



Fourth Study Commission
Public and Social Law

Meeting in Taipei, 14 – 18 November 1999

Final Report

THE RIGHT TO STRIKE

It can be stated, in general, that the strike is a right provided for by the constitution and statutory laws and regulations in conformity with the recommendations of the United Nations and international conventions. It is worth noting that in Taiwan, Switzerland, Austria and Brazil, the right to strike exists only for workers in the private sector.

Almost all the legislations consider advance notice and conciliation a procedure, the inobservance of which would render the strike illegal. Brazil and Austria foresee only negotiation. The right to strike is characterized by certain limits everywhere:

- it must not be political
- it must follow the required procedure
- it must not endanger public order

A minimum service is generally required when vital sectors are involved.

Penal, civil, social or administrative jurisdictions can be competent to decide in an ordinary or summary way, according to the nature of facts and the qualities of the parties.

In Israel, Brazil, Slovenia and Austria only the social jurisdictions are competent except in the cases of occupation of working premises; this situation is considered illegal in all countries.

The "Lock-Out" can be considered illegal in certain circumstances. In these cases it would have as a consequence the payment of salaries to the workers. In all cases a pecuniary sanction can be imposed.

As a salary is the amount due for work, in principle strikers do not receive any salary, but they may obtain some allowances paid by trade-unions when the latter ordered or recognized the strike. In some countries it is possible to resort to a Labour Court in order to claim the payment of the amounts due.

Subject for the next meeting:

Duration of work and job flexibility.