 'overtime' means any hours worked in excess of the statutory maximum or the number of hours agreed to in the contract, whichever is the less.

"Hours worked on Sundays and public holidays shall invariably be regarded as overtime for the purposes of remuneration, provided that they are in excess of the normal weekly hours of work."

(c) Holidays with pay

66. The general rule with regard to holidays is set forth in article 72 of Decree-Law No. 2200, which provides that:

"A worker with more than one year's service shall be entitled to 15 working days annual leave on full pay, which shall be granted in accordance with the procedure laid down in the regulations.

"Such leave shall preferably be granted in spring or summer, due account being taken of the requirements of the service."

67. According to article 73 of the Decree-Law:

"Any worker with 10 years' continuous or non-continuous service with the same employer shall be entitled to an extra day's leave for every three additional years of service. Such additional leave shall be a matter for individual or collective bargaining."

68. The remaining rules governing this benefit are found in the following articles:

"74. In undertakings which have distributed the working week over less than six working days, one of those days shall be regarded as a non-working day for leave purposes.

"75. A worker shall not be entitled to more than 35 days of annual leave, including non-working days, by virtue of either the provisions of article 73 or those of collective agreements or contracts or arbitration awards handed down in collective bargaining.

"76. Leave shall be continuous, but any leave in excess of 10 working days may be taken in instalments by mutual consent.

"Leave may also be accumulated by agreement between the parties, but only for up to two consecutive periods.

"77. In the case of a worker earning a fixed rate of remuneration, his full pay for the period of leave shall be represented by his wage or salary.

"In the case of a worker earning a variable rate of remuneration, his full pay shall be taken to be his average earnings over the last three months of employment.

"Any system of payment at piece rates or in the form of commission, bonuses, etc., which, as provided in the contract of employment, implies the possibility that the monthly total will not be constant from one month to another shall be deemed to constitute a variable rate of remuneration.

"78. If a statutory, contractual or voluntary adjustment of remuneration takes place while a worker is on leave, it shall also apply to the full remuneration payable during that leave from the date on which the adjustment took effect."

Inconvertibility of leave

"79. Cash may not be paid in lieu of the leave provided for in article 72.

"Only in cases wnere a worker who has qualified for leave ceases to be a member of the staff of the undertaking for any reason shall the employer pay cash in lieu of leave that the worker would have been entitled to take.

"Notwithstanding the foregoing, a worker whose contract is terminated before he has completed the year of service conferring an entitlement to leave shall receive compensation equal to his full pay, calculated in proportion to the period worked between the date of his recruitment or the date on which he completed his last full year of service and the date of termination of his contract.

"80. A worker employed in an undertaking or establishment which, owing to the nature of the activities it carries on, ceases to operate for certain periods of the year shall not be entitled to leave if the length of the interruption is at least equal to the period of leave to which he is entitled under this Decree-Law and he has received the remuneration provided for in his contract in the normal manner during that period."

69. The legislature has also provided the possibility for all the workers in an undertaking to be given leave at the same time. Thus, article 81 provides that:

"81. An employer may decide that his undertaking or establishment or any part of it is to be closed down for a minimum of 15 working days each year to enable all the corresponding staff to take their leave at the same time.

"In this case, leave shall be granted to all the workers employed in the undertaking or department, even if there are those who individually do not qualify for it; the latter shall be deemed to have taken advance leave."

(d) Remuneration for public holidays

70. In this connection, a distinction must be made between workers paid exclusively by the day and workers paid monthly.

71. Under article 53 of Decree-Law No. 2200, the former are entitled to remuneration for Sundays and public holidays. That article provides that:

"A worker who is remunerated exclusively by the day shall be entitled to cash remuneration in respect of Sundays and public holidays.

"If his remuneration consists of a daily base pay and a piece rate or other daily remuneration which makes its amount variable, the worker shall be entitled to cash remuneration for Sundays and public holidays only in respect of the daily base pay. If the daily remuneration is paid wholly at job rates, and does not comprise a daily base pay, the cash remuneration paid shall be equivalent to the worker's average earnings over the pay period in question.

"The provisions of this article shall not apply to contracts concluded for a maximum period of 30 days either because the parties have reached an express agreement to that effect or because the temporary nature of the services provided so requires. Such contracts may not be extended to more than 60 days.

"No account shall be taken for the purposes of the preceding paragraph of any incidental or special remuneration, such as gratuities, Christmas boxes, special bonuses, etc.

"To enjoy the entitlement provided for in the first paragraph of this article, a worker must have completed the full number of hours on all the days worked by the undertaking or department during the week in question. He shall forfeit the entitlement if his late arrivals amount to more than two hours in the course of any one week or four hours in the course of a calendar month.

"The provisions of the preceding paragraphs shall apply, where relevant, to the rest days granted to workers who are not entitled to the rest provided for in article 46.

"A worker shall not forfeit his entitlement on account of absences due to an industrial accident unless such absences cover a full week."

72. Workers paid on a monthly basis are paid for Sundays and public holidays by virtue of the fact that they have agreed to a monthly wage which is understood to cover both working days and Sundays and public holidays arising in the month in question.

III. ARTICLE 8. TRADE UNION RIGHTS

A. Legislation

73. The right to organize is recognized in the Constitution of the Republic of Chile and is regulated by Decree-Law No. 2756 of 1979.

B. Right to form and join trade unions

74. As indicated in the preceding paragraph, article 19, section 19 of the Constitution of the Republic of Chile recognizes the right to organize as follows:

> "The Constitution guarantees to all persons:
>
> "...
>
> "19. The right to organize in the cases and in the manner prescribed by law. Trade union membership shall always be voluntary.
>
> "Trade union organizations shall enjoy legal personality automatically by virtue of the registration of their rules and acts of constitution in the manner and on the terms prescribed by law.
>
> "The means for ensuring the autonomy of such organizations shall be provided by law. Trade union organizations and their leaders may not engage in party political activities."

75. Article 1 of Decree-Law No. 2756, for its part, provides that:

> "Workers employed in the private sector or in State undertakings, whatever their legal status, shall have the right to establish trade union organizations of their own choosing without prior authorization, subject only to compliance with the law and the rules of the organizations concerned."

76. Article 3 of Decree-Law No. 2756 establishes the right to join a trade union, the first, second and third paragraphs thereof providing as follows:

> "The right to organize shall be enjoyed by workers covered by article 1 who fulfil the requirements laid down by law and by the rules of the organizations concerned. Persons under legal age and married women shall not require permission of any kind to join a trade union.
>
> "Membership of a trade union shall be personal and may not therefore be transferred or delegated.
>
> "Membership shall be voluntary. No one can be forced to join a trade union organization in order to do a job or engage in an activity. No one can likewise be prevented from withdrawing from union membership."

77. The above rule is subject only to the limitation provided for in the fourth paragraph of article 3, which states that "no worker may belong to more than one trade union at a time".

C. Right of trade unions to federate

78. Regarding the right of national federations or confederations to form or join international trade union organizations, article 2 of Decree-Law No. 2756 provides that:

> "Trade union organizations shall have the right to form or join federations and confederations in the manner prescribed by law and by their rules, provided that such higher organizations have been set up in accordance with the provisions of this Decree-Law or have adapted themselves to it.
>
> "All the organizations referred to in the preceding paragraph shall likewise have the right to form and join international organizations of workers in the manner prescribed by their rules and by international legal norms, customs and practices."

D. Right of trade unions to function freely

79. This right is recognized by all the articles of Decree-Law No. 2756. We might cite as an example the right to establish a trade union without prior authorization (tne union is established at a meeting of workers attended by the quorum specified in articles 10 and 11 of the Decree-Law and conducted in the presence of an authenticating officer) and the right to adopt the union's rules and elect its officials.

80. We might also mention the right to hold ordinary and extraordinary meetings at any trade union office, outside working hours, to enable union members to discuss matters relating to the undertaking which employs them.

Freedom of trade unions to dispose of and administer property

81. Trade unions may also acquire, own and transfer property of any kind.

82. Employers, for their part, must provide the necessary facilities for elections of union officials and other secret ballots required by law. They must also grant union officials the necessary time off from work to perform their duties.

Guarantees

83. The legislature has also ruled to be unfair practices on the part of the employer any action which violates or obstructs trade union freedom, in particular the practices listed in article 66 of Decree-Law No. 2758 of 1979, which provides that:

"66. Any action directed against freedom of association shall be deemed to be an unfair practice on the part of the employer.

"More particularly it shall be unlawful for any person to:

"(a) obstruct the establishment of a workers' union by exerting pressure in the form of threats of loss of employment or benefits or closure of the undertaking, establishment or worksite if the decision is taken to establish a trade union;

"(b) offer or grant special benefits for the sole purpose of dissuading workers from establishing a trade union;

"(c) take any action covered by the preceding subparagraphs for the purpose of preventing a worker from joining an existing trade union;

"(d) interfere in trade union matters, for instance by actively intervening in the organization of a trade union, exerting pressure on workers to join a particular trade union, discriminating between existing trade unions through the unfair and arbitrary granting of extra-contractual facilities or concessions to some and not to others or making the engagement of a worker conditional on his signing an application to join a trade union or an authorization to have his trade union contributions deducted automatically from his remuneration;

"(e) discriminate unduly between workers for the sole purpose of inducing them to join or withdraw from a trade union or dissuading them from doing so."

Protection against dismissal

84. Finally, in conformity with article 28 of Decree-Law No. 2756, trade union officials enjoy the protection against dismissal provided for in article 22 of Decree-Law No. 2200 from the date of their election until six months after they cease to hold office, provided that they did not cease to hold office on account of a vote of censure passed by a union meeting, as a result of a penalty imposed by the competent court and involving their removal from office, or on account of the dissolution of the trade union or the closure of the undertaking.

85. The protection provided for in article 22 of Decree-Law No. 2200 means in effect that the employer cannot terminate the contract of employment of such individuals without the prior authorization of the courts. The courts may grant such authorization in the cases specified in article 13, subparagraphs (b) and (c), and article 14 (with the exception of the final paragraph) of Decree-Law No. 2200 and already cited in connection with article 6 of the Covenant (see paragraph 32 above).

"A copy of the employer's last offer shall be sent to the labour inspectorate within the two working days prior to the period specified in the second paragraph of the preceding article.

"Ballot sheets shall be marked with the words 'employer's last offer' or the word 'strike', depending on what each worker decides."

Quorum

"52. A strike shall be called by an absolute majority of tne workers involved in the bargaining procedure. Where this proportion is not attained, the workers shall be deemed to have accepted the employer's last offer.

"The foregoing shall be without prejudice to the option provided in the second paragraph of article 49, which must be exercised within three working days from the date on which the vote was taken.

"53. Once the decision to call a strike has been taken, the workers shall go on strike on the third working day following the date of the decision; this time-limit may be extended by agreement with the employer for a further five working days.

"If the workers do not go on strike at the time specified above, they shall be deemed to have decided against it and, consequently, to have accepted the employer's last offer, without prejudice to the option provided in the second paragraph of article 49, which must be exercised within three working days from the date on which the strike was to have begun.

"If an absolute majority of the workers involved in the bargaining procedure continues to work, the strike shall be deemed not to have taken place.

"54. After a strike has been called or at any time in the course of a strike the bargaining committee, without prejudice to its powers under article 23, or 10 per cent of the workers involved in the bargaining procedure may arrange for another vote to be taken to decide on the last offer made by the employer during the collective bargaining or to submit the case to arbitration. Decisions shall be taken by an absolute majority of the workers concerned.

"If a compromise solution is reached, the strike shall be called off and the workers shall resume work on the same conditions as obtained when the draft collective agreement was submitted.

"In such cases the provisions of articles 50 and 51 shall apply, as appropriate, but the presence of an authenticating officer shall not be required if the number of workers involved is less than 250."

Suspension of reciprocal obligations

"57. During a strike or a temporary closure or lockout, the contract of employment between the workers and the employer involved or affected shall be deemed to be suspended. The workers shall not therefore be required to provide their services nor the employer to pay the remuneration, benefits or bonuses deriving from such contract.

"However, all contributions due to the appropriate social insurance institution shall be payable by the workers who are on strike or by the employer when he has ordered a lockout, but then only in respect of the workers affected by it.

"58. During a strike or a temporary closure or lockout, the workers may take up other work or temporary jobs outside the undertaking without this signifying that their contract of employment with the employer is thereby terminated.

"During a strike, the employer shall likewise retain the right to run the undertaking and carry out any duties or activities pertaining to it, for which purpose he may engage such workers as he considers necessary."

Prohibition of bargaining on an individual basis

"59. As long as the workers remain members of the corresponding trade union or bargaining group, it shall not be lawful for the employer to offer to reinstate such workers individually on any conditions whatsoever.

"60. Once 30 days have elapsed since the strike began, any worker may withdraw from the bargaining procedure.

"A worker shall be deemed to have withdrawn from the bargaining procedure simply by returning to work and bargaining directly with the employer to determine his individual conditions of employment.

"The employer shall be required to accept a worker who returns to work and, if he does not reach agreement with him on fresh conditions of employment, shall observe conditions as provided for in the third and final paragraphs of article 26.

"Workers not covered by a previous collective agreement may take part in the preparation of a new draft only as specified in the second and third paragraphs of article 19.

"62. Workers maintaining their decision not to work after 60 days have elapsed since the strike began shall be deemed to have resigned of their own volition, termination of their contracts of employment for this reason having the same legal effect as if they had given notice.

"Notwithstanding the foregoing, workers in the situation referred to in the preceding paragraph shall be entitled to unemployment benefit."

Special obligations of union officials during a strike

"63. If a strike occurs in an undertaking or farm or in an establishment where the stoppage of work results in actual and irreparable damage to its material assets or damage to the health of users of a medical or health establishment, the trade union or group of workers involved in the strike shall supply the necessary staff to carry on the work the stoppage of which would be liable to cause such damage.

"If the employer so requests in writing, the bargaining committee shall inform him, within 24 hours of receiving his request, of the workers who are to provide the skeleton staff.

"If it fails to do so, the employer may apply to the courts for a ruling on the workers' obligation to supply such staff.

"The provisions of the preceding paragraphs shall apply where the workers explicitly refuse to provide such staff or where there is disagreement as to its composition.

"The employer shall make his application within five days reckoned from the date of the workers' refusal or the absence of agreement, as the case may be."

Protection against dismissal during industrial disputes

"64. Workers involved in collective bargaining shall enjoy the protection provided for in article 22 of Decree-Law No. 2200 of 1978 from five days before the date on which the draft collective agreement is submitted until the final text is signed, the parties are notified of the arbitration award or 60 days have elapsed since the workers went on strike, as the case may be.

"However, the employer shall not be required to apply for such protection to be lifted in the case of workers employed on fixed-term contracts if such contracts expire during the period specified in the preceding paragraph.

"65. Without prejudice to the provisions of article 6, the President of the Republic may decree the resumption of work for a period of 90 days if a strike is called or a lockout ordered and its nature, timing or length is such as to cause serious prejudice to health, supplies for the population, the national economy or national security.

"The decree ordering resumption of work shall also be signed by the Minister of Labour and Social Welfare, the Minister of National Defence and the Minister of the Economy, Development and Reconstruction and shall appoint a member of the corps of arbitrators to act as mediator. Once the decree has been issued, the periods laid down in this Decree-Law for strikes and lockouts shall be suspended and shall continue to run until their expiry only after the period specified in the preceding paragraph has elapsed.

"Work shall be resumed on the same conditions as obtained when the draft collective agreement was submitted.

"The fees of members of the corps of arbitrators appointed to act as mediators shall be paid by the Government in accordance with the rates established for that purpose by the Ministry of the Economy, Development and Reconstruction."

Restrictions

87. There are restrictions on exercising the right to strike within the collective bargaining process. These restrictions are set forth in article 6 of Decree-Law No. 2758, which provides that:

"6. It shall not be lawful for a strike to be called by workers in undertakings -

"(a) operating public utility services; or

"(b) where a stoppage would cause serious prejudice to health, supplies for the population, the national economy or national security.

"For the situation referred to in subparagraph (b) to arise the undertaking in question must account for a significant part of the activity in question nationwide or its stoppage must imply the total impossibility of providing a given service to a section of the population.

"Where, in cases covered by this article, direct agreement cannot be reached between the parties through collective bargaining, the matter shall be referred to compulsory arbitration in the manner prescribed in this Decree-Law.

"Whether an undertaking is in any of the situations described in this article shall be determined in the course of July each year by joint resolution of the Minister of Labour and Social Welfare, the Minister of National Defence and the Minister of the Economy, Development and Reconstruction."

88. By virtue of article 74 of Decree-Law No. 2756, the provisions of the Decree-Law do not apply to members of the armed forces and the police or to government officials.

89. The article in question provides that:

"This Decree-Law shall not apply to central or local government officials with the exception of workers employed in State undertakings. It shall likewise not apply to officials of the judiciary, the National Congress and State undertakings coming under the Ministry of National Defence or connected with the Government through that Ministry."

90. With regard to collective bargaining, article 3 of Decree-Law No. 2758 provides that:

> "Collective bargaining may take place in private undertakings and undertakings to which the State contributes or in which it participates or is represented.
>
> "No collective bargaining shall take place in central or local government services or institutions, in undertakings coming under the Ministry of National Defence or connected with the Government through that Ministry, in the judiciary or in the National Congress.
>
> "Collective bargaining shall likewise not take place in public or private undertakings or institutions, over 50 per cent of the budget of which has been financed by the State either directly or through duties or taxes in either of the last two calendar years."

91. With regard to the right to strike, the sixth paragraph of article 19, section 16, of the Constitution of the Republic of Chile provides that "neither State nor municipal employees may declare a strike".

IV. ARTICLE 9. RIGHT TO SOCIAL SECURITY

A. Introduction

92. Article 9 of the International Covenant on Economic, Social and Cultural Rignts provides that the States Parties to the Covenant recognize the right of everyone to social security, including social insurance.

93. In conformity with the above article, Chile's Constitution recognizes the right to social security of all inhabitants of the Republic without distinction. Article 19, section 18, of the Constitution provides that the action of the State shall be directed towards guaranteeing all inhabitants access to uniform basic benefits, whether granted by public or private institutions and financed or not by contributions, and that the State shall supervise the proper exercise of the right to social security.

94. As a means of achieving these objectives, a legal and institutional machinery has been set up which provides social insurance coverage to all public and private sector workers and gives assistance entirely free of charge to old people, disabled persons, children and young people under working age who have limited resources. A national system of unemployment and family benefits has also been introduced with some success and has been entirely government-financed since 1981.

95. As described above, using one means or another and in some cases more than one kind of coverage, Chile's population has witnessed a gradual improvement in its situation and a steady consolidation of its rights to the benefits offered by the social security system, which is operating with increasing effectiveness.

B. Benefits offered by the social security system

1. Medical care

Legislation

96. Medical benefits, in kind and in the form of medical care, are governed mainly by the following legal provisions:

(a) Act No. 6174, published in the Diario Oficial of 9 February 1938, introducing coverage for preventive medicine;

(b) Act No. 16781, published in the Diario Oficial of 2 May 1968, providing medical and dental care for active and retired contributors to various social insurance institutions;

(c) Act No. 16744, published in the Diario Oficial of 1 February 1968, introducing insurance against employment injury;

(d) Act No. 10383, published in the Diario Oficial of 8 August 1962, setting up the Social Insurance Service and providing health benefits for contributors to the Service;

(e) Legislative Decree No. 3, published in the Diario Oficial of 19 May 1981, laying down rules for the provision of health services and benefits by health insurance institutions (ISAPRES).

97. On the basis of the above legal instruments, in particular those mentioned in (a) and (b), Chile's population is entitled to preventive health care, medical treatment, rehabilitation and medicine. Whether or not the individual contributes to the financing of such benefits depends on the nature of his illness, his personal situation and the resources available to the service providing care.

2. Sickness benefits

Legislation

98. The provision of sickness benefits is governed principally by the following legal instruments:

(a) Legislative Decree No. 44, published in the Diario Oficial of 24 July 1978, introducing standard rules for sickness benefits for private sector workers;

(b) Decree-Law No. 35357, published in the Diario Oficial of 22 January 1981, making the provisions of Legislative Decree No. 44 of 1978 applicable to workers employed by the State and by State institutions and undertakings and workers governed by Act No. 15565;

(c) Legislative Decree No. 338 of 1960;

(d) Legislative Decree No. 3, published in the Diario Oficial of 19 May 1981, laying down rules for the provision of health services and benefits by health insurance institutions;

(e) Act No. 16744, published in the Diario Oficial of 1 February 1968, introducing insurance against employment injury.

99. Taken together, the above provisions constitute the basis for the system of sickness benefits which enables workers temporarily affected by an illness or taking preventive sick leave to maintain a steady income.

100. The sickness benefit provided for in Legislative Decree No. 44 is paid on a daily basis. Its daily amount is equivalent to a third of the amount used as a basis for its calculation and must come to at least a third of 50 per cent of the minimum income for the private sector.

101. The amount used as a basis for calculating sickness benefits is equivalent to the net remuneration and/or any cash benefit (other than unemployment benefit) received by the worker in the course of the calendar month preceding the date of the corresponding sick leave. If the recipient did not receive any net remuneration or cash benefit during that month, the basis for calculation shall be the net remuneration established in the contract of employment.

102. In this connection and in accordance with paragraph (c) of the guidelines, it should be pointed out that, pursuant to article 22 of the Constitution of the International Labour Organisation, the Ministry of Labour and Social Insurance gave detailed information on the nature, structure and functioning of sickness insurance in industry and agriculture in its reports on ILO Conventions Nos. 24 and 25 prepared during the periods 1978-1981 and 1981-1982 and submitted to the Ministry of Foreign Affairs for transmittal to the relevant international bodies.

3. Maternity benefits

Legislation

103. The maternity benefits provided by Chile's social security system are established principally by the following legal instruments:

(a) Act No. 16781, published in the Diario Oficial of 2 May 1968, providing medical and dental care for active and retired contributors to various social insurance institutions;

(b) Act No. 10383, published in the Diario Oficial of 8 August 1952, setting up the Social Insurance Service and providing health benefits for contributors to the Service;

(c) Legislative Decree No. 338 of 1960, published in the Diario Oficial of 6 April 1960;

(d) Decree-Law No. 2200, published in the Diario Oficial of 15 June 1973, establishing the Labour Code.

104. On the basis of the above provisions, women workers and the wives of workers are covered during pregnancy and childbirth and post-partum. Maternity coverage is also provided to other categories of pregnant women who require free medical care; such care is provided by the National System of Health Services.

Medical benefits and benefits in kind

105. Any pregnant woman belonging to a social insurance scheme is entitled to receive medical care in the same way as she would for an ordinary illness, such care being specialized according to need. Women wage-earners belonging to the Social Insurance Service scheme are also entitled to receive supplementary foods and/or breast feeding aids from the seventh week of pregnancy until they cease to breast feed their child.

Cash benefits

106. Maternity benefit. Women workers are entitled to receive, throughout the period of maternity leave and any extension thereof, a maternity benefit ranging, according to need, from the equivalent of the ordinary sickness benefit to the total remuneration and allowances to which they are entitled. Benefits are paid from the Fund for Preventive Medicine in the case of private sector workers and by the Government or the employer undertaking in the case of public sector employees.

107. Maternity allowance. This is a cash benefit paid throughout the entire pregnancy to both women workers and wives of workers qualifying as the latter's dependants.

108. The grant is paid from the Government-financed Single Fund for Family Benefits.

109. Maternity leave. Pregnant women workers are entitled to six weeks prenatal and 12 weeks post-natal maternity leave.

110. This period can be extended in the event of complications of childbirth or if a child under one year of age becomes seriously ill, requiring the mother's personal attention.

111. During the period of prenatal and post-natal maternity leave, including any extensions, contributors' jobs are held open for them.

4. Invalidity, old-age and survivors' benefits

Legislation

112. These benefits are provided principally through social insurance schemes which, in this instance, are currently managed by provident funds and companies which administer pension funds.

113. For those who have no access to this kind of coverage, there are Government-financed social benefits which are either provided for as subsidiary benefits in insurance schemes themselves or are the subject of special schemes.

114. The basic legal instruments in this area are, in chronological order:

(a) Legislative Decree No. 1340a of 1930, published in the Diario Oficial of 10 October 1930, on the organization and operation of the National Fund for Public Employees and Journalists;

(b) Act No. 10383, published in the Diario Oficial of 8 August 1952, making insurance against certain risks compulsory and setting up the Social Insurance Service;

(c) Act No. 10475, published in the Diario Oficial of 9 September 1952, on retirement and pensions for salaried employees;

(d) Legislative Decree No. 338, published in the Diario Oficial of 6 August 1960, containing the civil service employees code;

(e) Decree-Law No. 869, published in the Diario Oficial of 28 January 1975, establishing a pension scheme for disabled persons and old people with limited resources;

(f) Decree-Law No. 3500, published in the Diario Oficial of 13 November 1980, establishing a new pensions system.

115. Regarding pensions granted through social insurance schemes, we mention only those aspects which seem most relevant since detailed information has already been given on this in the reports on ILO Conventions Nos. 35 to 38 prepared for the period 1978-1981 and sent to our Ministry.

116. Extent of coverage. In provident funds: according to the nature of the services and the sector of activity; in companies administering pension funds: according to the wishes of each member.

117. Financing. In provident funds: by means of contributions paid into distribution funds; in companies administering pension funds: through contributions paid into individual capitalization funds.

118. In both cases, the State guarantees a minimum pension.

119. Amount of the benefit. In provident funds, the amount of the benefit is based on the taxable remuneration recorded over a given period which, for such cases, is considered to be the base period. In companies administering pension funds, the amount of the benefit is based on a number of factors, the main one being the account balance and/or the income insured, as the case may be.

120. Contribution ceiling. In provident funds, the ceiling is fixed. In companies administering pension funds, the ceiling is variable.

121. The main Government-financed social insurance pensions are the following:

(a) Those provided under the scheme set up by Decree-Law No. 869 of 1975 for disabled persons over 18 years of age and persons over 65. These pensions are granted on the sole condition that the recipients have limited resources, have resided in Chile for at least three years and do not have social insurance coverage. The pension consists of a basic amount, currently $Ch 1,642.82, which can be increased in variable proportions up to a maximum of $Ch 2,470.24 if the recipient has contributed to an insurance institution. Receipt of such pensions is incompatible with the receipt of any other pension. However, recipients are eligible for family allowances and free medical care. The scheme is financed from the National Pension Fund and administered by the Social Insurance Service. As of May 1983, it had 214,610 recipients on its books;

(b) The main subsidized scheme is that envisaged in article 27 of Act No. 15386 under which the Social Insurance Service provides old-age and invalidity pensions to those of its members who do not meet all the requirements for receiving a pension under the general scheme. These benefits are financed from the Social Assistance Fund of the Social Insurance Service.

5. Employment injury benefits

Legislation

122. Social insurance against employment injury was introduced by Act No. 16744 which, like the social insurance for old-age, invalidity and survivors' benefits, was reported on in detail in the reports on ILO Conventions Nos. 12, 17 and 18 prepared for the period 1978-1981 and submitted to this Ministry which can proceed in this connection as instructed in the guidelines.

123. The main features of this insurance are:

(a) It provides broad coverage against the corresponding risks to all workers employed in another person's service, self-employed persons belonging to any social insurance scheme, students having to do work that represents a source of income for the school, persons employed in Government establishments and private individuals who suffer some accident in the course of their studies or the practice of their trade or profession;

(b) Different kinds of benefits are available under this scheme and may be granted singly or cumulatively, according to the nature and seriousness of the injury sustained. They include: medical benefits and benefits in kind provided in response to the injury and during the period of rehabilitation and financial benefits in the form of global compensation or a pension, as the case may be;

(c) The scheme is financed by employers' contributions in the case of employed persons and by members of the scheme in some sectors of self-employed workers covered by Act No. 16744.

124. Transitional article 1 of the above Act envisages a system of social benefits for people who are ineligible for the benefits payable under the insurance scheme established by the Act because they sustained the injury in question prior to the Act's entry into force. Such benefits are financed from a special fund which derives its income from a percentage of the total annual income of the employment injury insurance scheme.

6. Unemployment benefits

Legislation

125. There is a system of unemployment benefits which is governed by Legislative Decree No. 150 of 1981 containing the redrafted, systematized and co-ordinated text of Decree-Law No. 307 and Decree-Law No. 603 of 1974.

126. This system, which has been in force since 1974, consists of a general system of benefits and requirements for public and private sector workers who legally qualify as unemployed persons and therefore receive cash benefits for the duration of their unemployment (up to a maximum of 360 days). The scheme preserves their rights to family and maternity allowances and to medical benefits under their respective schemes.

127. The amount of the cash benefit is equivalent to 75 per cent of the latest taxable remuneration received, in the case of public sector workers, and the same percentage of the average remuneration on which contributions were payable to the corresponding pension fund or sickness benefit scheme, or both, for the six calendar months preceding unemployment, in the case of private sector workers.

128. These benefits are paid from the Single Fund for Family Benefits and Unemployment Benefits, financed exclusively from Government contributions provided for in the Budget, in the case of private sector workers and from a section of the budget of the Ministry of Finance in the case of public sector workers.

7. Family benefits

Legislation

129. Family benefits are provided under a single system governed, like the above-mentioned unemployment benefits system, by Legislative Decree No. 150 of 1981.

130. This system, which was set up by Decree-Law No. 307 of 1974, provides uniform cash benefits for public and private sector workers, pensioners under any insurance scheme and persons receiving benefits of any kind who are responsible for anyone enjoying the legal status of eligible dependants, and state-run or state-approved institutions which are responsible for the upbringing and maintenance of orphaned or abandoned children and disabled persons.

131. As a general rule, the benefit is paid from the date on which eligibility commences until the last day of the last month in which the dependant remains eligible. In the case of dependent children, it is paid until 31 December of the year in which they reach 18 or 24 years of age, as the case may be.

132. The above legislation also provides a maternity allowance for women workers and recipients and the wives of workers and recipients. This allowance is for the same amount as the family allowance and is paid to them throughout the entire pregnancy.

133. Both these allowances currently amount to $Ch 401.98. The figure is doubled in the case of disabled dependants.

134. This benefit is financed from the Single Fund for Family Benefits and Unemployment Benefits, which is exclusively Government-financed.

8. Family subsidies

Legislation

135. A system of family subsidies for people with limited resources was set up by Act No. 18020 and operates in parallel with the above-mentioned system of family benefits.

136. The family subsidy is paid to mothers or, in their absence, fathers of children up to 8 years of age who are not covered by the system of family benefits and are unable, given their personal circumstances, to provide for the upbringing and maintenance of their dependants.

137. The subsidy consists of a cash benefit of the same amount as the family allowance and cannot be received at the same time as that allowance or any other income of an amount equal to or greater than the subsidy which the dependant might receive.

138. The subsidy is paid from the month following that in which the mayoral decision granting it was taken and runs until 31 December of the year in which the dependant reaches 8 years of age. It may be terminated prior to that date, however, if any of the conditions of eligibility cease to be fulfilled.

139. The system is financed from the government-funded National Social Emergency Fund. As of May 1983, 485,729 people had received this subsidy.

9. Main health programmes in force

140. Workers covered by the social security system described above through their various public or private institutions have well-established rights to the maintenance and care of their health. These rights also extend to the worker's family, his children being eligible up to the age of 18 years. Independent or self-employed workers may join an insurance scheme voluntarily and obtain similar benefits.

141. Ministry of Health programmes comprise health protection and promotion and recovery and rehabilitation in the event of illness. Health care is free for all legal recipients under the National System of Health Services.

142. The Ministry's various programmes include:

(a) The Maternal and Child Health Programme, the aim of which is to increase life expectancy at birth and reduce risks to mother and child during pregnancy and childbirth and post-partum. The programme consists of out-patient monitoring of pregnancy, professional care in childbirth in hospital establishments and responsible parenthood activities. Child-care activities include comprehensive programmes of immunization against communicable diseases (tuberculosis, poliomyelitis, measles, diphtheria, tetanus and whooping cough) and monitoring for malnutrition. (A supplementary feeding programme set up to prevent malnutrition benefits pregnant women, nursing mothers and children up to 6 years of age. The programme provides free rations of milk, puréed soups, rice, etc. and is accompanied by supervision of the child's growth and development by a doctor or nurse);

(b) The Programme of Adult Health Care, which consists of out-patient care and hospitalization when necessary; it includes free medical examinations for the diagnosis of illness and free treatment and rehabilitation of the sick;

(c) Medical care includes emergency care which is administered 24 hours a day in every hospital throughout the country, in some cases by specialized teams;

(d) Special mention should also be made of the dental care programme, programmes for combating tuberculosis and chronic non-communicable diseases (arterial hypertension, diabetes, rheumatism) and the mental health programme which focuses especially on alcoholism;

/...

(e) During his illness and throughout the period in which the doctor considers him unfit for work, the worker receives a sickness benefit, calculated on the basis of his insurance contributions to enable him to support himself and his family.

143. We have already reported on the special legislation that exists for the prevention of industrial accidents and the treatment and, where necessary, the rehabilitation of workers who sustain employment injuries. The legislation in question is reproduced in the annexes in the final part of this report.

144. Finally, the Department of Occupational Health and Environmental Pollution set up within the Institute of Public Health serves as a national reference laboratory in the area of occupational health and helps solve the health problems of workers in the work-place. This Department takes action to determine and evaluate the risks of industrial accidents and occupational diseases and enacts rules for their prevention.

Annex

LIST OF ANNEXES a/

Article 6. The right to work

1. National employment survey

2. Unemployment rates by branch of activity

3. Minimum employment plan

4. Vocational programme for heads of household

Article 8. Trade union rights

Information provided to the Committee on Freedom of Association in connection with Case No. 823 (note of 4 February 1983).

Article 9. Right to social security

1. Statistics on:

   (a) Employment and unemployment levels, 1977-1981

   (b) Minimum income and consumer price index, January 1977-January 1981

   (c) Average monthly taxable remuneration, 1977-1981

   (d) Employment injuries (Act No. 16744) 1980-1981, number of workers sustaining such injuries

   (e) Statistical information on:

      (i) Active contributors

      (ii) Passive contributors

      (iii) Family responsibilities

      (iv) Covered population

      (v) Total population of the country

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a/ These reference materials can be consulted in the archives of the Secretariat in their original language, in the form in which they were transmitted by the Government of Chile.

(vi) Coverage of the social insurance system

(vii) Unemployment benefits

(f) Total amount of social security benefits, 1980-1981

2. Legal provisions relating to:

(a) Preventive medicine

(b) Employment injuries

(c) Medical and dental care for active and retired contributors to the institutions mentioned in article 2 of Legislative Decree No. 286 of 1960

(d) Sickness benefits for private sector workers

(e) Amendments to pension schemes

(f) New pension system

(g) New system of social insurance contributions and derogation from a number of legal provisions

(h) Provision of health services and benefits by health insurance institutions

(i) Single System of Family Benefits and Unemployment Benefits for private and public sector workers (redrafted, co-ordinated and systematized text)

General

Labour reforms.
