Fourth Study Commission

General report and conclusions Santiago 2017

I. Report to Central Council

At the 59th Annual Meeting of the International Association of Judges in Mexico City, in 2016, the Fourth Commission chose as a topic: "*Flexible employment and other emerging types of labor relations".*

A total of 32 countries sent us a report. Eighteen countries gave us the pleasure of submitting their report in due time, ie before 1 August 2017.

These countries that submitted reports are:

Algeria, Armenia, Belgium, Canada, England, Georgia, Germany, Grece, Ireland, Japan, Netherland, Spain, Poland, Portugal, Serbia, Switzerland, Taiwan, United-States.

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The theme chosen by the Fourth Commission at the 59th International Congress of the U.I.M. aim for:

- on the one hand, to examine the different modes of "temporal and geographical flexibility" introduced by each country in its positive law;
- on the other hand, to identify the emerging modes (in the sense of alternative) of labor relations which would have appeared in order to ensure greater flexibility of working time.

In order to guarantee their competitiveness, companies are currently favoring:

- *external flexibility* by using temporary work, fixed-term contracts, subcontracting, or even the outsourcing of certain skills (IT, accounting, logistics, call centers, business catering, etc ...)
- or internal flexibility by using:
  1) "temporal" flexibility through working time arrangements or recourse to part-time work,

2) "geographical" flexibility of workplaces (telecommuting, home work, even changing jobs from one workstation to another, working for the same employer),

3) flexibility "by broadening the tasks of the worker" to recompose a trade within the same company (specialization by training to increase the skills of the worker)

4) flexibility "by reconversion" (training for a change of profession within the same company).

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The first working session of the Commission (Monday, November 13, 2017) was reserved for discussions of the topic of the year.

At the end of that session, **four observations can be drawn**. They constitute the conclusions of the commission**.**

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[1] With regard to the **legal framework** of the duration of working time:

- In general all countries have a regulation concerning working time. Although the United States does not generally have a maximum hour ceiling, working hours are regulated via overtime regulations;

- Regarding more particularly the countries that are members of the European community, the average duration of the working time was fixed by the Directive 2003/88 / EG of the Parliament and the European Council of November 4, 2003 on the regulation of the working time. The average duration of working time cannot exceed 48 hours of work, ie 6 days of 8 hours of work.

Most member countries of the European Community have transposed these rules into their national legislation.

[2] Regarding the **average duration of working time**, it varies in the participating countries between 38 and 52 hours of work per week, <u>excluding legal or conventional derogations</u>.

NB: national legislators have all provided for exceptions to the duration of working time, either general derogations or special derogations that would be too tedious to include in a summary report as the assumptions are numerous and distinct from a country to another.

I refer you to the written contributions of each of the countries.

Any work performed beyond the average duration of hours at work therefore, in principle, constitutes overtime work.

NB: We are talking about average working time in the sense that the working time is smoothed over a reference period ranging from a few weeks to a year, the main point being to respect during the reference period the number of working hours hour of work fixed by the legislator.

[3] With regard to the compensation that workers receive as a result of working overtime, it varies according to the country:

- the worker is not compensated (generally or for the first hour of overtime work);
- the worker is compensated at the standard hour rate or he enjoys a paid leave equivalent to the overtime worked;
- the worker who renounces to the payment of overtime should be granted compensatory paid leave for the equivalent of 150% of the overtime worked (Canada);
- the worker is compensated at 150% of his regular salary regardless of the period during which overtime is provided (Sunday and holidays included);
- the worker is compensated at 150% of the ordinary wage for overtime worked outside Sundays and public holidays and compensated at 200% for those hours performed on a Sunday or a holiday;
- the worker is not only compensated at 150% of the ordinary wage for overtime worked outside Sundays and public holidays and compensated at 200% for those performed on a Sunday or a holiday, but he also benefits from paid leave equivalent to the duration of overtime. The period of paid leave may even be increased if the worker requests the conversion of the supplement paid per additional hour (50% or 100% as the case may be) in an additional paid leave (Belgium, Switzerland).

[4] With regard to the different **modes of "temporal and geographical flexibility"** applied in companies and the **emerging modes of labor relations**, the different countries mentioned all or some of the following methods:

- successive fixed-term contracts;
- interim contracts;
- employment agencies for temporary word

- layoff;
- economic unemployment;
- working from home;
- teleworking;
- part-time work;
- on call or on demand (with or without payment of a minimum fixed remuneration corresponding to a minimum working time);
- occasional work;
- variable hours,
- introduction of the flexible schedule with mandatory fixed work ranges;
- increase in the reference period on which the calculation of the average working time is made, the main point being to respect during the reference period the average number of hours fixed by the legislature.

In light of these different hypotheses, the commission was particularly interested in the issue of "**teleworking**".

It should be noted that there is no proper definition of teleworking.

It could, however, be defined as a form of work organization or work performance in which work that could have been performed on the premises of the employer, is carried out, with the agreement of the parties (employer / worker), outside of these premises (work from the worker's home or elsewhere), on a regular and non occasional basis, using current information technologies.

During the course of the discussions, it appeared that the legislators or the social partners of most countries have not legislated on this matter, either because this type of flexibility was not yet applied in the country (rare), or because this type of flexibility was left to the contractual field of the parties alone, including with regards of the payment of expenses related to teleworking.

In this respect (teleworking costs), in Canada (Quebec), when the worker is paid the minimum wage, the employer must provide him/her with the material, equipment, raw materials or the goods necessary for the execution of his/her work, free of charge (art 85.01 *Lnt*). In practice, the employers in most countries provide the necessary equipment.

Among the reports received, only Belgium implemented the European Telework Agreement of 16 July 2002 by introducing in its positive law the notion of telework through a collective labor agreement n° 85 of 9 November 2005 (made compulsory by the Royal Decree of 13 June 2006 and entered into force on 1 July 2006) which applies to all companies located in Belgium.

Article 9 of this Collective Agreement provides, with respect to the expenses related to the implementation of the teleworking agreement, that the costs incurred by the teleworker must be borne by the employer, although it distinguishes the worker using his own equipment from the one using the equipment provided by his/her employer.

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The second session of the Commission (Wednesday, November 13, 2017) was reserved for the presentation of Justice Margaret McKeown, a member of our Commission, and now a vice-chair, representing the United States.

In the wake of the theme of the 59th Annual Meeting of the International Union of Magistrates ("**Social Networks and Labor Relations**"), Judge Margaret McKeown gave us a brilliant presentation entitled “Social Media: The good, the bad and the ugly”. She explained that judges have to be extremely prudent using social media and that there are ethical constraints relating to confidentiality, appearance of impropriety, security, and the dignity of the courts. She presented us very convincing examples from multiple countries of the risks for a judge (or a member of his staff), in using social media improperly or unwittingly and in ways that impugn the integrity of the courts. She also offered guidelines for social media training for judicial officers and their staffs. It was also noted that there are positive uses of social media by the courts that can be explored.

I was able to see that many delegates, even outside our committee, were very interested in this particularly interactive presentation.

I can only thank Margaret McKeown very warmly for this wonderful initiative.

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II. <u>Topic for the next meeting of the Fourth Commission</u>

The members of the Commission have chosen as a topic:

Rights and obligations of refugees: a risk of modern slavery?

Santiago, Chile, November 16, 2017
Philippe Bron
President of the Fourth Study Commission